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C.S. No.450 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

C.S.No.450 of 2019

ITC Limited
Education and Stationery Products Business,
ITC Centre, 5th Floor,
No.760, Anna Salai,
Chennai-600 002
Rep. By its Head of Sales and Marketing
Power of Attorney Holder
Mr.R.Ravinarayanan

.. Plaintiff

vs.

Mr.Davendra Kumar Gupta
S/o.Dayanand Gupta,
Proprietor
M/s.Nirmit Engineers,
IV/516/1C, Stret No.5, Bholanath, Shahdara,
Delhi-110032.

... Defendant

PRAYER: Complaint filed under Order IV Rule 1 of Original Side Rules Read with Order VII Rule 1 CPC prays for a judgment and decree against the Defendant (a) for a sum of Rs.2,58,23,653/- (Rupees Two Crore Fifty Eight Lakh Twenty Three Thousand Six Hundred and Fifty Three only) together with interest at the rate of 24% on Rs.1,31,69,311/- (Rupees One Crore



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Thirty One Lakh Sixty Nine Thousand Three Hundred Eleven only) from the date of plaint till the date of realization; and (b) for costs of this suit.

For Plaintiff : Ms. Vandana Parasuram for
M/s.K.Krishnamoorthy

J U D G M E N T

The plaintiff filed a suit for recovery of Rs.2,58,23,653/- from the defendant with interest on the principal sum of Rs.1,31,69,311/- at 24% p.a. from the date of plaint till the date of realization.

2. The plaintiff stated that it is in the business of supplying educational and stationery products. Upon being approached by the defendant in relation thereto, goods were supplied by the plaintiff to the defendant under multiple invoices. A running account was maintained in respect of supplies made by the plaintiff to the defendant. After providing credit to payments made by the defendant, the plaintiff states that a principal sum of Rs.1,31,69,311/- and interest thereon in an aggregate sum of Rs.1,26,54,342/- was due and payable by the defendant to the plaintiff as on the date of plaint.



3. In spite of suit summons being served on the defendant, the defendant failed to appear. Consequently, by order dated 09.06.2022, the defendant was set *ex parte* and the matter was placed before the learned Additional Master II for recording the *ex parte* evidence of the plaintiff.

4. The plaintiff examined Mr.Dileep Patnana, Assistant Manager (Finance) and authorized signatory, as PW1. During the course of examination-in-chief of PW1, the 9 documents listed at the foot of this judgment were exhibited as Exs.P1 to P9.

5. Learned counsel for the plaintiff invited my attention to Ex.P4, which specifies the terms and conditions applicable to all the transactions. This document has been signed by both parties. As per clause 5 thereof, learned counsel points out that the rate of interest was agreed to be duly communicated by the plaintiff to the defendant from time to time. Learned counsel also points out that the defendant confirmed the amount due and payable as on 31.03.2016 under Ex.P5 in an aggregate sum of Rs.1,57,35,259/-. According to learned counsel, this includes interest at



24% p.a. Learned counsel also relies upon the statement of account (Ex.P9).

She points out that interest waivers were provided from time to time, such as by entry dated 28.10.2015 for a sum of Rs.4,92,991/-. She submits that the suit claim was made on the basis of the said statement of account which shows a closing balance of Rs.2,58,23,652.56.

6. The plaintiff has placed on record sample invoices as Ex.P6. As discussed above, the confirmation of balance as on 31.03.2016 is on record as Ex.P5. The terms and conditions of the transaction provide for the communication of the rate of interest. No document directly evidencing the communication of the rate of interest is on record, but the confirmation of balance, as on 31.03.2016, includes interest. Ex.P9, which is the statement of account, evidences that the amount outstanding as on 31.05.2019 is Rs.2,58,23,652.56.

7. Thus, the assertions in the plaint were duly proved by adducing evidence in support thereof. By taking into account the fact that no



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evidence to the contrary was adduced by the defendant, the plaintiff is entitled to succeed. Therefore, the plaintiff is entitled to a sum of Rs.2,58,23,653/- as prayed for. As regards interest in the post suit period, the plaintiff shall be entitled to interest at 12% p.a. As the successful party, the plaintiff is also entitled to costs.

8. In the result, the suit is decreed as follows:

(i) the defendant is directed to pay to the plaintiff a sum of Rs.2,58,23,653/- with interest on the principal sum of Rs.1,31,69,311/- at 12% p.a. from the date of plaint until realization; and

(2) the defendant is directed to pay costs.

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Index : Yes / No

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Plaintiff's witness:

Mr.Dileep Patnana : P.W.1

Defendant's witness : Nil

Documents exhibited by the Plaintiff:

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Sl.No	Exhibits	Date	Particulars of Documents
1.	Ex.P1	12.03.2022	The photocopy of the Authorization Letter (Original seen and returned)
2.	Ex.P2	-	The original letter from the defendant authorizing transporters to collect the goods.
3.	Ex.P3	28.10.2013	The original certificate issued by defendant bank.
4.	Ex.P4	-	The original condition of Sale signed by the defendant.
5.	Ex.P5	31.03.2016	The original confirmation of balance dated 31.03.2016.
6.	Ex.P6	29.03.2015	The original invoice
7.	Ex.P7	30.09.2016	The office copy of the legal notice
8.	Ex.P8	28.06.2019	The original bank statement of the plaintiff
9.	Ex.P9	-	Statement of account.

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