

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.07.2019

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The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.No.538 of 2017

M/s.Roca Bathroom Products Private Limited,
having its registered office at 4th Floor, 'KGN Towers', No.62,
Ethiraj Salai, Egmore, Chennai – 600 105
Rep. by its Authorized Signatory, Mr.D.Sundaram.

...Plaintiff

Versus

G.Santhosh Kumar,
Proprietor, 'Nest – A House of Complete Interiors'
Plot No.58C, Prashanthi Nagar, Raghavendra Colony, Kondapur,
Hyderabad, Telangana – 500 081.

...Defendant

This suit is filed under Order VII Rule 1 of C.P.C r/w. Order XXXVII of the C.P.C for the following reliefs:

(i) Direct the defendant to pay a sum of Rs.1,40,21,777.02 (Rupees One Crore Forty Lakhs Twenty One Thousand Seven Hundred and Seventy Seven and Two Paise only) along with interest thereon, being a commercial transaction, at 18% p.a., on the principal sum of Rs.1,36,13,376/- (Rupees One Crore Thirty Six Lakhs Thirteen Thousand Three Hundred and Seventy Six only) from the date of the plaint till realization;

(ii) direct the defendant to pay costs of this suit; and

For Plaintiffs : M.K.F.Manavalan

For Defendant : Set *ex parte*

vide order dated 05.07.2019

J U D G M E N T

The present suit has been admitted on 12.07.2017, and the substituted service on the sole defendant was effected by way of Paper Publication on 26.03.2018, however, when the matter was called on 05.07.2019, none appeared on behalf of the defendant.

2. Today(17.07.2019), this matter is taken up for final disposal.

3.1. The learned counsel for plaintiff submitted that the plaintiff is a Private Limited Company, registered under the Indian Companies Act, 1956, indulged in the manufacture and trading of ceramic sanitary ware, taps & fittings, cisterns & seat covers and other bathroom products (the 'Products'). He also submitted that the defendant is carrying on the business of selling sanitary & Ceramic ware under the name and style of 'Nest – A House of Complete Interiors'.

3.2. The learned counsel would contend that the plaintiff had supplied their products to the defendant upon the orders placed by

the defendant on various dates and the products supplied by the plaintiff were received by and on the defendant's behalf without demur. He would further contend that the plaintiff maintains a running account in respect of all transactions with the defendant since the transactions being commercial in nature, interest thereon at the prevailing commercial rates at 18% per annum, was liable to be paid for non-payment of the plaintiff's dues on demand.

3.3. The learned counsel contended that in spite of repeated requests, the defendant has failed to pay the outstanding due to the plaintiff and therefore, the outstanding sum of Rs.141.13 Lakhs, was payable by the defendant towards the principal as on 23.12.2016. He also contended that there was a Minutes of Meeting held at Hyderabad on 23.12.2016, between the plaintiff's President and the defendant which was filed as Document No.2, wherein, the defendant had acknowledged that a sum of Rs.141.13 Lakhs was payable by the defendant towards the principal as on 23.12.2016 and that the said sum would be paid along with interest thereon till date of payment within stipulated time lines mentioned hereinbelow:

Sl.No.	Date	Amount
1	31.12.2016	5 Lakhs
2	31.01.2017	25 Lakhs

Sl.No.	Date	Amount
3	28.02.2017	25 Lakhs
4	31.03.2017	34 Lakhs
5	30.04.2017	26 Lakhs
6	31.05.2017	26.13 Lakhs

3.4. The learned counsel for plaintiff argued that Clause 3 of the said Minutes of Meeting (Document No.2), clearly states that the defendant will provide seven post-dated cheques for the above dues payable to the plaintiff by 23.12.2016. He further argued that when the aforesaid post-dated cheques issued by the defendant were presented for encashment by the plaintiff, the same were dishonoured for the reason, "Insufficient Funds" and so the plaintiff issued a Legal Notice dated 21.02.2017 to the defendant calling upon to pay the outstanding due, however, the said notice was returned with a Postal Endorsement, "Unclaimed" and therefore, left with no other alternative, the plaintiff filed the present suit before this Court since the entire cause of action of the suit arose at Chennai.

4. Heard the learned counsel for plaintiff and perused the materials available on record.

5.1. On perusing the plaint and the documents viz., Document Nos.1 to 9 filed by the plaintiff, it is seen that though the plaintiff supplied their products to the defendant upon the orders placed by the defendant, the defendant failed to pay the outstanding due of Rs.141.13 Lakhs to the plaintiff. Therefore, the plaintiff and the defendant had a Minutes of Meeting on 23.12.2016, wherein, the defendant agreed to make the payment and provided a schedule to repay the said outstanding due. However, the defendant failed to make the payment of outstanding due as per the terms of the Minutes of Meeting and also the post-dated cheques which were given by him were dishonoured for the reason, "Insufficient Funds". So the plaintiff issued a Legal Notice dated 21.02.2017 to the defendant, however, the same was returned with the postal endorsement, "Unclaimed".

5.2. The said facts are clearly evident from the documents filed by the plaintiff viz., Document No.1, Invoices of the plaintiff Company; Document No.2, Minutes of Meeting held at Hyderabad between the plaintiff's President and the defendant; Document No.3, Post-dated cheques issued by the defendant to the plaintiff;

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Document Nos.4 & 5, Outward Return Memo of the city Union Bank Ltd.,; Document No.6, Legal Notice issued by the plaintiff's counsel to the defendant; Document No.7, Postal Endorsement; Document No.8, Statement of Accounts filed by the plaintiff Company; and Document No.9, Extract of the Resolution passed by the Board of Directors at its Meeting held on 06.09.2016.

5.3. It is crystal clear that the defendant played fraud on the plaintiff without settling the agreed amount of suit claim and the plaintiff also proved the suit claim beyond doubts. Therefore, this Court is inclined to decree the suit as prayed for by the plaintiff.

6. Accordingly, as stated above, this Civil Suit is decreed as prayed for.

17.07.2019

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