

Suit instituted on	14	11	2018
Registered on	14	11	2018
Decided on	29	11	2024
Duration	Y.	M.	D.
	06	00	15

EXH. NO.94

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

Small Civil Suit No. 461/2018

Plaintiff:-

KICH ARCHITECTURAL PRODUCTS PVT. LTD.

(Behalf and as a Authorized signatory)

Mr. Nilesh Jasubhai Dodiya

Address:-

Gondal Road, NH 8B, Vavdi,

Rajkot.

Versus.

defendant-

MR. AJIT KUMAR SINGH

ADDRESS:

J-24, Sector-12, Pratap Vihar,

Ghaziabad

Sub:- Suit for recovery of an amount of Rs.7,55,617/-

Appearance:-

G.R.Thaker Ld. Advocate for the plaintiff .

D.A.Sinojia Ld. Advocate for the defendant.

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

The facts of the plaintiff's suit in nut shell are as under:

1. The plaintiff has filed this suit for recovery of an amount of **Rs.7,55,617/-** against the defendant. That the plaintiff is doing business of various type of Hardware products, Bathroom Accessories, Handrail and Baluster system in Gujarat and many other states of India. Further, the plaintiff appointed defendant as a area manager of the West U.P. and Uttarakhand on 26/12/2009 and during service period plaintiff had supply and hand over the sample piece of goods articles of around Rs.5,52,617/- to defendant, also hand over one laptop, mobile etc., but without clearance of pending matter, all of sudden defendant had resigned by email on 14/02/2017 and which was not fair on part of defendant, but after his resign defendant did not hand over the article and sample piece of goods, laptop and mobile to the plaintiff. Further, the plaintiff gave reminder to hand over the above said articles and sample goods but till date defendant has not handover this all thing.

Furthermore, at the time of submitting defendant resignation, defendant is duty bound to give two month notice to plaintiff but defendant had not giving the two months notice to plaintiff, therefore, defendant is also liable to pay Rs.1,80,000/- in lieu of notice period to plaintiff. Furthermore, the plaintiff requested the defendant several times to make the payment of sample goods but the defendant did not do so. Therefore, the plaintiff is entitle to get amount Rs.5,52,617/- of Samples Goods, Rs.1,80,000/- Two Months Notice Pay, Rs.16,300/- of Laptop amount and Rs.7,000/- of Mobile Instrument which being total Rs.7,55,917/-, but after giving several reminders, the defendant did not gave attention to the plaintiff and therefore, plaintiff had issued a legal notice on 4/9/2018 to the defendant but the defendant neither replied the notice nor paid the total outstanding of the plaintiff. Therefore, the plaintiff has constrained to file this suit against the defendant.

2. The defendant are duly served with summons by pursis Vide. Exh.5 and in response to the same, the defendant

remain present before the Court and filed his W.S. vide Exh.32 but thereafter did not produced any oral as well as documentary evidence before the court to defend his side and therefore, the court had closed the right of the defendant to produce evidence.

3. In support of this suit, the plaintiff has produced following oral as well as documentary evidence for proving its case.

ORAL EVIDENCE

Sr.	Details of Documents	Ex. No.
1	Affidavit on behalf of the plaintiff Mr. Nilesh Jasubhai Dodiya	15

Documentary Evidence

Sr.	Details of Documents	Ex. No.
1	The copy of the resolution	18
2	Appointment letter of defendant	19
3	List of sample piece of goods articles gave by plaintiff	20
4	Resignation of defendant	21
5	Pay slip Month Dec-2016	22
6	Letter of due payments & pending matters by plaintiff	23
7	Ledger of tour advance of defendant	24
8	Email by plaintiff to reminder about client for due payments & pending matters	25
9	Notice given by the plaintiff to defendant	26
10	Forwarding letter regarding sent notice to other	27

	address as the aforesaid notice not served.	
11	Appointment letter given to the defendant	51
12	Registration of plaintiff firm given by Indian Government	52
13	Electric light bill of plaintiff company	53
14	Notification of Panchayat Rural House Development Department, Sachivalaya, Gandhinagar	54
15	Filed expense statement of plaintiff company	55
16	Letter Dtd.30/08/2017 and Reg. A.D. Slip regarding payment due by defendant	56
17	Money slip of Reg. A.D.	57
18	Reg. A.D. Money Receipt and online ledger	58
19	Email sent to the defendant	59
20	Email sent to the defendant	60
21	Email sent to the defendant	61
22	Email sent to the defendant	62
23	Computerized ledger regarding amount given to the defendant as tour allowance	63
24	Computerized ledger regarding amount given to the defendant as tour allowance	64
25	Prize list of products of plaintiff company	65
26	Prize list of products of plaintiff company (hardware products)	66
27	Prize list of products of plaintiff company (bathroom and house hold accessories product)	67
28	Prize list of products of plaintiff company (hardware products)	68
29	Prize list of products of plaintiff company (hardware products)	69
30	Prize list of products of plaintiff company (hardware products)	70
31	Prize list of products of plaintiff company (bathroom and house hold accessories product)	71
32	Prize list of products of plaintiff company (hardware products)	72

