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Decided on : 03:04:2021

Duration : Yrs__Ms__Days__

In The Court Of Additional Small Cause Judge Surat At - : Surat.

Summary Suit No. 144 of 2016 (Org. Summary Suit No.32 of 2013).

Exh. No.____

Plaintiff : **Sunny Scape its proprietor Maheebub Jasani**
Aged : 45 years, Occupation : Business,
Address at : Plot No.23, Block No.12-A, Road
No.6, Opp. Chunavala, Saradar Patel Road,
Udhna Udyog Nagar, Surat.

Versus

Defendant :1. **Peragone Plastic.,**
Address : Street No.18, Gondal Road, Samarat
Industrial Estate, Rajkot.

2. **Vipul Korat is a proprietor of Peragone
Plastic,**
Address : Street No.18, Gondal Road, Samarat
Industrial Estate, Rajkot.

Subject : Suit For Recovery of Rs. 2,61,591/- with interest.

Appearance :

Mr. M. K. Desai, Learned Advocate for the plaintiff.

Mr. P. S. Rana, Learned Advocate for the defendants.

: : Judgment : :

[1.] The plaintiff has filed the present suit against the defendant for recovery of Rs. 2,61,591/- with running interest @ 24% p.a. under Order 37 of Civil Procedure Code as summary suit.

Addl. Small Judge Surat.

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

That the plaintiff is carrying on the business of scrap at the address mentioned in the plaint and defendant is carrying on the business at the mentioned address in the plaint. The defendant was purchased the goods of Rs. 2,61,591/- including tax of Rs. 12,456/- from the plaintiff on 23/05/2011 and the plaintiff has issued a bill of the said amount in the name of defendant. Against this payment, the defendant had issued a cheque in favour of the plaintiff dated 01/08/2011 and also to be assured that it was to be cleared. The said cheque is of Rajknot Nagarik Sahakar Bank Ltd., bearing No.186375 amounting to Rs. 2,61,591/- and it was deposited by the plaintiff in his account on 01/08/2011 but it was returned with endorsement "Funds Insufficient". Thereafter, the plaintiff immediately intimated the defendant about the fact of returned cheque so the defendant has stated the plaintiff to deposit the cheque again and it was to be cleared even after this cheque was returned frequently dated 05/08/2011, 11/08/2014, 24/08/2011 & 06/09/2011 respectively. Then, the defendant had returned the said cheque and issued a new cheque of Self bearing No.170311 of Rs. 1,00,000/- dated 21/08/2011 but it was not encashed by the plaintiff due to insufficient amount in his account and thereafter the defendant has refused to pay the said amount. Thus, the plaintiff did issue a legal demand notice to the defendant for the amount of Rs. 2,61,591/- on 23/05/2011 and it was returned with intention refused. Hence, the cause of action arisen to file the present suit on 21/08/2011 for issuing a cheque by the defendant in favour of the plaintiff and thereafter gave a legal notice on 20/12/2011. Thus, the defendant is liable to pay the said amount with interest at the rate of 24% p.a. from the date of filing of the suit till the date of realization and hence the present suit is filed.

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[3.] The summons was issued upon the defendant by RPAD it was duly served upon the defendant and they have appeared before the Court through their Advocate for appearance. Thereafter, the application to issue summons for judgment was preferred by the plaintiff which was granted and both the defendants were asked to remain present on service of summons for judgment which are in the record of the case and as per both the defendants are served with summons for judgment. In spite of that neither both defendants have appeared before the court nor filed any application that leave to defend the suit.

[4.] Thenafter, plaintiff has filed documentary evidence list vide Exh.26 which was contained mark 26/1 to 26/14, all documents are original or office copy of the commercial transaction between plaintiff and defendant hence all documents are exhibited as Exh.37 to Exh.50.

[5.] Looking to the provision of Order 37 of C.P.C. on service of summons for judgment **“The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the court or judge to be just.** Further, sub rule (a) of Rule 6 provides as follows : **Rule 6 (a) “ if the defendant has not applied for leave to defend or if such application has been made and is refused, the plaintiff shall be entitled the judgment forthwith”.** Hence as per this provision if defendant has not applied for leave to defend the suit or he has applied the application is rejected then plaintiff shall be entitled the judgment forthwith.

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[6.] Here in the present case though both the defendants were served with the summons for judgment neither of them appeared before the court nor they have filed any application for leave to defend the suit and hence this situation then plaintiff shall be entitled to the judgment forthwith as per provision of order 37 Rule (6) (a) of the C.P.C. The plaintiff has produced documentary evidence on record. On perusing documentary evidence, the plaintiff's suit is within a period of limitation. The plaintiff has prayed for interest at the rate of 24% p.a. which is very high rate of interest. Looking to the economical scenario, the reasonable rate of interest should be applied and if on suit claim amount 6% interest p.a. should be awarded to the plaintiff, it is just and proper in the interest of justice. Under such circumstances, I pass following order.

FINAL ORDER

1. The plaintiff's suit is hereby partly allowed.
2. Decree of Rs. 2,61,591/- (Rupees Two Lack Sixty One Thousand Five Hundred Ninety One Only) is passed in favour of the plaintiff against the defendant with interest at the rate of 6% p.a. from the date of filing of suit till it's realization.
3. The defendant shall bear its own costs alongwith plaintiff.
4. Decree be drawn accordingly.

Pronounced and signed in the open court today on 03 day of April, 2021.

Date:03/04/2021
Surat

(**Alarakha A. Runza**)
Addl. Judge, Small Cause Court
Surat. UID-Code No.GJ01150

Addl. Small Judge Surat.