

Presented on : 01/01/2021

Registered on : 01/01/2021

Decided on : 05/03/2022

Duration :

D/M/YEAR

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IN THE COURT OF 3RD ADDL. SENIOR CIVIL JUDGE AHMEDABAD (RURAL)

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Regular Summary Suit No. 1/2021

Exhi: 11

A & M Jumbo Bags Limited
Through its Authorized person
Pratishbhai C. Shah,
Age-55, Hindu, Occup.-Business,
Address- Block No.100,
Opp. HP Petrol Pump, Jetalpur,
Ta. Dashkroi, Ahmedabad, Gujarat ... Plaintiff
V/s.

Shree Shiva Sai Micro Industries,
Address-Survey No.126, Bala Nagar (V&M),
Mahububnagar, Telangana, India ... Defendant

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Sub : Suit valued at Rs. 2,33,805/-

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Mr. Ld.Advocate D.M. Shah Ld.Adv. for the Plaintiff.
Mr. Ld.A. for The defendant-None appeared

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

1.) Introduction :

The Plaintiff has filed this summary suit against the Defendant under order 37 of the Civil Procedure Code.

2.) Brief fact of plaintiff case:

A) The plaintiff is Company registered under the Companies Act, 1956 at Ahmedabad and dealing in the business of whole sale selling of Jumbo Bags for pakaging.

- B)** The plaintiff states that the defendant approached plaintiff Company for supply of Jumbo bags for packaging of its good and requested to supply bags on credit bases and also to open account in the name of Company/Firm as per the cause title and thereby have purchased Jumbo bags from plaintiff Company on credit before year 2017 every now and then and defendant had given proper bill/invoice for the same.
- C)** It is further stated that the plaintiff has maintained a running account for the transaction taken place between the plaintiff and the defendant in the books of plaintiff company. All the payments made for the supply are duly credited to the defendant's account maintained by the plaintiff. It was also decided from the beginning between the parties that the defendant will make payment for the goods brought on credit within 15 dyas from the supply of goods and in case of default, the plaintiff company will be entitled to recover the remaining outstanding amount along with 20% interest on the bill/invoce amount and defendant had agreed to the same.
- D)** Plaintiff further states that defendant had purchased jumbo bags from the plaintiff company on credit in year 2017-2018 vide Bill/Invoices of different amounts totalling an amount of Rs.24,38,887/- for which Bills/Invoices has been produced vide Exh.-9. And for that defendant had given various cheques of amount of Rs.22,07,582/- only on different dates towards total outstanding dues/recovery amount to the tune of Rs.24,38,887/- drawn on Dena

Bank and Cosmos Co. Op. Bank Limited which was/were deposited in the bank during relevant time details of the said cheques are duly narrated in the statement of account. Hence, the plaintiff company is legally entitled to recover the outstanding due amount of Rs.2,31,305/- from the defendant.

E) It is further submitted that the defendants are playing tactics to prologue the payment and have failed to pay the due amount and interest till date after repeated demands by the plaintiff company. The plaintiff has also issued a legal notice dtd. 10.09.2020 but the defendant did not reply till today. Also the transaction with defendant have been made subject to Ahmedabad jurisdiction only. And the materials/goods has been supplied by the plaintiff and delivered to the defendant is at registered office of plaintiff company at Ahmedabad. The defendant had visited registered office of plaintiff company and had placed order. Thus, the cause of action has taken place within the jurisdiction of this Hon'ble Court. Thus, the plaintiff is entitled for a decree for an amount of Rs.2,33,805/- with further interest @ 20% p.a. from the date of filing of this suit till realization.

3.) Case Proceeding:

On institution of the Summary suit, the notice have been served to the defendant. Neither the defendant nor his advocate had appeared.

