

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL SUIT NO. 49 OF 2013

Shree Sundha Steels Pvt.Ltd.

...Plaintiff

Vs.

M/s.Joyti Divya Fabrication Ltd.

...Defendant

Mr.M.D. Mali I/b. M.D. Mali & Co. for Plaintiff.

None for Defendant.

CORAM : S.C. GUPTE, J.

DATE : 12 APRIL 2018

P.C. :

By an order dated 14 February 2018 passed in the commercial suit, the Defendant was directed to file its written statement within four weeks. The court noted, when the matter appeared on 21 March 2018, that there was no written statement and the Defendant was absent. The suit was accordingly posted for exparte decree and appears on board accordingly. Even today none appears for the Defendant.

2 The suit is on a dishonoured cheque. The cheque was issued towards payment of goods sold and delivered by the Plaintiff to the Defendant. The Plaintiff relies on the original dishonoured cheque dated 15 October 2011 issued by the Defendant and the dishonoured memo issued by the receiving bank.

3 The Plaintiff produces original documents in evidence. These include the board resolution of the Plaintiff company, the original cheque

dated 15 October 2011 along with the written memo issued by the receiving bank, the Plaintiff's Advocates' notice, the proof of its service including postal receipts and acknowledgement cards, further correspondence between the parties along with proof of receipt of the correspondence, the ledger account's statement of the relevant period, original "C" form issued by the Defendant in respect of the sales and confirmation of the accounts of the year 2009-10 signed by the Defendant. The documents, which are listed at Serial Nos.1 to 16 in the index to the compilation, are admitted in evidence and marked as **Exhibit P-1 to P-16** in accordance with the serial numbers in the list of documents.

4 Based on the documentary evidence tendered in court, the Plaintiff has made out a case for recovery of the amount of the dishonoured cheque. In addition to the principal amount represented by the cheque, the Defendant will have to pay interest at the rate of 18% per annum under Section 80 of the Negotiable Instruments Act. The interest will be calculated as of the date of the cheque and will have to be paid for the pre-suit period from that date and also *pendente post* decree till payment or realisation.

5 The Plaintiff's suit is accordingly decreed for the principal amount of Rs.3.81 crores together with interest at the rate of 18% per annum from 15.10.2011 till the date of the suit and thereafter during the pendency of the suit till payment or realisation. The Plaintiff will also be entitled to the costs of the suit. Refund of court fees in accordance with the applicable rules.

(S.C. GUPTE, J.)