

Suit instituted on	16	2	2019
Registered on	16	2	2019
Decided on	26	4	2019
Duration	Y.	M.	D.
	0	1	20

Exh. No. 22

**IN THE COURT OF THE ADDITIONAL JUDGE,
SMALL CAUSES COURT, AT RAJKOT**

Small Civil Suit No. 43 of 2019

Plaintiff

Marwadi Shares & Finance Ltd.

(Registered company under the Companies Act).

Through:- Legal Officer,

Shri Dharendra Narendrabhai Dhotre,

Hindu, Adult, Occu. Service,

Address:-

Regd. Office- Marwadi Financial Plaza,

Nana Mava main road,

Near 150 ft. Ring road,

R A J K O T**V E R S U S****DEFENDANT**

Himanshubhai Hematlal Palan

Hindu, Adult,

Address:-

401-A- Abhishekh Appartment,

Umiyadham road,

Varachha,

S U R A T.

Appearance:-

Learned Advocate for the plaintiff.....**Mr. K. M. Patel**

Suit proceeded against the defendant as an exparte.

Sub :- Suit for recovery of an amount Rs. 42,802/-

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

1. The plaintiff has filed this suit for recover of an amount of Rs. 42,802/- against the defendant for which facts of the suit of plaintiff can be narrated as under.

2. That the plaintiff company is doing the business in the name & style of Marwadi Shares & Finance Ltd at Rajkot and the plaintiff company is doing the business of Demate service, purchase & sell of shares and brokerage of purchase & sell of shares. That the plaintiff company is holding membership of National Securities Depository Ltd. and Central Depository Services Ltd. and the plaintiff is serving as Legal officer in the plaintiff company. That the defendant has came into contact with the plaintiff company and the defendant has opened Demate Account in the plaintiff company bearing Client I. D. No. 10185652, D. P. I. D. IN300974. That the the plaintiff company has given facility of the defendant in respect of Demate services and therefore, the defendant is liable to pay A.M.C. charges regularly and accordingly, the plaintiff company is entitled to recover the A. M. C. charges. That as per clause No. 1, 8 and 9 of the agreement, the defendant is become found due to the sum of Rs. 42,802/- along with an

interest at the rate of 24% p.a. That the plaintiff company has maintained the ledger account of the defendant. That the plaintiff company has informed to the defendant to pay due amount, but the defendant has not paid due amount of Rs. 42,802/- to the plaintiff and therefore, the plaintiff company has issued a notice dated 14-06-2018 to the defendant through Regd. A.D., and the said notice has been duly served to the defendant. The cause of action has arisen for the plaintiff to file this suit against the defendant at the time when the defendant has not paid due amount and after serving of notice to the defendant on 14-06-2018. Therefore, the plaintiff company has instituted the present suit for recovery of due amount of Rs. 42,802/- along with an interest at the rate of 24% pa.

3. The summons of the suit served on the defendant vide Exh.9 to remain present before the Court. But the defendant was not remained present on the date fixed for appearance and ex-parte order passed below plaint Exh.1 on 29-03-2019 under Order- 9 Rules 6 (1) of the C. P. C.

4. In support of this suit, the plaintiff has produced following oral as well as documentary evidence.

ORAL EVIDENCE

No.	Name of Witness	Exh. No.
1	An affidavit in form of chief examination of the plaintiff's witness Dhirendra Narendrabhai Dhotre.	11

DOCUMENTARY EVIDENCE

No.	Details of Documents	Exh. No.
1	Original Letter of Authority dt. 02-05-2018 given to Mr. Dhirendra Narendrabhai Dhotre by Marwadi Shares & Finance Ltd.	13
2	Certified true copy of Resolution of Board.	14
3	True copy of application of defendant form and agreement.	15
4	True copy of Ledger Account of defendant from 01-04-2015 to 08-06-2018.	16
5	Original Certificate of the plaintiff company.	17
6	A notice dt.09-06-2018 given by the plaintiff to defendant.	18
7	A receipt of Postal Department in respect of Regd. A.D.	19
8	Acknowledgement for legal notice served to defendant	20
9	Closing Pursis	21

5. In this suit, the following issues have been framed at Ex. 10.

1	Whether the plaintiff proves that Rs.42,802/- is due as outstanding from the defendant?
2	Whether the plaintiff is entitled for an interest? If yes, at what rate?
3	Whether the suit is within the limitation?
4	What order and decree?