- 4.) Finally Ld. Advocate on behalf of plaintiff submitted the application to pass exparte decree vide Ex.-10. Therefore it is required to be considered as per provisions laid under order 37 of CPC. Hence, I, am of opinion that plaintiff is entitled to obtain exparty decree. Hence, the matter adjourned for as prevailing provision of order 37 (3) of CPC.
- 5.) The plaintiff has submitted following documents vide Exh.-9 along with the suit.

S.No	PARTICULARS	Exh. No.
1.	Original Bill/Invoice no.054 dtd. 14.04.2017	9/1
2.	Original Bill/Invoice no. 001/A&M/17-18 dtd. 1.07.2017	9/2
3.	Original Bill/Invoice no. 0026/A&M/17-18 dtd. 12.07.2017	9/3
4.	Original Bill/Invoice no. 0098/A&M/17-18 dtd. 03.08.2017	9/4
5.	Original Bill/Invoice no. 00167/A&M/17-18 dtd. 31.08.2017	9/5
6.	Original Bill/Invoice no. 00424/A&M/17-18 dtd. 10.11.2017	9/6
7.	Original Bill/Invoice no. 00442/A&M/17-18 dtd. 15.11.2017	9/7
8.	Original Bill/Invoice no. 00481/A&M/17-18 dtd. 25.11.2017	9/8
9.	Original Bill/Invoice no. 0510/A&M/17-18 dtd. 4.12.2017	9/9
10.	Original Bill/Invoice no. 00597/A&M/17-18 dtd. 23.12.2017	9/10
11.	Original Bill/Invoice no. 00640/A&M/17-18 dtd. 4.01.2018	9/11
12.	Original Bill/Invoice no. 00672/A&M/17-18 dtd. 11.01.2018	9/12
13.	Original Bill/Invoice no. 00705/A&M/17-18 dtd. 20.01.2018	9/13
14.	Original Bill/Invoice no. 00748/A&M/17-18 dtd. 1.02.2018	9/14
15.	Statement of account from 01.04.2016 to 15.12.2020	9/15
16.	Original Legal Notice 10.09.2020	9/17
17.	Original Return RPAD dtd. 24.09.2020	9/18

18	Track Report	9/19
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- 6.) The plaintiff has also submitted an affidavit of examination in chief vide Exh.-10 in which Pratishbhai C. Shah, authorized signatory of the plaintiff company has mentioned entire facts which had been already mentioned in the plaint. Therefore, no repetition of the facts is made herewith.
- 7.) The perusal of the record further reveals that present plaintiff has preferred this summary suit under order XXXVII. The present suit file under order XXXVII, Rule 2(3) of Civil Procedure Code which requires to be reproduced herein as under :

"The defendant shall not defend the suit referred to in Sub Rule 1 unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, upto the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such a decree may be executed forthwith."

According to the above cited provision laid down in Order XXXVII, the plaintiff firm is entitled to the decree forthwith without framing issues in this proceedings.

- 8.) As far as the issue of limitation is concerned, the concrete proofs are hereby produced by the plaintiff like Invoices, statement of

account, notice etc. Further, all documents have been referred in his affidavit in chief under which the Court has sufficient reason to believe that it is fall within a period of limitation. Therefore, I hold that plaintiff is entitled to achieve a decree for recovery of amount Rs.2,31,305/- along with interest at the rate of 9% per annum from the date of institution to the date of recovery. Hence, I, pass the following order in the interest of justice.

-:: O R D E R ::-

1. The suit of the plaintiff is hereby **allowed**.
2. The plaintiff is entitled to recover the amount of Rs.2,33,805/- (Rupees Two Lack Thirty three Thousand Eight Hundred and Five Only) along with 9% interest p.a. from the defendant till realization.
3. The defendant shall bear the cost of the plaintiff and his own.
4. The decree be drawn accordingly.

Pronounced & signed in the open court today i.e. on 5th March, 2022.

Date:05/03/2022
Place: Ahmedabad
Rural

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(Jignesh Vishnubhai Patel)
3rd Addi.Senior Civil judge
mirzapur, Ahmedabad
(Unicode GJ00960)