

KABC010004802017



**IN THE COURT OF THE LII ADDL. CITY CIVIL &
SESSIONS JUDGE, BANGALORE (CCH-53)**

Dated this the 11th day of September, 2023

PRESENT

Sri.B.G.Pramoda, B.A.L., LL.B.,
LII Addl. City Civil & Sessions Judge,
Bangalore.

O.S.No.166/2017

plaintiff :

M/s.Rishab Electrical and
Industrial Suppliers
Duly represented by its
Proprietor Sri.Rajendar Kumar,
Aged about years,
Srilakshmi Plaza, No.35/1,
U.M.Lane, Opp. Khaleel Building,
Chickpet Cross, Bengaluru-560053.

(By Sri.B.R.S., Advocate)

-V/S-

Defendants:

1. M/s Simplex Infrastructure Ltd.,
Office at Simplex House No.27,
Shakespeare Sarani,
Kilkota – 70017, Duly represented
by its Managing Director,
2. M/s Simplex Infrastructure Ltd.,
Site office at C/o NTPC Limited,
Near Kudgi Railway Station,

Basavana Bagewadi Road,
Kudgi, Bijapur, (Vijayapur)-586121.
Duly represented by its manager.

(Exparte)

Date of institution of the suit:	05.01.2017		
Nature of the suit:	Money Suit		
Date of commencement of recording of evidence:	16.02.2022		
Date on which Judgment was pronounced:	11.09.2023		
Duration:	Year	Months	Day
	06	08	06

J U D G M E N T

The plaintiff firm has filed the present suit under Sec.26 read with Order VII Rule 1 of CPC, praying for recovery of sum of Rs.10,88,261/- from the defendant along with interest at the rate of 24% p.a. from the date of the suit till the date of realization.

2. The brief facts of the case of the plaintiff firm as averred in the suit plaint are as follows:-

The plaintiff firm is doing wholesale business under the name and style as M/s.Rishab Electrical and Industrial Suppliers. The defendant No.1 is the head of the defendants company. The defendant No.2 is the branch of defendant No.1 company. The defendants are regular customers of

plaintiff firm. The defendants have given order for supply of electrical materials by the plaintiff firm. Depending upon the order, the materials have had been supplied by the plaintiff firm to the defendant company. The defendants company having received the materials acknowledged the same through invoices. But the defendants have purchased the electrical items from 01.04.2014 to 23.02.2015 worth of Rs.24,23,942/-. The defendants are now liable to pay sum of Rs.10,88,261/- to the plaintiff firm as on the date of suit. The plaintiff firm was supplied electrical materials periodically to the defendants company as per request and requirement. The defendants have agreed to make payment to the plaintiff firm once in 15 days to the materials supplied. After receiving the materials from the plaintiff firm, the defendants did not made payment as assured by them. The plaintiff firm send legal notice to the defendants demanding the payment of outstanding balance due amount. But there was no reply from the defendants. Hence, the plaintiff firm has stated that cause of action arose for it to file the suit and prayed to decree the suit.

3. After service of suit summons, the defendants have not appeared before the court and they were placed exparte. Then the matter was posted for evidence of plaintiff firm.

4. The plaintiff firm in order to prove its case, has adduced the oral evidence of its proprietor as P.W.1. P.W.1 has produced 4 documents and got them marked as Ex.P.1 to P.4 and closed his side. Then the matter was posted for arguments.

5. Heard the arguments of Learned counsel for the plaintiff. Perused the plaint averments, oral and documentary evidence and other materials on record.

6. Having done so, the following points are arises for my consideration:

P O I N T S

1. Whether the plaintiff firm proves that it has supplied electrical materials to the defendant company worth of Rs.24,23,942/- from 01.04.2014 to 23.02.2015?
2. Whether the plaintiff firm proves that the defendant is due to the sum of Rs.10,88,261/- to it towards purchase of electrical materials from it?
3. Whether the plaintiff firm is entitled for the reliefs as prayed for?
4. What order or decree?

7. My answer to the aforesaid points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In Partly Affirmative

Point No.4 : As per final order,
for the following :

REASONS

8. **POINTS NO.1 to 3:** These points are inter related to each other and as such they are taken up together for discussion to avoid repetition of facts.

9. The plaintiff firm in order to prove aforesaid points and to prove its case has adduced the oral evidence of its proprietor as P.W.1. P.W.1 in his examination-in-chief filed by way of affidavit has deposed that the plaintiff firm is doing wholesale business of supply of electrical materials under the name and style as M/s.Rishab Electrical and Industrial Suppliers. P.W.1 has further deposed in his examination-in-chief that the defendants are the regular customers of plaintiff firm and they used to give order for supply of electrical materials to the plaintiff firm either through phone or email or agent or directly. P.W.1 has further deposed in his examination-in-chief that depending upon the requirements of the defendant company and as per the order, the plaintiff firm had supplied electrical materials to the defendant company worth of Rs.24,23,942/- in between 01.04.2014 to 23.02.2015. P.W.1 has further deposed in his examination-in-chief that the defendants are due to pay sum of Rs.10,88,261/- to the plaintiff firm as on the date of filing of the suit towards

electrical goods received by them from the plaintiff firm. P.W.1 has further deposed in his examination-in-chief that the defendants have to make payment to the plaintiff firm once in 15 days. The defendants after receiving the materials from the plaintiff firm did not make payment as assured by them. P.W.1 has further deposed in his examination-in-chief that the plaintiff firm has issued legal notice to the defendants demanding the payment of outstanding balance due amount. But there was no reply from the defendants and they have not paid the balance due amount to the plaintiff firm. Hence, P.W.1 has stated that the defendants are liable to pay Rs.10,88,261/- to the plaintiff firm along with interest at the rate of 24%p.a.