33	Prize list of products of plaintiff company (bathroom and house hold accessories product)	73
	Prize list of products of plaintiff company (hardware products)	74
34	Prize list of products of plaintiff company (bathroom and house hold accessories product)	75
35	Prize list of products of plaintiff firm	76
36	Arch shopping the steel hardware products	77
37	Arch shopping the steel hardware products	78
38	Arch shopping the steel hardware products	79
39	Arch shopping the steel hardware products	80
40	Arch shopping the steel hardware products	81
41	Arch shopping the steel hardware products	82

4. The following issues have been framed at **Ex.13** for determination of the suit.

1	Whether the plaintiff proves that Rs.7,55,617/- is due outstanding amount from the defendant?
2	Whether the plaintiff is entitled for the interest? If yes, at what rate ?
3	Whether plaintiff proves that suit is within the limit?
4	What order and decree?

Issue No.1:-

Having carefully gone through plaint and the documents produced at **Ex. 18 to 82** as mentioned above. The plaintiff stated that before filing of this suit, the notice has been serve to the defendant and during notice period, the defendant have not paid due amount. Further he has state that notice

under procedure of suit has been duly served to the defendant and after service of notice, the defendant remain present before the Court and filed his W.S. vide Exh.32 and denied the facts of plaint of plaintiff. Ld. Advocate for the Defendant has cross-examined the Plaintiff vide Exh. 15 but during the cross-examination defendant fails to bring the adverse facts which has denied in his written statement. Thereafter the neither defendant nor his advocate remained present before the court and did not produced any oral as well as documentary evidence before the court to defend his side and therefore, the court had closed the right of the defendant to produce evidence as well as final arguments. Further he has stated that as per provisions of C. P. C., when the defendant is not appeared before the court, then it can be said that the defendant have admitted the pleading of suit as well as documents under procedure of suit and therefore, decree requires to be passed in favor of the plaintiff. Thus, considering the arguments advanced by learned advocate for the plaintiff and considering the averments in the plaint as well as documentary evidence as discussed above and after service of summons to the defendant, it appears that the

defendant is not entered to defend the present suit within the time prescribed under law. Thus, it is presumed that defendant is admitting the claim as mentioned in the suit. Therefore, in view of above, there is no reason to disbelieve the documentary evidence produced by the plaintiff at **Ex. 18 to 82** which are supported the averments made in the plaint and accordingly, the plaintiff has proved that plaintiff is entitle to recover only outstanding amount of **Rs.7,55,617/-** from the defendant. Hence the issue No.1 has proved by the plaintiff through his oral evidence as well as documentary evidences, therefore issue No.1 is comes in **"Affirmative"**.

Issue No.2:-

Looking to the facts of the case and averment made in the plaint as well as evidences produced by the plaintiff that relief of plaint, plaintiff has demanded interest at the rate of **12% P.A.** on suit amount, looking to the documentary evidence there is no any document or agreement regarding the interest between Plaintiff and Defendant therefore, as per Section 34 of Civil Procedure Code the plaintiff is entitled to get an interest at the rate of **6% p.a.** on due amount and accordingly. Therefore, the issue

No.2 is **“Partly Affirmative”**.

Issue No.3:-

Looking to the documentary evidence submitted by the plaintiff it transpire that the suit of the plaintiff is within the limitation. Hence, the issue No.3 is **“Affirmative”**.

By observing the documentary and oral evidence submitted by the plaintiff, plaintiff succeeding the suit and plaintiff has proven issue No.1 to 3 by his evidence and therefore, plaintiff is entitle to get relief prayed in the plaint. Hence, the plaintiff is entitle to get outstanding amount of **Rs.7,55,617/-** from the defendant and in view of above discussion and considering the facts of the plaint, plaintiff suit is require to allow. I pass the following final order in the interest of justice.

// O R D E R //

- (1)** The present suit of the plaintiff is hereby partly allowed.
- (2)** The defendant is hereby liable to pay an amount of **Rs.7,55,617/-** (Rupees seven lakh fifty five thousand six hundred seventeen only) with an interest **6% p.a** to the plaintiff from the date of filing of this suit till payment of decreed amount.

(3) The defendant is ordered to bear their own cost and cost of the plaintiff.

(4) Decree to be drawn accordingly.

Signed and Pronounced in the open court today on this 29th **day in the month of November 2024.**

Date: 29/11/2024
Place : Rajkot

(Nitinchandra N. Dave)
Additional Judge,
Small Cause Court,
Rajkot.
UID - GJ01069