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Decided on : 17/10/2020

Duration : 08Yr 02 Mts 03 Dys.

**IN THE COURT OF 2ND ADDI. CIVIL JUDGE & JMFC AT
WANKANER, DIST. MORBI**

**R.C.S. No. 51 OF 2012
Exhibit -**

PLAINTIFF:-

Sunraj Ceramic Pvt. Ltd.

Address- village Lakdadhar of Wankaner taluka,
Incorporated with the Registrar of Companies.

VERSUS

DEFENDENT :-

Tile Home,

Address- 15/2, Arundel pet,
Guntur, Andhra Pradesh.

Subject: Suit For Money Recovery of Rs. 1,29,496/-.

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Appearance

Mr. H.M. Sheth, Learned Advocate for the Plaintiff.

Ex-parte as no one appeared.

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

[1] The plaintiff has instituted this present suit for recovery of Rs.1,29,496/-(one lakh twenty nine thousand four hundred ninety six rupees only) against the defendant and the brief facts of the plaint are as under,

that the plaintiff is a private limited company duly incorporated with the registrar of companies under the provisions of companies Act, 1956. The plaint is signed by the director of the company and he has been authorized by the board of directors to take legal action to recover the outstanding dues from the parties. The plaintiff is manufacturing and selling wall tiles whereas the defendant is carrying on business of Ceramic goods and wall tiles in the name of tile home. But, the plaintiff is not aware about the legal status of the defendant firm and therefore reserves it's right to amend the plaint. It is further asserted that the defendant has purchased wall tiles of Rs. 2,58,992/-(two lakhs fifty eight thousand nine hundred ninety two rupees only) from the plaintiff on credit by invoice no. 16, dated 02/04/2011. The defendant has paid Rs. 1,29,496/- (one lakh twenty nine thousand four hundred ninety six rupees only) to the plaintiff and an amount of Rs. 1,29,496/- (one lakh twenty nine thousand four hundred ninety six rupees only) is outstanding on the part of defendant. It is further stated that the plaintiff has requested defendant to pay the outstanding amount repeatedly but the same is not paid till date. This act of defendant is not fair and illegal. Moreover, the amount is due from long time and the plaintiff is also entitled to recover interest at the rate of 2% per annum. Hence, the plaintiff served legal notice dated 01/05/2012 upon the defendant through his advocate even though outstanding amount is not paid. Hence, the cause of action arose to file this present suit against the defendant and prayed for relief as claimed in para-8 of the plaint.

[2] As the plaintiff has filed this present suit, summon has been issued to the defendant through R.P.A.D. which was duly served upon him and acknowledgment receipt is produced on the record of the case vide exhibit 13. But, no one appeared from the defendant side before this Court. Hence, my predecessor has passed order below Ex. 1 to proceed with the case Ex-parte against the defendant on 31/12/2015.

[3] The plaintiff has produced following oral and documentary evidences in support of his averments:-

ORAL EVIDENCE OF PLAINTIFF

Sr. No.	Description	Exhibit
1	PW 1- Deposition affidavit of Jayantilal Babulal	18

DOCUMENTARY EVIDENCE OF PLAINTIFF

Sr.No.	Description	Exhibit
1	Incorporation certificate of plaintiff company	20
2	Resolution of company	21
3	Copy of invoice no. 16	22
4	Copy of ledger	23
5	Office copy of notice given to the defendant	24
6	Postal Slip	25
7	Acknowledgment receipt	26

The plaintiff has produced evidence closing pursis vide exhibit 27 and no other evidence is produced by him in support of his case.

[4] Thereafter, the Ld. Advocates of plaintiff has advanced oral arguments referring the evidence produced on the record and referred the documentary produced on the record of the case. The arguments of Ld. Advocates will be discussed at appropriate place to avoid repetition.

[5] For the purpose of deciding this suit, issues were framed vide Ex. 14 by my predecessor on the basis of pleadings. The issues, finding and reasons are as under:-

:- ISSUES :-

1. શુ વાદી પુરવાર કરે છે કે તેઓની પ્રતિવાદી પાસેથી દાવા અરજીમાં જણાવેલ રકમ રૂ. 1,29,496/- બાકી લેણા પેટે મેળવવા હક્કદાર છે ?
2. શુ વાદી બાકીની લેણી રકમ ઉપર વ્યાજ મેળવવા હક્કદાર છે જો હા, તો કેટલું ?
3. શુ વાદી માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે ?
4. શુ હુકમ અને શુ હુકમનામું ?

The finding of this Court toward the issues are as under:-

1. Issue no.1 in the affirmative.
2. Issue no.2 in the affirmative.
3. Issue no.3 in the affirmative.
4. As per Final Order.

:- REASONS :-

[6] **Issue No. 1, 2, 3 and 4.**

6.1 As factual aspect of aforesaid issues are inter-connected to each other, they are discussed together to avoid repetition.

