

S.C.S. No.446/2011

RECEIVED ON : 10-08-2011
REGISTERED ON : 10-08-2011
DECIDED ON : 31-12-2012
DURATION :
EXH. NO. : 19

**IN THE COURT OF THE JUDGE, SMALL CAUSES COURT,
AT RAJKOT**

SMALL CIVIL SUIT NO.446 OF 2011

PLAINTIFF

M/s. Glory Tradelink Pvt. Ltd.
Through its Proprietor / Director,
Shri Rohitbhai P. Kanabar,
Office at : Dhanrajni, Dr. Yagnik Road,
R A J K O T

V E R S U S

DEFENDANT

1. Chairman – Managing Director,
M/s. Vibgyor Elight Industries Ltd.
Fomra Towers, 84/A, A J C Boss Road,
K O L K A T A – 700 014.
2. Managing Director,
M/s. Fortune Auto Sales India Pvt. Ltd.
24, Ground Floor,
Opp. : Rudra Arcade Traffic Helmet Point,
Nr. Manav Mandir, 132' Ring Road, Memnagar,
A H M E D A B A D – 380 052

Mr. D. A. Antani, Learned Advocate for the plaintiff.

Ex-parte against the defendants.

J U D G M E N T

1. The brief facts of plaintiff's case are as under.

That the plaintiff is working as advertising agency and publishing advertisement in various news papers for their clients and the defendants have business relation with the plaintiff since long and the defendant No.1 is a company and the defendant No.2 is a distributor in Gujarat.

2. The plaintiff's further submission is that the defendant No.1- company through its distributor have started business with plaintiff and defendants were regularly paying the amount for publishing advertisement of defendants' products and accordingly, plaintiff was fully satisfied with the business relation with defendants.
3. The plaintiff's further submission is that defendants have given more business during Navratri and Diwali festivals and according to instructions of the defendants, the plaintiff has published their advertisements and sent the bill of the charges, but the defendants have not paid the same. The plaintiff has repeatedly demanded the payment and, though the defendants' office has admitted the outstanding due of

the plaintiff through E_mail and given assurance to make payment, but has not paid the same.

4. The plaintiff's further submission is that plaintiff is maintaining the defendants' account and accordingly, Rs.1,38,368/- is to be paid by the defendants and to recover the above dues, the plaintiff has repeatedly reminded and talked with the officials of the defendants as well as the distributor to pay the amount through phone and E_mails, but defendants have not cared to pay the said amount and, therefore, plaintiff has issued legal demand notice and said notice was duly served to the defendants, the defendants have not cared even to reply and not paid any amount as demanded and, therefore, plaintiff is constrained to file this suit to recover outstanding amount of Rs.1,38,368/- with interest at the rate of 18% per annum jointly and severally from the defendants.
5. The defendant No.1 is duly served by substitute service by way of public notice Exh.11 published in the daily news

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paper Times of India, Kolkata, dt.16-07-2012, but neither defendant nor anybody has appeared on behalf of defendant No.1 and, therefore, order of ex-parte against the defendant No.1 is passed below Exh.1 on 14-08-2012.

6. The defendant No.2 is duly served and Learned Advocate Mr. Mukesh R. Bhatti has filed an adjournment application vide Exh.6 for and on behalf of defendant No.2, but even after giving sufficient opportunities, neither he has filed written statement nor he has appeared and contested this suit for and on behalf of defendant No.2 and, therefore, the right of defendant No.2 for cross-examination closed and matter was ordered to be proceeded ex-parte against the defendant No.2 by order dt.14-08-2012.

7. The plaintiff has submitted following oral as well as documentary evidence.

Oral Evidence

- 1) Plaintiff Mr. Rohitbhai P. Kanabar has filed his affidavit-in-chief at Exh.12.