6. My findings of issues for determination are as under.

1	In the affirmative.
2	Yes, at the rate of 7% per annum.
3	In the affirmative.
4	As per final order.

7. I have heard the arguments of the Learned Advocate for the plaintiff and he has argued on the pleading of plaintiff as well as

documentary evidence. While on the other hand, the defendant did not choose to remain present during the trial of the suit. My reasons for findings of the points for determination are discussed hereinafter.

REASONS

Issues Nos. 1, 2 and 3

All points are being discussed altogether only for the sake of convenience.

8. The plaintiff's side Mr. Dhirendra Nanrendrabhai Dhotre has filed his chief examination in form of oral evidence vide Ex. 11 wherein he has reiterated the facts of suit. Mainly he has stated that the plaintiff has filed this suit against the defendant for recovery of an amount of Rs. 42,802 /-. He has stated that he is serving as Legal officer in the plaintiff company. Further he has stated that the defendant has opened Demate Account in the plaintiff company and the Demate Account has been registered bearing client I. D. No. 10185652, D.P. I. D. No IN300974 and the defendant is liable to pay A. M. C. charges regularly and the defendant is become found due to the sum of Rs. 42,802 /- and as per clause No. 1, 8 and 9 of agreement, the defendant is liable to pay an interest at the rate of 24% on the said due amount. In his chief examination, the plaintiff has referred the documents and produced documentary evidence vide Exh. 13 to Exh. 20 to prove that the the defendant is become found due to the sum of Rs. 42,802/-.

9. The evidence of the plaintiff is remained unchallenged as the

defendant did not choose to remain present in the suit. In absence of any kind of evidence from the defendant's side, there is no reason to disbelieve the evidence produced by the plaintiff as discussed above.

Further it transpires that after service of notice to the defendant vide Ex. 20, the defendant did not take care to pay outstanding due amount of the plaintiff and not replied notice of the plaintiff. Meaning thereby, it can be said that the defendant has neglected the matter in question. In view of above, the plaintiff has proved that Rs. 42,802/- is due as outstanding amount amount from the defendant. Accordingly, my finding of issue No. 1 is given in the "**Affirmative**". Issue No. 2 relates to the question as to whether the plaintiff is entitled to get interest. Now looking to relief clause para 7 (2) of plaint, the plaintiff has claimed an interest at the rate of 24% on due amount. The said amount of interest as claimed by the plaintiff is exorbitant and excessive and in the fitness of thing and prevailing rate of interest, it would be just and proper to award an interest at the rate of 7% on due amount. Accordingly, my finding of issue No. 2 is given in the "**Affirmative**" and the plaintiff is entitled to get interest at the rate of 7% on due amount. Further, having gone through account statement produced by the plaintiff and in absence of written statement as well as any kind of evidence from the defendant's side, it is found that suit is within the limitation. Accordingly, my finding of issue No. 3 is given in the "**Affirmative**". In view of discussion of issue No. 1 to 3 and relying on the facts and circumstances, the plaintiff has succeeded to prove the facts of suit by producing oral as well as documentary evidence as

discussed above and hence, the plaintiff's suit deserves to be allowed with costs and following order is passed in the interest of justice.

∴ O R D E R ∴

1. The plaintiff's suit is hereby allowed and decreed with cost.
2. The defendant is hereby ordered to pay Rs. 42,802/- (Rupees Forty Two Thousand Eight Hundred and Two only) with an interest at a rate of 7% per annum from the date of the suit till the realization of decretal amount.
3. The defendant is ordered to bear the costs of the plaintiff and to bear his own, if any.
4. Decree be drawn accordingly.

Pronounced in the open Court today on this **26th** day of April, 2019.

Palace : R A J K O T
Date : 26-04-2019.

[Chandrakant Nathubhai Desai]
Additional Judge
Small Causes Court,
R A J K O T
UID Code No. GJ00995

