

Received on :

Registered on :

Decided on :

Duration :

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Exh. _____

IN THE COURT OF JUDGE SMALL CAUSE COURT
AT SURAT
SMALL SUMMARY SUIT NO. 241 OF 2018

Plaintiff :

Parmar Vipul Natubhai,
 Residing at 138, Abhaynagar society,
 Lambe Hanuman Road, Surat.

Versus

Defendants :

- 1 Gurukrupa Lace
 Address: Shop no.2, Sunshine Palace,
 Nr.Jain Mandir, Morox Mahollo,
 Zampa bazar, Surat.
- 2 Sankshipt Sevantilal Mehta
 Residing at A-3,Dena Parivar,
 Makkhanbhog,Timaliawad,
 Nanpura, Surat.

Sub: Suit for recovery of Rs.3,53,614/- along with interest.

Mr.R.H.Jolia, learned advocate for the plaintiff.

Mr.Jitesh C.Chaul, Learned advocate for the defendant.

JUDGMENT

The facts of the case of the Plaintiff in brief are as under :

1. The Plaintiff herein is engaged in the business of Embroidery Lace Patti at the address mentioned in the title of the Suit. The plaintiff used to supply materials to the defendant on credit facility. The defendant herein had purchased materials on credit on various dates from the plaintiff and had assured that the bills amount would be paid on maturity. The plaintiff claims to recover Rs.3,53,614/- from the defendant in lieu of the said transactions. On demand, the defendant used to request the plaintiff for same time and used to give evasive reply but failed to make payment of the outstanding dues. The plaintiff claims that no payment is made by defendant against said bills. The plaintiff claims that an amount of Rs.3,53,614/- remains due and payable towards the said bills. The plaintiff claims to recover amount of interest @ 18% p.a. The plaintiff has filed the present suit to recover Rs. 3,53,614/- with interest accruing thereon @ 18% p.a. from the date of suit till the date of decree from the defendant personally as well as from his assets and properties.

2 The Plaintiff had issued summons for appearance on the defendant as prescribed under the provisions of Order XXXVII, Rule 2 of the Code of Civil Procedure which is duly served upon the defendant. The defendant has appeared in response to the summons for appearance. The defendant has not declared address of service of summons under the provisions of Order XXXVII, Rule 3 of the Code of Civil Procedure.

3 The Plaintiff had thereafter filed an application under Order XXXVII Rule 3(4) of the Code of Civil Procedure for issuing summons for judgment against the defendant. This summons for judgment issued on 24.07.2019 was served by bailiff summons at the address of the defendant on 25-07-19. The defendant has not filed any application seeking leave to defend

within the prescribed time-limit of 10 days in accordance with the provisions under Order XXXVII Rule 3(5) of the Code of Civil Procedure.

4 The Plaintiff has sued the defendant for recovery of Rs.3,53,614/- with interest at the rate of 18% p.a. on the ground that the defendant failed to repay the amount towards the materials purchased from the Plaintiff. The Plaintiff has deposed on oath & in accordance with pleadings in the plaint. The plaintiff has produced documentary evidence to prove its case. On perusal of the documentary evidence placed on record list vide Exh.3 which was contained mark 3/1 to 3/15 all the documents are original or office copy of the commercial transactions between plaintiff and defendant hence all documents are exhibited as Exh.14 to 28 in which he reiterated all the facts mentioned in Exh.1.

5 In the said summary suit, it appears that the summons for appearance was duly served. Thereafter, the Plaintiff filed an application and affidavit stating that since the defendant had not filed any address for service within 10 days from the publication of summons for appearance and had not appeared in response to the summons for appearance, judgment and decree be passed in his favour under Order XXXVII Rule 3(6)(a) of the Civil Procedure Code. The summons for judgment was duly issued on 25.07.2019 by bailiff. The defendant failed to file leave to defend within 10 days of the service of the summons for judgment.

6 It would be seen from the provisions of Order XXXVII Rule 3 of the Code of Civil Procedure that the defendant may at any time within 10 days of the service of the summons under Order XXXVII Rule 2 of the Code of Civil Procedure enter an appearance either in person or by pleader and the address for service has to be filed within 10 days from such service of summons. The application required to be made by the defendant under Rule 3(5) for leave to defend has to be made at any time within 10 days from the service of the summons for judgment. It has been laid down under the

provision of Order XXXVII Rule 3(6)(a) that at the hearing of the summons for judgment if the defendant has not applied for leave to defend or if such application is made and has been refused, the Plaintiff shall be entitled to judgment forthwith.

7 In the facts and circumstances of the present case, the defendant has neither entered an appearance nor filed application for leave to defend within the time stipulated under Rule 3 and Rule 3(5). Under the circumstances, the allegations in the plaint are deemed to be admitted and 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 18% p.a. contractual rate of interest is in existence between the parties. Hence, I think it to be just and proper in the interest of justice to award interest at the rate of 18% p.a. on the outstanding amount from the date of suit till date of decree.

In the result, I pass the following order.

ORDER

The present suit is hereby allowed.

The Plaintiff is entitled to recover an amount of Rs. 3,53,614/- [Rs. Three lac Fiftythree thousands Six hundred Fourteen only] with running interest @ 18% p.a. accruing thereupon from the date of suit till date of realization from movable and immovable and personal properties and persons of the defendant.

The defendant shall pay the costs of the suit to the Plaintiff.

Decree be drawn accordingly.

Pronounced in open court on this 23rd day of August 2022.

Date: 23.08.2022
Surat

(**Bindu Gopikrishna Awasthi**)
Judge, Small Cause Court, Surat
UID No. GJ00810