

Received on :

Registered on :

Decided on :

Duration :

D M Y

Exh. _____

IN THE COURT OF JUDGE SMALL CAUSE COURT

AT SURAT

SMALL SUMMARY SUIT NO.72 OF 2022

Plaintiffs :

- 1 M/s.Sarla Narrow Fabrics- partnership firm
 - 2 Rajesh Ugalkishor Aggarwal- Partner
 - 3 Sunitaben W/o Rajesh Jugalkishor Aggarwal- partner
- Office Address: Plot A-18/21, A-18/04, M.G.Road No.8,
Udyog Nagar, Udhna, Surat.

Versus

Defendants :

- 1 Hanuman Prasad Jain
Proprietor of M/s.Arihant Creation
- 2 Himansubhai Hanumanbhai Jain
Administrator of M/s.Arihan Creation,
Address: Flat no.303, Krishna Residency,
Behind Paliwal Garden Khadigram,Udyog
Road, Sanganer, Jaipur,Rajasthan-302 029.

Sub: Suit for recovery of Rs.2,33,209/- along with interest.

Mr.G.K.Modi,learned advocate for the plaintiff.

JUDGMENT

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

1 The plaintiff herein is a partnership firm engaged in the business of manufacturer of Narrow Fabrics under the name and style mentioned hereinabove. The plaintiffs and defendants were on business terms. The defendants used to purchase goods from plaintiff on credit basis. There was no dispute regarding price, quality, quantity of the material supplied to the defendant. The plaintiff submits that the defendant had received materials worth Rs.509855/- for the period from 31.8.19 to 15.10.19 against which defendant made part payment of Rs.353010/- an amount of Rs. Rs.156845/- remained due and outstanding and payable by defendant. As per terms and conditions set out in the bill, the defendant was liable to pay delayed payment charges at the rate of 2% p.m. The defendant again made part payment of Rs.12,600/- vide two transaction dated 14-4-21. Against which plaintiff filed criminal complaint against defendants in Udhna Police station and also lodged a complaint against him in 'Samadhan, Micro and Small Enterprise Facilitation Council on 17-2-2022. Hence, filing this separate suit against the defendants to recover outstanding amount of toward the bills of goods they have borrowed from us. i.e. Principal amount of Rs.1,44,245/- loss of interest at the rate of 2% p.m. which comes to Rs.88,964/- so total come to Rs.2,33,209/- as on filing on the suit. The plaintiff given legal notice to defendant on 15-10-20 through RPAD which is duly served on 19-10-20 but defendant neither gave a reply nor they complied the notice. The plaintiff has filed the present suit to recover Rs.2,33,209/- with interest @ 2% p.m. from the date of suit till realization from the defendants personally as well as from their assets and properties.

2. The Plaintiff had issued summons for appearance on the defendant by RPAD as prescribed under the provisions of Order XXXVII, Rule 2 of the Code

of Civil Procedure which is shown to have been duly served on 27-5-22 to defendants. Pursuant to service of summons for appearance the defendants have neither appeared nor filed address for service in accordance with the provisions of Order XXXVII, Rule 2 of the Code of Civil Procedure. The defendants have thus failed to comply with the provisions of Order XXXVII, Rule 2 of the Code of Civil Procedure.

3. The Plaintiff has submitted an application on affidavit at Exh.8 seeking judgment and decree in accordance with the provisions of Order XXXVII Rule 2(3) of the Code of Civil Procedure. 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 defendant failed to file appearance within the prescribed period pursuant to service of process in accordance with the provisions of Order XXXVII Rule 3 of the Code of Civil Procedure the claims in the plaint are deemed to be admitted and the plaintiff is entitled to decree against the defendant.

4. The plaintiff has produced documentary evidence list vide Exh.7 which was contained mark 7/1 to 7/49, all the documents are original or office copy of the commercial transactions between plaintiff and defendant hence all documents are exhibited as Exh. 10 to 58 in which he reiterated all the facts mentioned in Exh.1.

5. 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. Order XXXVII Rule 2(3) provides that the defendant shall not defend the suit unless he enters an appearance in accordance with Order XXXVII Rule 3 and in default of the defendant 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.

6. In the facts and circumstances of the present case, summons is treated to be duly served upon the defendant. The defendant neither appeared nor filed address for service in response to the summons for appearance within the time prescribed. Under the 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 24% contractual rate of interest is in existence between the parties on the amount remaining unpaid. Hence, I think it to be just and proper in the interest of justice to award interest at the rate of 24% 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.2,33,209/- (Rupees Two lac Thirtythree thousand Two hundred Nine only) with running interest at the rate of 24% p.a. accruing thereupon from the date of suit till date of realization from movable and immovable and personal properties and persons of the defendants.

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

Decree be drawn accordingly.

Pronounced in open court on this 6th day of January 2023.

Date: 6-1-23
Surat

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