Documentary Evidence

- 1) Copy of E_mail dt.06-07-2010 for advertisement sent by defendant No.1 to the plaintiff at Exh.13.
 - 2) Copy of E_mail dt.22-09-2010 for advertisement sent by defendant No.1 to the plaintiff at Exh.14.
 - 3) Copy of E_mail dt.20-08-2010 for payment sent by defendant No.1 to the plaintiff at Exh.15.
 - 4) Legal notice dt.19-03-2011 issued to defendants by plaintiff's Learned Advocate demanding Rs.1,38,368/- at Exh.16
 - 5) Postal Acknowledgment of Registered Post at Exh.17.
8. The defendants have not produced any evidence.
9. As per provisions of Order-XX, Rule-IV of C. P. C., there is no need to frame issues, but points of determination may be framed and so, this Court has raised points of determination as under.
- (1) Whether the plaintiff proves that Rs.1,38,368/- is due from the defendants?

(2) Whether the plaintiff is entitled to get interest? If yes, at what rate?

(3) What order and decree?

10. My findings on the above points are as under.

(1) In the affirmative.

(2) In the affirmative. The plaintiff is entitled to get the interest at the rate of 9% per annum.

(3) As per final order.

REASONS

POINTS NOS.1 and 2

11. The plaintiff has submitted his affidavit-in-chief vide Exh.12 and stated all the facts of the plaint in his deposition and in support of his submissions, he has also submitted his documents vide Exh.13 to Exh.17. On the other hand,

defendants are duly served as per Exh.07 and Exh.11 respectively. Of course, Learned Advocate Mr. Mukesh R. Bhatti was appeared for and on behalf of defendant No.2 and sought adjournment vide Exh.6, but thereafter, neither written statement is filed nor any documents are produced nor contested this suit and according to order passed on 15-12-2012, right for cross-examination of plaintiff's witness was also closed.

12. Looking to the documents produced by the plaintiff and affidavit in support of such documents and in absence of contrary evidence of defendants, it is proved by plaintiff that he has carried out advertisement work of defendants'. Not only that, but the defendants have also admitted the outstanding due of the plaintiff by E_mail dt.20-08-2010 Exh.15. Of course, according to this E_mail dt.20-08-2010 Exh.15, only Rs.75,842/- was admitted by the defendants as due payment of the plaintiff. But according to legal notice dt.19-03-2011 Exh.16, Rs.1,38,368/- was demanded towards due amount and it is pertinent to note here that

defendants have neither appeared and contested this suit nor produced any contrary evidence and, therefore, this Court has no reason to disbelieve the said legal notice and such amount as due amount and thus, Rs.1,38,368/- remains due from the defendants.

13. Thus, considering the documents produced by the plaintiff and in absence of denial and / or contrary evidence of the defendants, this Court is of the opinion that plaintiff is entitled to recover Rs.1,38,368/- from the defendants towards due amount of advertisement work of the defendants carried out by the plaintiff as claimed by the plaintiff. So, my reply for point No.1 is accordingly in the affirmative.

14. So far as prayer for interest is concerned, the plaintiff has claimed the interest at the rate of 18% per annum, but no any agreement is produced by the plaintiff to show that there is a contract between the plaintiff and the defendants to charge the interest at particular rate on the principal amount

or due amount and, therefore, taking the judicial notice of the prevailing rate of interest of Nationalized Banks, if 9% interest per annum on the said amount is awarded then it will be just and fair interest rate under Section-34 of the Code of Civil Procedure.

15. In the light of the above discussions, it is held that plaintiff is entitled to recover sum of Rs.1,38,368/- along with interest at the rate of 9% per annum thereon from the date of suit to till its realization from the defendants. So, my reply for point No.2 is accordingly in the affirmative and for point No.3, following final order is passed in the interest of justice.

ORDER

1. The plaintiff's suit is hereby allowed with cost.
2. The defendants are ordered jointly and severally to pay Rs.1,38,368/- (Rupees One Lac Thirty Eight Thousand Three Hundred Sixty Eight Only) to the plaintiff together with interest at the rate of 9% per annum from the date of filing of this suit i. e. 10-08-2011 till realization of this amount from their all types of

moveable and immovable properties.

3. Defendants do bare their own costs and also bare the cost of the plaintiff.
4. Decree to be drawn accordingly.

Pronounced in the open court today on this 31st day of
December, 2012, at Rajkot

R A J K O T

DATE : 31-12-2012

[UPENDRA M. BHATT]
JUDGE
SMALL CAUSES COURT
R A J K O T