



Received on : 13-01-2021
Registered On: 19-01-2021
Decided on : 24-01-2025
Duration: 4Yrs 0Mths 5Days

Order Below Exb.3 In Summary Suit No.48/2021

Mr.J.B Prajapati, Learned Advocate for the Plaintiff.
Ex-parte against defendant.

Coram: Mrs.N.P.Unadkat, Judge.

1] The plaintiff has filed this suit against the defendant for recovery of Rs.1,98,298/- with cost and interest at the rate of 18% p.a. under Order 37 of Civil Procedure Code as Summary Suit.

2] The brief facts of the plaintiff's suit are as under:

- The plaintiff is a partner of Jain Traders, indulged in the whole^{sale} business of selling suitings and shirtings.
- Defendant had purchased goods from the plaintiff on credit and bills of the same were issued to her accordingly. Goods were sent to Paragnaz, West Bengal.

- Details of the bills are as under -
 1. Bill no.R-1199 for sum of Rs.84,105/-
 2. Bill no.R-1200 for sum of Rs.42,053/-
 3. Bill no.R-1347 for sum of Rs.1,12,140/-

Total amounting to sum of Rs.2,38,298/-.

- Out of the outstanding amount, defendant had issued cheque for sum of Rs.40,000/- on 18-3-19 and after deducting the said amount, the outstanding amount to be paid by the defendant was Rs.1,98,298/- only.
- Plaintiff repeatedly requested the defendant to clear her outstanding dues. In compliance to the repeated pleas of the plaintiff, defendant against her dues issued two cheques for sum of Rs.10,000/- on 14-9-2020 and 42,000/- on 28-9-2020 from her Bandhan bank account, Akra fatak, Kolkata. On presenting for clearance both returned unpaid with endorsement "funds insufficient".
- Plaintiff issued legal notice to the defendant on 3-10-2020. Defendant responded to the said notice admitting her dues but failed to pay the same. Hence, the present suit.

NO

3] Service of notice to defendant:

Defendant has been duly served with the suit notice vide Exb.27, but she has not appeared in person or through her advocate to defend the claim of the plaintiff. Thus, the suit of the plaintiff remained uncontested. The plaintiff has filed an application vide Exb.30 for passing ex-parte decree against the defendant.

4] Point for determination:

Thus, in light of the above facts, the point herein to be determined is that, "Whether the plaintiff is entitled to recover sum of Rs.1,98,298/- along with interest @ of 18% p.a from the defendant?"

5] Evidences:

In support of pleadings, plaintiff has produced following documentary evidences listed as under:

Sr.No	Document	Exhibit
1	Account Statement	32
2	Original cheque no.000256 dated 14-9-20	33
3	Cheque return memo	34
4	Original cheque no.000228 dated 28-9-20	35
5	Return memo	36
6	Legal notice vide R.P.A.D	37
7	Postal AD	38
8	Track Consignment Report	39
9	Reply to notice filed by the defendant	40

6] **Settled Legal Position:**

- a] It would not be out of place to refer to O.37 of C.P.C which pertains to Summary suits. O.37 of the C.P.C establishes the summary procedure. It was created by keeping in mind some specific suits in order to avoid the undue hindrance imposed by the defendant, who has no defense. In contrast to other civil claims, the trials in summary procedure begin after the judge grants leave to the defendant to challenge the case.
- b] In **Navinchandra Babulal Bhavsar v. Bachubhai Dhanabhai Shah (1967)**, the Gujarat High Court outlined the objective of summary suits. The Court stated that the sole objective of implementing the summary procedure is to give motivation to businesses and industry by inspiring confidence in the industrial community that their reasons with regard to financial claims of liquidating sums (ascertained amount) would have been speedily determined and that their claims would not stay on for decades, preventing their money for a long period.
- c] In view of the provisions of law, it is clear that if defendant failed to file appearance before the Court within a period of ten days from the date of service of summons upon him; the plaintiff shall entitle to decree under O.37, R.2(3) of C.P.C.

7] (i) On considering the documentary evidences more particularly statement of account at Exb.32, it clearly appears that the defendant had outstanding dues of Rs.1,98,298/-. Defendant had issued cheques for sum of Rs.10,000/- and 42,053/- which returned unpaid with funds insufficient. In reply to the legal notice at Exb.39 read with Exb.40, defendant acknowledged her debts and showed her willingness to pay the said amount and pleaded for time. Suit of the plaintiff has not been contested by the defendant. In spite of acknowledging her dues, she has not paid any amount thereafter.

~~NU~~ (ii) The plaintiff's interest is required to be protected especially in light of the acknowledgment made by the defendant. The court cannot lose sight of the fact that those who avail credit facilities are duty bound to repay the due amount. Any lapse in such matters should be viewed seriously. Hence, plaintiff is rightfully entitled to recover the outstanding due amount from the defendant.

(iii) However, the claim for interest @ 18% p.a appears to be unjustified as there is no written agreement pertaining to the interest between the parties. Considering section 34 of C.P.C assessing interest @ 6% p.a would be fair and just. Thus, considering the facts of the

present case and the totality of above narration, I answer the point determined above is answered partly in affirmation and on the basis of above discussion, I pass following final order -

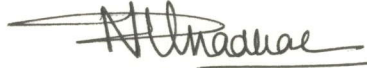
::FINAL ORDER::

1. The plaintiff's suit is hereby partly allowed.
2. Defendant is directed to pay the outstanding amount of 1,98,298 (Rupees One Lakh, Ninety Eight Thousand, Two Hundred and Ninety Eight Only) along with simple interest @ 6.00% p.a. thereon from the date of filing of this suit till its realization.
3. Parties to bear their own costs.
4. Decree be drawn accordingly.

Pronounced and signed in open court today on 24th day
of January, 2025.

Date :24-01-2025

Place:Ahmedabad


(Mrs. Namrata P. Unadkat) 24/1/25
Judge, Code No.GJ01058
Small Cause Court No.03
Ahmedabad