IN THE COURT OF III ADDL.CIVIL JUDGE AND JMFC., AT HUBBALLI .

OS No.751/2022

DATED: 2nd February 2024

:PRESENT:
SMT.PREETHY.K., L.L.M.,
III Addl.Civil Judge & JMFC.,
Hubballi

Plaintiff : Bishoni Trade Links
A proprietorship concern
By its Proprietor Shanti W/o Birbal Bishoni,
R/by its Power of Attorney holder
Shri Chidambar S/o Shyamrao Kulkarni, Age: 47 years, Occ: Employee, R/o: Vijaynagar, Hubballi.

(**By Sri.S.R.A Advocate**)

-Vs-

Defendant: Shree Shankeshwar Tiles and Lights
A proprietorship concern
Represented by its Proprietor
Vikas Jayantilal Jain,
Age: Major, R/o: 1st floor, Lal Manzil, Opp: Naidu Hospital, Inamdar colony, BLDE road, Vijayapur-586101.

(**Exparte**)

Date of institution of Suit	1.10.2022
Nature of the suit	Recovery of Money
Date of commencement of recording evidence	20.12.2023
Judgment pronounced on	2.2.2024

Total duration	Year/s	Months	Day/s
	01	04	01

(**PREETHY.K**)
III Addl.C.J & JMFC.,
Hubballi

JUDGMENT

The suit for recovery of money a sum of Rs. 2,03,750/- along with interest at 24% p.a.

2. **Brief facts of the plaintiff case are as under:**

The plaintiff is a sole proprietorship and is engaged in the business of supplying LPG stoves, Cookers, Electrical Air-Coolers, Water Heaters and other home appliances etc. The defendant is a regular customer of the plaintiff. The defendant had approached the plaintiff to purchase Orient Electric Air coolers, Wall fans and Ceiling Fans, Exhaust fans. The plaintiff had supplied the various products to the defendant on credit basis and as per the running account maintained by the plaintiff the total outstanding is Rs. 2,03,750/-. The plaintiff repeatedly requested the defendant to clear the outstanding balance. The defendant postponed the payment on one or other reasons. The plaintiff issued legal notice dated 27.8.2022 to the defendant to pay the amount. The defendant neither paid the amount nor replied to the notice. Hence the suit.

3. Even after service of summons, the defendant did not appear before this court and as such is placed exparte.

4. In order to prove its case, the power of attorney holder of the plaintiff examined as PW1 and got marked documents Ex.P1 to P.6.

5. Heard and perused the materials on record.

6. **The following points arise for consideration.**

1. Whether the plaintiff proves that, the defendant purchased goods from the plaintiff and is due a sum of Rs. 2,03,750/-?

2. Whether the plaintiff is entitled to the relief sought for?

3. What order or decree?

7. **The above points are answered as under:**

Point No.1 : **In the Affirmative**
Point No.2 : **In the Affirmative**
Point No.3 : As per the following order for the following reasons.

REASONS

8. **Point No.1 and 2**: As these points are interconnected with each other they are taken together for discussion to avoid repetition.

9. It is the burden upon the plaintiff to establish these points. In order to establish the same, the Power of attorney holder of the plaintiff has filed affidavit in lieu of examination in chief and examined as PW-1. The affidavit is verbatim of plaint

averments and as such it does not require repetition. Further PW-1 got marked documents at Ex.P-1 to Ex.P-6. Ex.P-1 is the General power of attorney dated 16.9.2022, Ex.P-2 is the Copy of ledger account, Ex.P-3 is the Tax invoice dated 26.12.2019, Ex.P.4 is the Tax invoice dated 28.10.2019, Ex.P.5 is the Legal notice and Ex.P.6 is the postal acknowledgment.

10. On perusal of the oral and documentary evidence it is the case of the plaintiff that, the defendant had approached the plaintiff for the purchase of goods on credit basis. The plaintiff had supplied various products to the defendant on several occasions and issued various tax invoices. The defendant failed to make payment in respect of the products and is due a sum of Rs. 2,03,750/-. The copy of the ledger placed by the plaintiff at Ex.P.2 evidences the various transactions taken place between the plaintiff and the defendant for the period from 1.4.2019 to 31.3.2020. Ex.P.3 is the tax invoice dated 26.11.2019 and Ex.P.4 is a tax invoice dated 28.10.2019 and these materials substantiates the case of the plaintiff that, the plaintiff had raised tax invoice in respect of the products/goods supplied to the defendant.

11. Further, it is the case of the plaintiff that, the defendant had made various payments under tax invoice but is in due a sum of Rs. 2,03,750/- . These materials reflects that, the goods are delivered as per the said tax invoices. The plaintiff in his oral evidence has specifically deposed that, the defendant failed to make payment under the tax invoices at Ex.P.3 and 4.It is deposed that, there was a repeated request by the plaintiff to

the defendant to pay the amount and also a legal notice came to be issued. The legal notice is produced at Ex.P.5 and postal acknowledgment at Ex.P.6 evidences the service of notice to the defendant. The defendant has not chosen to reply to the notice.

12. Further, in this case the defendant had not bothered to appear before this court. The oral and documentary evidence of the plaintiff has remained unchallenged and unrebutted. At this juncture there is no any material before this Court to disbelieve the case of the plaintiff. The plaintiff has succeeded in establishing these points by oral and documentary evidence.

13. Further, the plaintiff herein is seeking a recovery of sum of Rs. 2,03,750/- along with interest at the rate of 24% p.a. As per Ex.P.2 the ledger account the closing balance is Rs. 4,53,750/-. However the plaintiff is specifically claiming a sum of Rs. 2,03,750/-. Since the plaintiff is claiming only the said amount, this court is constrained to only consider the said amount. That apart, the plaintiff is seeking a interest at the rate of 24% p.a. However, the plaintiff has not placed any other supportive materials to substantiate that, there was an agreement between the plaintiff and defendant agreeing the rate of interest. No doubt a transaction appears a business transaction. But in the absence of any materials to show that, the interest was an agreed interest , this court founds that, it is appropriate to grant a reasonable interest on the amount claimed. Hence these points are answered **in the Affirmative.**

14. **Point No. 3:** In view of the above finding this court proceeds to pass the following;

O R D E R

The suit of the plaintiff is decreed with cost.

The defendant is liable to pay the suit claim of Rs.2,03,750/- to the plaintiff.

The defendant is hereby directed to pay interest at the rate of 12% per annum on sum of Rs.2,03,750/- from the date of suit till the date of realization.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, transcript revised, corrected by me and then pronounced in the open court on this 2nd February 2024)

(**PREETHY.K**)
III Addl.C.J & JMFC.,
Hubballi

ANNEXURE

List of witnesses examined for plaintiff:

PW1 : Chidambar Kulkarni

List of documents Exhibited for plaintiff:

Ex.P-1 : General Power of attorney
Ex.P-2 : Copy of ledger account
Ex.P-3 : Tax invoice
Ex.P-4 : Tax invoice
Ex.P-5 : Legal notice
Ex.P-6 : Postal acknowledgment

List of witnesses examined for defendant:

-NIL-

List of documents Exhibited for defendant:

-NIL-

III Addl.C.J and JMFC.,
Hubballi

(Judgment pronounced in Open Court vide separate Order)

<u>O R D E R</u>

The suit of the plaintiff is decreed with cost.

The defendant is liable to pay the suit claim of Rs.2,03,750/- to the plaintiff.

The defendant is hereby directed to pay interest at the rate of 12% per annum on sum of Rs.2,03,750/- from the date of suit till the date of realization.

Draw decree accordingly.

III Addl.C.J & JMFC.,
Hubballi