

Received on : 11-10-2022

Registered on : 11-10-2022

Decided on : 01-01-2024

Duration :

D M Y

Exh. _____

IN THE COURT OF ADDITIONAL JUDGE

SMALL CAUSE COURT

AT SURAT

SMALL MONEY SUIT NO. 490 OF 2022

Plaintiff :

Dear Textile – A Partnership Firm

Through Partner Kiran C. Sheta,

Occupation: Business,

Address : 41, Anjani Ind. Estate, Vibhag-4/B,

Variyav-Amroli-Sayan Road, Surat.

Versus

Defendant :

Girish Gulabsinh Parakh

Proprietor of Kushal Impex – A Proprietor Firm

Occupation: Business,

Address : 3/2885, Malini Wadi,

Nr. Kohinur Market, Salabatpura, Surat.

Sub: Suit for recovery of Rs.1,42,670/- along with interest.

Appearances. :-

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Ld. Advocate Mr. M.C.Mehta for the Plaintiff.

None (Ex-parte) for the Defendant.

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JUDGMENT

The facts of the case of the Plaintiff in brief are as under :

[1] The plaintiff herein is a Partnership Firm and is engaged in the business of Grey Cloth under the name and style of “Dear Textile”. The defendant approached the plaintiff for purchase of Weightless(Big) Grey Cloths on terms and conditions and purchased goods worth of Rs.1,77,423/- on credit basis on 23-08-2021 under Bill/Challan No.158 and thereafter, made part payment of Rs.60,000/- through cheque on 24-02-2022, but did not paid due amount of Rs.1,17,423/-. The plaintiff submits that an amount of Rs.1,17,423/- remains due and payable by the defendant against the said business and transactions of the invoices were particularly as set out in the plaint.

The plaintiff claims to recover the outstanding amount of Rs.1,17,423/- with interest amount at the rate of 36% per annum is Rs.25,247/- accruing thereon from 24-02-2022 to 30-09-2022 which total amounting to Rs.1,42,670/- from the defendant. The plaintiff further submitted that in spite of repeated demands, the defendant is not making payment and clearing the outstanding, the plaintiff has filed the present suit to recover Rs. 1,42,670/- together with interest @36% p.a. from the date of institution of the suit till the date of realisation from the defendant personally as well as from his movable and immovable properties.

[2] Summons/notice of the suit was issued and served upon the defendant through Belief by affixing on door. As the defendant failed to appear and answer the suit claim, the suit was ordered to be proceeded with *exparte* against defendant.

[3] Looking to the facts & pleadings, the following issues have arisen for deciding the case of the plaintiff which are framed at Exh.10.

ISSUES

- (૧) શું વાદી પુરવાર કરે છે કે, વાદી પ્રતિવાદી પાસેથી દાવા મુજબની લેણી રકમ કાયદેસર રીતે મેળવવા હક્કદાર છે?
- (૨) શું વાદી પુરવાર કરે છે કે, વાદી દાવાની રકમ ઉપર વ્યાજ મેળવવા હક્કદાર છે? જો હા તો કેટલા ટકા ?
- (૩) શું વાદી દાવામા માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે?
- (૪) શું હુકમ અને શું હુકમનામું ?

[4] Considering the pleadings, relevant submissions, evidence placed on record and the reasons as mentioned hereinafter, I answer the above issues as under :

- [1] In partly Affirmative.
- [2] In partly Affirmative.
- [3] In partly Affirmative.
- [4] As per final order.