6.2 Arguments: The Ld. Advocate of the plaintiff has argued that the plaintiff has produced copy of invoice which shows that the defendant has purchased the wall tiles from the plaintiff and also paid the half amount of the bill. But, full payment was not made till date. The plaintiff has also issued legal notice to the defendant which was also served. But, the defendant has neither given any reply nor made payment of outstanding amount. In the present case also, the summon was duly served to the defendant through RPAD but he failed to remain present before this Court. Hence, the plaintiff has successfully proved his case

and prayed for relief as claimed in plaint. As the present case is tried Ex-parte against the defendant, no argument from defendant side.

6.3 Moving toward discussing the oral evidence of PW-1 vide exhibit 18, He has supported the facts of plaint and stated that the defendant has purchased wall tiles from the plaintiff company on 02/04/2011 through invoice no. 16 and the same was delivered to the defendant. The defendant has paid Rs. 1,29,496/-(one lakh twenty nine thousand four hundred ninety six only) to the plaintiff through cheque no. 119154 on 18/11/2011 but remaining outstanding amount is due in the ledger of the plaintiff. He has also prayed that the defendant is liable to pay the remaining amount along with the interest at the rate of 2% per month. He has supported the fact of service of notice to the defendant and the same are produced on the record. Hence, prayed for allowing the suit.

Considering the documentary evidences produced on the record of the case, the plaintiff has produced copy of registration certificate of the company vide **exhibit 20** which shows that the plaintiff is private limited company. Thereafter, resolution of the company is produced vide **exhibit 21** dated 16.07.2012 which provides for taking of legal action for recovery of due balance and Jentilal Babulal Kavathiya and Dhirajlal Babulal Kavathiya, being directors of the company, are authorized to do the same on behalf of company. Further, the bill of wall tiles is produced vide **exhibit 22** which bears the name of tile home as purchaser and an amount of Rs. 2,58,992/- (two lakhs fifty eight thousand nine hundred ninety two rupees only) is shown as grand total and the bill also shows the details of truck number and transporter name. It bears date of 02/04/2011 and signature of jentilal as authorized signatory for Sunraj Ceramin Pvt. Ltd. Thereafter, the ledger is produced vide **exhibit 23** which shows that the defendant has paid Rs. 1,29,496/-(one lakh twenty nine thousand four hundred ninety six only) through cheque on

18/11/2011 and remaining amount of Rs. 1,29,496/-(one lakh twenty nine thousand four hundred ninety six only) is outstanding. Thereafter, office copy of notice given to the defendant is produced vide **exhibit 24** which is addressed to the defendant dated 01/05/2012. Perusing the notice, it appears that the plaintiff has demanded payment of outstanding amount of Rs. 1,29,496/-(one lakh twenty nine thousand four hundred ninety six only) from the defendant and transaction of wall tiles is mentioned in it. Further, the plaintiff has produced postal slip and acknowledgment receipt vide **exhibit 25 and exhibit 26** which shows that the aforesaid notice was duly served to the defendant.

6.4 Perusing the oral as well as documentary evidences produced on the record of the case, it appears that the defendant has purchased wall tiles from the plaintiff company and half amount of the bill was paid and remaining amount is due. From the record, it is clear that the defendant has been served with the summon of the case which was duly served to him. Even though, he failed to remain present before this Court in connection with present case and also failed to give any reply. Hence, the case was also tried Ex-parte against him. Moreover, the plaintiff has also demanded the payment of outstanding amount by giving notice to the defendant but it appears that no payment is made. Therefore, the plaintiff has successfully proved the facts of issue no. 1 and 2 by his oral and documentary evidences and he is entitled for relief as claimed in the plaint. The limitation period for recovery of money for goods sold is three years from the date of delivery of goods. Hence, the suit is within limitation. Therefore, the plaintiff is entitled to recover the outstanding amount with reasonable interest from the defendant. As far as the question of interest is concerned, the plaintiff has asked for 2% per per annum and the same is sound reasonable.

6.5 Therefore, this Court gives answer of issue no. 1, 2 and 3 in affirmative and hereby passes following final order in the interest of justice:-

O R D E R

1. The present suit of plaintiff is hereby allowed.
2. The defendant **Tile Home or the person responsible for the business of tile home** is hereby ordered to pay Rs. 1,29,496/-/- (one lakh twenty nine thousand four hundred ninety six only) to the plaintiff **Sunraj Ceramic Pvt. Ltd.** along with interest at the rate of 2 % per annum from 14/08/2012 till the date of actual payment within three months.
3. The plaintiff will be entitled to bring execution of this order if the defendant fails to make payment as per this order after expiry of three months.
4. The defendant shall bear the cost of this present suit.
5. Decree be drawn accordingly.

Pronounced in open Court today on 17th October, 2020 under my seal and signature.

Place: Wankaner
Date: 17/10/2020

Aatmadeep Sharma
2nd Addi. Civil Judge
& JMFC, Wankaner.
UI Code: GJ01355