

**IN THE COURT OF LXXXV ADDL. CITY CIVIL & SESSIONS
JUDGE, AT BENGALURU (CCH. 86) (Commercial Court)**

THIS THE 06TH DAY OF JANUARY 2021

**PRESENT:
SMT. LATHAKUMARI M.
M.A., LL.M.,
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com. OS. No.8303/2018

BETWEEN:

M/S Parshwa Marketing Agencies

Dealers in Bopp, Thermal and Polyester
Films, Parshwa Nivas No.207/B, 2nd Block,
3rd Stage, Judges Colony, 3rd D Cross
Basaveshwaranagar, Bangalore-560079
Represented by one of it's Partner
Sri. Nirupam A Shah,
Aged about 39 years
S/o Ashok Kumar B Shah

: PLAINTIFF

(Represented by Sri. G.S.
Mahadevappa - Advocate)

AND

1. M/s Print Club,

No.230/235, Srinath Building
1st Floor, Sultanpet,
Bangalore-560053.

By its Partners
Sri Sebastian & Sri Mohan Kumar.

2. Mr. Sebastian

Aged about 40 years
Father's name not known to the

plaintiff
 Partner of M/s Print Club
 No.230/235, Srinath Building
 1st Floor, Sultanpet,
 Bangalore-560053.

3. Mr. Mohan Kumar

Aged about 38 years
 Father's name not known to the
 plaintiff
 Partner of M/s Print Club
 No.230/235, Srinath Building
 1st Floor, Sultanpet,
 Bangalore-560053.

: DEFENDANTS

(Ex-parte)

Date of Institution of the suit	19.11.2018		
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	Suit for recovery of money		
Date of commencement of recording of evidence	27.08.2019		
Date on which judgment was pronounced	06.01.2021		
Total Duration	Year/s 02	Month/s 01	Day/s 17

(LATHAKUMARI M.),
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.

J U D G M E N T

This is a suit filed by plaintiff's agency against the defendants for a judgment and decree for a sum of Rs.2,45,000/- together with court cost and current interest at the rate of 18% per annum from the date of suit till realization and for such other reliefs as this court deems fit to grant in the circumstances of the case.

2. The brief facts of the plaintiff's case is that, the Plaintiff is a registered partnership firm carrying on the business in the name and style of Parshwa Marketing Agencies and this suit is filed by one of its partner Sri. Nirupam A Shah. In para-4 of the plaint, it is mentioned that defendants have purchased Bopp Lamination Film from the plaintiff agencies under the credit bills. Towards the said purchase the defendants have made payment of Rs.2,55,267/-. After giving deduction to the said amount, plaintiff asserts that, the defendants are still due to the plaintiff for a sum of Rs.2,28,359/- towards the balance of principal amount. In spite of plaintiff's repeated requests and demands defendants failed to pay the same. The plaintiff asserts that he has also produced copy of the credit bills and ledger account extract for the period 1.4.2017 to 11.10.2018. In this regard, the defendants are liable to pay the said

amount along with agreed rate of interest at the rate of 24% p.a., as per trade usage and custom, which amounts to Rs.15,641/- in all Rs.2,45,000/- including legal notice charges of Rs.1000/-. In this regard, defendants issued three cheques towards part payment. When plaintiff presented the first cheque for Rs.76,000/- to his bank, same was returned unpaid as "funds insufficient". It is plaintiff's further case that since the first cheque itself has been returned unpaid, he has not presented the remaining two cheques and issued legal notice to the defendants on 12.10.2018. In spite of receipt of said notice, defendants failed to pay the amount due along with interest. Having left with no other way, plaintiff constrained to file this suit for the reliefs mentioned supra.

3. On issuance of suit summons, defendants remained absent placed ex-parte.

4. On behalf of the plaintiff, one of its partner Nirupam A Shah got examined himself as PW.1 and got marked as many as 23 documents in support of its claim.

5. I have carefully scrutinized the entire records before me. Heard the arguments.

6. Now the point that arise for my consideration is:-

1) Whether the Plaintiff is entitled for recovery of a sum of Rs.2,45,000/- together with court costs and current interest @ 18% per annum from the date of suit till realization?

2) What Order?

7. My answers to the above Points are as under:

Point No.1 :- In the Affirmative

Point No.2 :- As per the final Order
for the following reasons.

