

GJVD170007552021



RECEIVED ON : 13.12.2021
REGISTERED ON : 13.12.2021
DECIDED ON : 07.09.2022
DURATION : 00. 08. 25
YY MM DD

=====

**IN THE COURT OF JUDGE, SMALL CAUSES COURT
VADODARA**

=====

SMST-R No. 227 OF 2021.

Exhibit : ____

PLAINTIFF:

Vasantkumar Jesangbhai Chaudhari

Resi at:- B/66, Girdhar Park Society,
Novino Battery, Makarpura, Vadodara

Versus

DEFENDANTS :-

1. V.S. Cargo Service

Address:- 2409, Haware Infotech Park, 24th
Floor, Opp. Vashi Station,
Near Inorbit Vashi, Navi
Mumbai, Maharashtra,

2. Vivek Arvind Dave

Resi at:- 71, Darshanam-99, Sama
Savli Road, Vadodara

APPEARANCE OF ADVOCATES :

Mr. **M.B. Gohil**, Ld. Advocate for Plaintiff.

None for the Defendants.

**SUIT FOR RECOVERY OF Rs. 7,00,000/- UNDER ORDER-37 OF
THE CIVIL PROCEDURE CODE**

:: J U D G M E N T ::

(1) The plaintiff has filed this suit under the Provision of **Order-37 of the Civil Procedure Code** for recovery of **Rs. 7,00,000/-** with interest accruing thereon @18% p.a. till actual realization. The short facts narrated in the present suit are as under :-

(2) The plaintiff is living with his family and providing sustenance for them. Defendant no. 1 is selling a four-wheeler car in the name and style of "V.S. Cargo Service" at the above-mentioned address and defendant no. 2 is owner and administrator of the defendant no.1. The plaintiff contacted the defendants through his friend to purchase Eco Sport SE Diesel Absolute Black (Four Wheeler Car) and in response to purchase the said four wheeler car, the plaintiff transferred the amount of Rs. 11,000/- through online transaction as initial payment (advance booking) against the total amount of Rs. 10,00,000/-. Moreover, the defendants asked the plaintiff to clear the remaining amount instantly hence, the said car could be delivered at the earliest. Thereafter, the plaintiff transferred the amount of Rs. 7,00,000/- & Rs. 2,89,001/- respectively through online transactions to the plaintiff's bank account. Moreover, the defendants neglected to deliver the said car to the plaintiff and gave assurance, the amount of Rs. 10,00,00/- would be returned very

soon. Moreover, as per his assurance, the defendants transferred only Rs. 3,00,000/- through online transactions to the plaintiff's bank account and remaining amount of Rs. 7,00,000/- is still due. After various requests and reminders by the plaintiff, the defendants executed a cheque for clearing the remaining amount and the same cheque was deposited by plaintiff with his bank and to the great surprise of the plaintiff the said cheque was returned by the banker with a reason of "Fund Insufficient". The plaintiff sent notice through his advocate on 9.11.2021 to the defendants to clear the outstanding dues and hence to clear such legal outstanding dues, even though defendants failed and neglected to return the remaining amount of the plaintiff. Therefore, the plaintiff has filed the present suit for recovery of Rs. 7,00,000/- from the defendants along with interest accruing thereon @18% p.a. till actual realization.

(3) The Court issued summons for appearance on the defendants as prescribed under the provisions of Order XXXVII Rule 2 of the Code of Civil Procedure, which was published upon the defendants on 02.08.2022. The defendants neither appeared in response to the summons for appearance nor filed address for service as laid down under the provisions of Order XXXVII, Rule 3 of the Code of Civil Procedure.

(4) The Plaintiff has submitted an application at Exh. 10 in accordance with the pleadings in the plaint. It is submitted that the plaintiff has filed the present suit and has sought relief of decree in its

favour in accordance with the provisions of O.37 of the Code of Civil Procedure. It is submitted that as the defendants failed to appear within the prescribed period the allegations in the plaint are deemed to be admitted and the plaintiff is entitled to decree for the sum mentioned in the plaint.

(5) The Plaintiff has produced documentary evidence to prove its case. On perusal of the evidence placed on record, original cheque and return memo are produced at Exh. 12 to 15, office copy of legal notice is produced at Exh. 16, original postal slip is produced at Exh. 17 & 18, online print of track consignment report is produced at Exh. 19, original unclaimed sealed cover notice are produced at Exh. 20 & 21, original maruti courier slip are produced at Exh. 22 & 23, original unclaimed sealed cover notice are produced at Exh. 24, original statement of maruti courier service is produced vide exh. 25, online print of email is produced at exh. 26.

(6) As per the provisions of Order XXXVII Rule 3(1) of the Code of Civil Procedure, a defendant may at any time within 10 days of the service of the summons enter an appearance either in person or by pleader and shall file address for service of notice. Order XXXVII Rule 2(3) provides that in default of the defendants in entering appearance the allegations in the plaint shall be deemed to be admitted, and the Plaintiff shall be entitled to a decree for a sum together with interest at the rate specified.

(7) In the facts and circumstances of the present case, summons was duly served. The defendants neither appeared before the court nor filed an address for service in response to the summons for appearance within the time prescribed. Under these circumstances, the plaintiff is entitled to a decree for the sum as prayed for. On perusal of the documents produced with the affidavit, it appears that no contractual rate of interest is in existence between the parties on the amount remaining unpaid. It is a settled principle of law that in case of decree for payment of money, where there is no contractual rate of interest agreed upon, the rate of interest shall not exceed 6%. Therefore, I think it to be just and proper in the interest of justice to award interest at the rate of 6% on the outstanding amount from the date of suit till date of decree. Hence, I pass the following final order.

:: ORDER ::

- > The plaintiff's suit bearing Summary Suit No. 227/2021 is hereby decreed under the Provision of Rule 2(3) Order XXXVII of the Civil Procedure Code.
- > The plaintiff is entitled to recover an amount of **Rs. 7,00,000/- (Rupees Seven Lac Only)**, from the defendants with interest **@6%** per annum from date of the suit till realization of the decretal amount.
- > The defendants have to pay the costs of the plaintiff and also bear their own costs.

- Decree to be drawn up accordingly.

Signed and pronounced in the open Court today on the 07th day of **September**, 2022.

Date: 07.09.2022
Vadodara.

A.H. Alam

Baldev Shaktidan Gadhvi
Judge, Small Cause Court,
Vadodara, (UIC GJ 00850)