

Received on : 17/02/2018
Filed on : 17/02/2018
Registered on: 17/02/2018
Decided on : 01/05/2019
Duration : 01 Y 02 M 14 D

In the Court of 2nd Additional Civil Judge, Ankleshwar

Regular Summary Suit- 02/2018

Dharmeshkumar Pradumanbhai Gandhi,

Authorized person of Aadarsh Hardware & Paints Store,

Aged-45 Years, Religion-Hindu, Occupation-Business

R/O:4,5 Dhanlaxmi Chambers, Asian Paint Chowkdi, G.I.D.C., Ankleshwar

.....**Plaintiff**

Versus

1. VKS Projects Ltd.,

2. Dr. V.K.Sukumaran (Managing Director),

3. Manager,

All Office at: 507, B Wing, Sai Sangam Building, Palm Beach Road,

Sector-15, CBD Belapur (E), Navi Mumbai-400614

.....**Defendant**

Appearance

Mr. N.K.Jambu, Ld. Advocate for Plaintiff.

None for defendant.

JUDGEMENT

1. The present suit has been filed for recovery of Rs. 61,637/- (Sixtyone Thousand Six Hundred Thirtyseven only). The fact of the case as per plaintiff is that:

(A) The plaintiff herein is a firm and has office at the address as mentioned in the title clause of this plaint. The plaintiff firm is engaged in the business of manufacturing, trading and in general dealing in various kinds of paints and hardware.

(B). The defendant no.1 is company, defendant no. 2 is director of

defendant no. 1, and defendant is an employee working in the company with guideline of defendant no. 2. The plaintiff has supplied materials of cost 3,89,580/- and an amount was paid at the time of Rs. 2,77,643/-. An amount of Rs. 1,11,637/- was due, and of which Rs. 50,000/- was paid by RTGS, and for other due amount of Rs. 61,637/- a cheque of Rs. 50,000/- of IDBI Bank, Navi Mumbai Branch, with number 201093 was issue in the name of plaintiff. The cheque bounced after submitting it in The Kalupur Commercial Co.-Operative Bank Limited on 19.06.2017. The legal notice was sent on 11.07.2017 which was complied on 14.07.2017. The defendants have not paid the amount till yet. Thus the plaintiff has filed present suit seeking August Intervention of this Honorable Court in the larger interest of commerce, economy and to uphold the very spirit and legislative intent of Order XXXVII of Code of Civil Procedure. Also has prayed that:

(a) The decree for Rs. 61,637/- may kindly be passed in favour of the plaintiff as against the defendant and consequentially the defendant may kindly be ordered to pay and remit the amount along with the interest @ 18% per annum.

(b). The cost of the suit may also kindly be awarded in favour of the plaintiff as against the defendant.

(c) Any other relief that this Honorable Court may deem fit.

2. Further, the summon was issued to the defendant and which was served on him through e-mail, Whatsapp and RPAD but has not appeared himself or through his counsel. The summons returned with “Refused” endorsement and in torn condition, which means that it was read by the party, and then was refused.

3. Seeking the facts of the case and provision of Order XXXVII, the defendant did not appear and further did not file any application for

seeking leave to defend. Thus the defendant has violated the provision under Order XXXVII Rule 3. Thus the plaintiff deserves the relief as claimed and the judgment must be pronounce in the present suit.

4. In order to prove the his case the plaintiff has produced following oral and documentary evidence:

Oral Evidence

S. No.	Particulars of Witness	Exhibit
1	Affidavit on oath of Dharmesh Pradumn Gandhi	13

Documentary Evidence

S.No.	Particulars of Documents	Exhibit
1	Retail Invoice No. RI0063 dt. 19.05.2016	16
2	Retail Invoice No. RI0081 dt. 04.06.2016	17
3	Retail Invoice No. RI0093 dt. 13.06.2016	18
4	Retail Invoice No. RI0104 dt. 18.06.2016	19
5	Retail Invoice No. RI0107 dt. 21.06.2016	20
6	Ledger from 01.04.2015 to 12.12.2017	21
7	Cheque No. 201093 of A/C 0306102000007634	22
8	Cheque Return Memo	23
9	Legal Notice dt. 11.07.2017	24
10	RPAD Slip	25
11	Legal Notice dt. 27.12.2017	26
12	RPAD Slip	27
13	Acknowledgement	28

5. The Cheque No. 201093 of A/C 0306102000007634 at Exhibit 22 as per Section 118 of Negotiable Instruments Act, 1881 provides of a conclusive proof of legal dues. Also the summons has been served on defendant but has not appeared nor have filed a reply to the suit. Thus it is deemed that the defendant have accepted in totto of the due amount as shown by the plaintiff. The Return Memo at Exhibit 23 provides that the due amount is not paid. The Invoices provides of business transactions between the plaintiff and the defendants. The Ledger of defendant company provides of a due amount of Rs. 61,637/- on 12.12.2017.

6. Before proceeding ahead it is pertinent to mention the facts in **Harikishan Vedprakash Agarwal & Anr. Versus Burjor Joshi & Ors.** by Hon'ble Bombay High Court on 10 April, 2015 in NOTICE OF MOTION NO.2658 OF 2012, which is as below:

"20. Whilst observing that the procedure is the handmaid of justice and the Court must always be anxious to do justice and to prevent victories by way of technical knockouts, the Court observed the length to which it can go to grant time to file written statement. The observations in that judgment also strictly do not apply to this case, except perhaps the above observation which would apply to all matters of procedure. Similar in the case of R. N. Jodi & Brothers Vs. Subhashchandra (2007) 6 SCC 420 in para 14 of which it is observed : "**Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.**" This is though the rule is "couched in a negative language implying mandatory character."

7. The plaintiff has proved his case. Hence the suit deserves to be allowed. Hence following order is made below in the interest of justice.

:: O R D E R ::

1. The present summary suit of the plaintiff is hereby allowed.
2. The defendants are hereby ordered to pay the amount of Rupees 61,637/- (SixtyOne Thousand Six Hundred Thirty Seven only), with compoundable interest of 12% per annum to plaintiff, from the date of

filing of the suit,till realization,severally and jointly.

3. Defendants shall bear the cost of plaintiff.

4. Decree to be drawn accordingly.

Pronounced in open Court on 01st day of May, 2019.

Tripathi)

Judge,

(Brijendra Chandra

2nd Additional Civil

Ankleswar, District-Bharuch
Code No. GJ 01423