[5] The plaintiff has produced the following oral as well as documentary evidence :

ORAL EVIDENCE

Sr. No.	Particulars of documents	Exh. No.
1	Affidavit of the plaintiff.	13

DOCUMENTARY EVIDENCE:

Sr. No.	Particulars of documents	Exh. No.
1	Partnership Deed of plaintiff's firm.	15
2	Supplementary Partnership Deed of plaintiff's firm.	16
3	Consent Letter.	17
4	GST Registration Certificate of plaintiff's firm.	18
5	GST Registration Certificate of Defendant's firm.	19
6	Copy of Delivery Chalan of transport goods to the defendant.	20
7	Bill No.158 of purchased goods by defendant from plaintiff.	21
8	Ledger Account Statement of defendant.	22
9	Certificate of Section 65(b) of The Evidence Act-1872.	23

REASONS

Issue Nos.1, 2 & 3:

In order to avoid repetition of facts and circumstances, Issue Nos.1, 2 & 3 are hereby decided together.

[6] It is the case of the Plaintiff that the defendant approached the plaintiff for purchase of Weightless(Big) Grey

Cloths on terms and conditions and purchased goods worth of Rs.1,77,423/- on credit basis on 23-08-2021 under Bill/Challan No.158 and thereafter, made part payment of Rs.60,000/- through cheque on 24-02-2022, but did not paid due amount of Rs.1,17,423/-. The plaintiff submits that an amount of Rs.1,17,423/- remains due and payable by the defendant against the said business and transactions of the invoices were particularly as set out in the plaint.

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[7] The plaintiff has produced documentary evidence to prove his case. On perusal of the evidence placed on record list vide Exh.12 which was contained mark 12/1 to 12/9, all documents are original or office copy of the commercial transaction between plaintiff and defendant, hence all documents are exhibited as Exh.15 to 23.

[8] The plaintiff has deposed on oath at Exh.13 in accordance with the pleadings in the plaint and has verified the figures & signatures in the bill/challan & contents in the documents. The deponent has admitted the facts of goods having been supplied to the defendant. The fact that an amount of Rs.1,17,423/- remains outstanding and payable by defendant to the plaintiff towards the sale and supply of goods is affirmed on oath by the plaintiff. The defendant has neither appeared nor challenged the contentions raised in the pleadings. According to the Evidence Act, the existence of certain facts can be presumed unless and until the contrary is proved. In the facts and circumstances of the present

case, this aspect tilts in favour of the Plaintiff rather than the defendant and I have no reason to disbelieve the same.

[9] As the Plaintiff has proved the suit claim to its full extent by way of authenticated documents and cogent evidence, I have reason to believe that the Plaintiff is entitled to interest on the outstanding amount. The Plaintiff has prayed for interest @ rate of 36% p.a. on the outstanding amount charges from the date of filing of the suit. On perusal of the documents produced with the affidavit, it appears that no contractual rate of interest is in existence between the parties. Hence, I think it to be just and proper in the interest of justice to award interest @9% p.a. on the outstanding amount from the date of suit till date of decree.

[10] The Plaintiff has made out its case as well as the suit claim to its full extent by way of authenticated documents and cogent evidence. The facts stated by the official of the Plaintiff on oath are supported by documentary evidence. Further, as the defendant has failed to reply and has neither challenged the suit claim nor the

evidence, the Plaintiff is entitled to relief as prayed for. Thus, an outstanding principal amount of Rs.1,17,423/- as per the suit claim together with running interest @9% p.a. on the outstanding payment from the date of filing of suit till date of actual realization is due to the Plaintiff in respect of the goods supplied by the Plaintiff. In the light of the above, I answer Issue Nos. 1, 2 & 3 are in partly Affirmative and Issue No.4 is as follow:-

:- ORDER :-

- (1) The present suit is hereby partly allowed.
- (2) The Defendant is hereby directed to pay principal amount of Rs.1,17,423/- [Rs. One Lakh Seventeen Thousand Four Hundred and Twenty Three only] with interest @ 9% p.a. accruing thereupon to the plaintiff from the date of suit till realisation.
- (3) The Defendant shall pay the costs of the suit to the Plaintiff.
- (4) Decree be drawn accordingly.

Pronounced in open court on this 1st day of January, 2024.

Date : 01/01/2024
Surat.

[Bhaskarbhai Chandubhai Bhalia]
Additional Judge
Small Cause Court, Surat
Judge Code - GJ01469