10. The plaintiff firm apart from adducing the oral evidence of P.W.1 has produced certain documents. Ex.P.1 is the office copy of legal notice issued by the plaintiff firm to the defendants dated 03.09.2016. Ex.P.2 and 3 are the two postal acknowledgments. Ex.P.4 is the copy of ledger extract. In Ex.P.3 demand notice issued by the plaintiff firm to the defendants, the plaintiff firm has demanded the defendants to pay outstanding balance due amount of Rs.10,88,261/- along with interest at the rate of 2% p.m. from 01.07.2015. Ex.P.4 ledger extract shows that the plaintiff firm has supplied goods worth of Rs.24,23,942/- as averred in the suit plaint. Further the closing balance in the ledger extract as on 23.02.2015

shows Rs.24,23,942/-. But the plaintiff firm has stated that the defendants are actually liable to pay Rs.10,88,261/- to it as on the date of institution of the suit.

11. In spite of service of suit summons, the defendants have not appeared before the court and they have not contested the suit filed by the plaintiff. The plaintiff averments, oral and documentary evidence adduced on behalf of the plaintiff firm remained unchallenged by the defendants. Ex.P.2 and 3 postal acknowledgments shows that Ex.P.1 legal notice was duly served upon the defendants. In spite of service of demand notice issued by the plaintiff, the defendants have not given any reply to the legal notice by denying their liability of Rs.10,88,261/- to the plaintiff firm as mentioned in Ex.P.1 demand notice. The plaintiff firm has produced various tax invoices. Since those tax invoices are xerox copies, the same are not got marked. But in Ex.P.4 ledger extract, there is reference of sale of materials to the defendant company on various dates. The voucher number and amount of goods supplied is also mentioned in Ex.P.4 ledger extract. In the suit plaint as well as in the evidence of P.W.1, there is reference of supply of electrical goods by the plaintiff firm to the defendants from 01.04.2014 to 23.02.2015 worth of Rs.24,23,942/-. Since the oral evidence of P.W.1 and documentary evidence adduced on behalf of the plaintiff firm are remained unchallenged, they can be believed as true. The

suit filed by the plaintiff firm is not contested by the defendants. The oral and documentary evidence and plaintiff averments are sufficient to come to the conclusion that the plaintiff firm has supplied electrical goods to the defendant company worth of Rs.24,23,942/- from 01.04.2014 to 23.02.2015 to the defendants company and the defendants are liable to pay Rs.10,88,261/- being outstanding balance amount to be paid by them to the plaintiff firm for having received the electrical goods. As such, I am of the opinion that the defendants are liable to pay sum of Rs.10,88,261/- to the plaintiff firm.

12. The plaintiff firm has sought for recovery of Rs.10,88,261/- from the defendants. Further the plaintiff firm has also sought for future interest at the rate of 24% p.a. on outstanding balance amount. It is already discussed and held above that the plaintiff firm is entitled for recovery of sum of Rs.10,88,261/- from the defendants. Future interest sought for by the plaintiff firm from the date of suit at the rate of 24% p.a. seems to be exorbitant. The plaintiff firm has not produced any documents in order to show that the defendants have agreed to pay interest at the rate of 24% p.a. in case of default in making payment. The plaintiff firm has not produced any contract or agreement entered into between it and the defendants regarding payment of interest to be paid by the defendants for default in making payment. As such, I am of

the opinion that the defendants cannot be held liable to pay interest at the rate of 24% p.a. The defendants company even though liable to pay outstanding balance of Rs.10,88,261/- to the plaintiff firm, he has not paid same till today. As such, I am of the opinion that some interest has to be awarded on the outstanding due amount. Hence, in the interest of justice and equity to both the parties, I am of the opinion that future interest at the rate of 6% p.a. can be awarded on Rs.10,88,261/- from the date of filing of the suit till the date of realization of the decretal amount. As such, the suit filed by the plaintiff firm is partly deserves to be decreed. The plaintiff firm has proved Points No.1 and 2. Accordingly, I **answer Points No.1 and 2 in Affirmative**. Since it is held that the suit filed by the plaintiff firm is partly deserves to be decreed. Hence, I **answer Point No.3 in Partly Affirmative**.

13. **POINT NO.4:** In view of my findings on Points No.1 to 3, I proceed to pass the following:

ORDER

The suit filed by the plaintiff firm under Sec.26 read with Order VII Rule 1 of CPC, is hereby Partly decreed with cost.

The defendants are held liable to pay sum of Rs.10,88,261/- to the plaintiff firm.

The defendants are also held liable to pay future interest at the rate of 6% p.a. on Rs.10,88,261/-

from the date of institution of the suit till the date of realization of decretal amount.

Draw decree accordingly.

(Dictated to the Stenographer, directly on computer, corrected and then pronounced by me in the open court on this the 11th day of September, 2023).

(B.G.Pramoda)

LII Addl. City Civil & Sessions Judge,
Bangalore.

ANNEXURE

List of witnesses examined for the plaintiff firm :

P.W.1 Rajendar Kumar

List of the documents marked for the plaintiff firm :

Ex.P.1 Office copy of legal notice dated 03.09.2016

Ex.P.2 & 3 Two postal acknowledgments

Ex.P.4 Copy of ledger account extract

List of the witnesses examined for the defendants:

Nil

List of the documents marked for the defendants:

Nil

LII Addl. City Civil & Sessions Judge,
Bengaluru.