REASONS

8. **Point No.1** :- It is the case of the plaintiff agencies that defendants purchased Bopp Lamination Film from the plaintiff under various invoices. They have paid Rs.2,55,267/- towards part payment and they are still due of Rs.2,28,359/-.

9. To substantiate the same, plaintiff's one of the partner was examined on oath before this court as PW.1. In his chief-examination by reiterating entire plaint averments, P.W.1 got documents marked at Ex.P1 to P23. Ex.P1 is the Registration of Firm. Ex.P2 to P18 are all invoices against which defendants alleged to have purchased lamination film rolls from plaintiff agencies. It is the contention of plaintiff that towards the part payment defendants also issued three

cheques. The said cheques are as per Ex.P9 to P21. Plaintiff has also produced account ledger extract pertaining to purchase made by Print Club which is also again marked as Ex.P21. For the sake of convenience this document is now marked as Ex.P21(a). Ex.P22 is the Certificate in compliance of Sec. 65B(4) of the Indian Evidence Act. Ex.P23 is the office copy of the legal notice issued to defendant Print Club. Ex.P23(a) is the postal receipt. Ex.P23(b) is the postal acknowledgment. This postal acknowledgment establishes that defendants inspite of receipt of legal notice as per Ex.P23 not at all bothered to reply to said notice or to pay the balance of amount as claimed in the legal notice. In the legal notice the plaintiff has specifically mentioned that defendants are still due of Rs.2,28,359/- and they are liable to pay the same along with agreed rate of interest at the rate of 24% per annum. Inspite of receipt of such notice defendants have not made any effort either to pay the amount or to clarify about the same. As I have already stated, defendants remained absent in this suit and they were all placed ex-parte. Under such circumstances there is no reason to disbelieve the oral and documentary evidence relied upon by the plaintiffs more particularly the invoices and also accounts ledger extract itself as per Ex.P21(a). In the absence of specific defence there is no reason to disbelieve the version of PW.1 recorded

on oath. That apart there is no inconsistency in facts pleaded in the plaint and also documents produced. Apart from invoices, ledger extract plaintiff has also produced as many as three cheques. It is the contention of the plaintiff that these cheques were issued by defendants towards part payment of the amount due. All these documents establish the case of the plaintiff. Though in the invoices there is reference to interest about 24% per annum for delayed payment, plaintiff agencies is claiming only 18% in the suit in their prayer column which appears just and reasonable in a transaction like this, which is commercial in nature. Accordingly this court opines that plaintiff is entitled for the amount claimed along with interest at the rate of 18% per annum from the date of suit till realization as claimed. Accordingly, I answer Point No.1 in the **“Affirmative”**.

10. Point No.2 : - In view of my findings on Point No.1, I proceed to pass the following Order.

ORDER

The Suit decreed with costs.

***Defendants are directed to pay a sum of
Rs.2,45,000/- along with interest at the rate
of 18% per annum from the date of suit till***

realization.

Draw decree accordingly.

(Dictated to the Judgment Writer, transcribed by him, corrected and then pronounced by me in open Court on this the **06th day of January, 2021**).

**(LATHAKUMARI M.),
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.**

A N N E X U R E

**LIST OF WITNESSES EXAMINED ON BEHALF OF THE
PLAINTIFF**

PW.1 Sri. Nirupam A. Shah

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE
PLAINTIFF**

Ex.P-1	Certified Copy of Form-A
Ex.P-2 to 18	Copies of Invoices
Ex.P-19 to 21	Three Original Cheques
Ex.P-19(a)	Bank Memo
Ex.P-21(a)	Account Extract from 1.4.2017 to 1.10.2018.
Ex.P-22	Certificate u/s 65B of Indian Evidence
Ex.P-23	Copy of the Legal Notice dt. 12.10.2018
Ex.P-23(a) & 23(b)	Postal Receipt & Acknowledgment

**LIST OF WITNESSES EXAMINED ON BEHALF OF THE
DEFENDANTS**

NIL

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE
DEFENDANTS**

NIL

(LATHAKUMARI M.),
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.

The Judgment is pronounced in Open Court. (vide separate judgment) The operative portion of the said Judgment is as follows :-

ORDER

The Suit decreed with costs.

Defendants are directed to pay a sum of Rs.2,45,000/- along with interest at the rate of 18% per annum from the date of suit till realization.

Draw decree accordingly.

LXXXV ACCJ, B'LURU.