

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

CS 52 of 2017

Rinki Plastics Private Limited

Versus

Debasis Mullick

Ms. Aparajita Rao

... for the plaintiff.

Hearing Concluded On : 06.12. 2023

Judgment on : 15.12.2023

Krishna Rao, J.:

1. The plaintiff has filed the instant suit against the defendant for a decree of sum of Rs. 41,91,734/-, with an interest @ 24% per annum.
2. It was certified that defendant has not entered appearance either in person or through Advocate, despite of service of notice. As none appears on behalf of the defendant, by an order dated 11th October,

2023, this Court had fixed the matter under the list of ‘undefended suits’.

3. The Plaintiff is a registered company under the name and style of ‘Rinky Plastics Private Limited’, and carries on business as supplier/dealer of PVC Pipes and Fittings and allied products, having its registered office at 5/1, Clive Row, Kolkata – 700001.
4. The Defendant carries on business under the name and style of ‘M/s Dharmaraj Hardware’, as its Sole Proprietor thereof, from its office at Sardar Ghatt, (near Vivekananda College More), P.O., P.S., and District: Burdwan, PIN: 713 101.
5. In the usual course of business, the defendant, from time to time, placed purchase orders for supply of various sizes and dimension of UPVC, Pipe, Casing pipe and certain other PVC pipes and fittings, over telephone and based on such oral orders, the Plaintiff used to supply and deliver diverse quantities of PVC Pipes and Fittings, etc. from its factory at Village and P.O. Mondalpur, P.S. Jamuria, District Burdwan – 713336, to the place of defendant’s business, which the defendant received and accepted without raising any objection or dispute whatsoever either with regard to the quantities and quality of the products sent to the defendant by the plaintiff.
6. In respect to the deliveries made by the plaintiff to the defendant, the defendant had acknowledged the receipt of the products by signing the challan in token of receipt of the goods.

7. The plaintiff, from time to time, raised invoices upon the defendant which included the applicable Value added Tax.
8. It was, inter-alia, agreed between the parties that the defendant would make payment of the price of goods sold and delivered within 30 days from the date of receipt of invoices raised on the defendant in the usual course of business and in default, the defendant would pay to the plaintiff an interest thereon at the rate 24% per annum from the due date of invoices.
9. The Plaintiff has submitted final bill of a total of sum of Rs. 41,17,915/, during the period from 13th May, 2014 to 11th August, 2015 which leads to a total number of 13 invoices which the defendant has received without objections.
10. The defendant, from time to time between 28th May, 2014 and 31st January, 2015 has made part payments amount to a total sum of Rs. 12,20,000/-, out of total amount of Rs. 41,17,915/- the last of such payment was received by the plaintiff on 31st January, 2015, leaving a balance sum of Rs. 28,97,915/- with an added interest @ 24% p.a. from the due date of each such bill till realisation.
11. In or around the years 2015 and 2016, the representatives of the plaintiff on several occasions personally visited and approached the defendant, Mr. Debasis Mullick for settlement of bills at his office. In course of such negotiation the defendant admitted that a sum of Rs. 28,97,915/- is due

and payable by the defendant to the plaintiff with further interest @ 24% p.a. as agreed.

12. The defendant, failed and neglected to pay the said sum of Rs. 28,97,915/- or any part or portion thereof or any interest thereon to the plaintiff in spite of repeated demands, and even after the defendant assuring the plaintiff to clear the outstanding dues by December 31, 2016.
13. As the defendants had failed to pay the due amount, the plaintiff had sent a notice issued on 25th November, 2016, through its Advocate, and called upon the defendant for payment of the aforesaid outstanding due of Rs. 28,97,915/- together with an interest @ 24% per annum which was returned undelivered to the Advocate of the plaintiff by the postal authorities with the endorsement 'insufficient address'.
14. The Plaintiff, to prove its case, the plaintiff has examined one witness, namely, Sandip Modi on his behalf and during his examination, six documents which were exhibited as **"Exhibit A to Exhibit F"**.

Exhibit A – Board resolution passed by the company which has authorized Mr. Sandeep Modi to deal with this case.

Exhibit B – Bills and invoices with challan raised by the plaintiff addressing the defendant are exhibited collectively.

Exhibit C – An account of Dharmaraj Hardware prepared by the plaintiff to show the total bill raised and amount due along with delivery challans duly received and signed by the agent of the defendant are exhibited collectively.

Exhibit D – Company's ledger of Dharmaraj Hardware.

Exhibit E – Notice prepared by the lawyer of the plaintiff which was served by them to the defendant.

Exhibit F – Postal receipt of the notice served by the plaintiff to the defendant which was returned to the post office due to insufficient address of the defendant.

- 15.** Exhibit B and Exhibit C collectively proves that the plaintiff had issued several bills and invoices to the defendant on supply of PVC Pipes and Fittings at Sadar Ghat (Near Vivekananda College More), Dist.: Burdwan from 13th May, 2014 to 11th August, 2015 for a total amount of Rs. 41,17,915/- .

Exhibit D is a ledger of the plaintiff's company which proves the outstanding due and amount payable by the defendant.

Exhibit E proves that the plaintiff had sent a legal notice dated 25th November, 2016, to the defendant by speed post to clear off the dues and Exhibit 'F' is undelivered postal cover which was returned by the post office to the plaintiff where it says that the legal notice dated 25th November, 2016, could not be delivered to the defendant due to insufficient address. It appears from the plaint and several documents, i.e. invoices, bills, challans, sent to the defendant by the plaintiff, which were duly received by the defendant. In the said document including plaint, the address of the defendant is the same address as mentioned in the legal notice and the defendant had received all documents

including the writ of summons of the case and therefore, it is presumed that the plaintiff has sent the notice to the defendant at the correct address but the defendant had deliberately avoid to receive the notice.

16. Upon perusal of the plaint, evidence of plaintiff's witness and document exhibited during evidence, this Court finds that the plaintiff has supplied materials as per the desire of the defendant and the defendant has received all the materials from time to time without any objection through challans. The plaintiff raised invoices and the same was also received by the defendant without any objection. On receipt of materials and invoices raised by the plaintiff, the defendant has paid an amount of Rs. 12,20,000/- out of total amount of Rs. 41,17,915/-. The defendant has paid the last payment to the plaintiff on 31st January, 2015. Inspite of several requests made by the plaintiff, the defendant has failed to pay the balance amount of Rs. 28,97,915/- with interest. The defendant has deliberately avoided to receive the legal notice though the address mentioned in the legal notice is to that of the address mentioned in the plaint, challans and invoices.

17. In view of the above, this Court holds that the defendant is liable to pay a sum of Rs. 28,97,915/- along with interest @ 24% per annum with effect from 1st February, 2015 till the realization of the said amount.

18. The defendant is directed to pay a sum of 28,97,915/- along with an interest at the rate of 24% per annum from 1st February, 2015 till the realization of the said amount.

19. C.S No. 52 of 2017 is thus **allowed ex parte**. Decree to be drawn accordingly.

(Krishna Rao, J.)