



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

COMMERCIAL SUMMARY SUIT NO. 1296 OF 2019

M/s. Gini Silk Mills Ltd	]	
A Company Incorporated	]	
Under Companies Act, 1956,	]	
Having its Adm. Office at,	]	
413, Jogani Indl Estate,	]	
Opp Kasturbha Hospital,	]	
J.R. Boricha Marg, Lower Parel East	]	
Mumbai - 400 011	]	.. Plaintiff
V/s.		
1. Soham Fashion	]	
A registered firm	]	
Under Indian Partnership Act, 1932	]	
Having its registered office at	]	
31, 5th Main Road, Opp Kavi Travels	]	
Shrirampuram, Bengaluru.	]	
2. Mohit Kumar Jain,	]	
(Partner),	]	
having office at, 31, 5th Main Road,	]	
Opp. Kavi Travels, Shrirampuram,	]	
Bengaluru	]	
And		
Residing at 7/9, Chandravarkar	]	
Layout, Ind Main,	]	
Palace Road Cross,	]	
Bengaluru 560 020	]	
3. Jalpa Jain,	]	
(Partner),	]	
having office at 31, 5th Main Road,	]	
Opp. Kavi Travels,	]	
Shrirampuram,	]	
Bengaluru.	]	
And		
Residing at 7/9, Chandravarkar	]	
Layout, Ind Main,	]	
Palace Road Cross,	]	

Bengaluru 560 020	]	
4. Karthik Rao,	]	
(Partner)	]	
having office at 31, 5th Main Road,	]	
Opp. Kavi Travels,	]	
Shrirampuram,	]	
Bengaluru	]	.. Defendants

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Ms. Akshaya Puthran i/b. S. K. Singhi & Partners LLP for the Plaintiff.

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CORAM : KAMAL KHATA, J.
RESERVED ON: 19TH JULY, 2023.
PRONOUNCED ON: 29TH AUGUST 2023.

JUDGMENT:

1. The plaintiff has filed the suit in the Commercial Division under the provisions of Order XXXVII of the Code of Civil Procedure 1908 ("CPC") seeking a summary judgment against the defendants in the sum of Rs. 2,18,40,204/- and further interest at the rate of 24% per annum from 31st March 2019 till the actual realization of the entire claim. The particulars of claim is set out at Exhibit I. The claim is based on the goods sold and delivered and cheques issued against the same.

2. Ms. Puthran the learned counsel for the plaintiff submitted that the plaintiff is a manufacturer / supplier of cotton and linen fabrics and the defendants are suppliers of fabrics and therefore, needed regular supply of fabrics. The defendants regularly placed

purchased goods from the plaintiffs. They got from the plaintiffs credit period of 35 days from the date of supply of goods. It was agreed that delay in payment would result on interest being charged @ 18% from the 36th day up to 75 days and thereafter @ 24% on delay beyond 75 days. It was also understood between the parties that after supply, its acceptance and upon raising of invoice, the defendants would clear the invoice amount within 35 days.

3. It is submitted that between 6th February 2016 and 11th January 2017, a total 78 invoices were raised by the plaintiffs on the defendants. It is not in dispute that the defendant accepted goods without demur. On the contrary the defendants had issued 18 cheques against the invoices. However those cheques were dishonoured on presentation with the remarks "exceeds arrangement". The particulars of the cheques are mentioned in paragraph 18 of the plaint. Since the cheques were dishonoured, the plaintiffs demanded payment from defendant Nos. 1 to 4. Consequently, fresh 18 cheques were issued to substitute the expired cheques. However, the defendant Nos.1 to 4 once again dishonoured the cheques. The plaintiffs therefore through their advocates issued notices under Section 138 on 25th March 2019 and another notice on 9th April 2019. As per the plaintiffs the

total dues as on 31 March 2019, together with interest, was Rs.2,18,40,204/-.

4. It was further submitted that by a handwritten letter dated 3rd June, 2017, defendants through one Mr. Mohit Jain and one Mr. Kartik Rao admitted the outstanding amounts payable towards plaintiff and proposed a payment schedule. However even after meetings and promises, the defendants failed to pay the money.

5. Under these circumstances, the suit was filed on 07th June 2019. The learned counsel for the plaintiff accordingly prayed for the suit to be decreed. The plaintiffs could not serve the hard copy of the plaint as they were not allowed to enter into the premises by the security guards and accordingly served the Summary Suit on the registered email IDs as more particularly mentioned in the affidavit of service dated 12th June 2019. The plaintiffs also filed an affidavit of service dated 13th June 2019 to prove service on the defendants by "Blue Dart Express" showing that the packets were delivered to the defendants, then on 19th June 2019, proving service through Blue Dart Express for the motion taken out in the summary suit. On 26th February 2022 with regard to the substituted service through two local daily newspapers, i.e., Free Press Journal English and Karnataka, Malla, Kannada on

defendant Nos. 2 to 4. As the service through the bailiff by way of RPAD service could not be effected on defendant Nos.2 to 4, whilst it was complete on defendant No.1. The plaintiffs have also filed an affidavit of service dated 27th April 2022, proving the service of the writ of summons by the department on 11th April 2022 and publishing of the writ of summons into local daily newspapers, namely Free Press Journal English and Kannada on 21st April 2022. In spite of service, the defendants have failed to enter appearance. Consequently, the plaintiffs have filed the certificate of non-appearance on 20th July 2022.

6. The mandate of order XXXVII Rule 2, Sub-rule 3 on non appearance of the defendant, entitles the plaintiff to a decree.

Order XXXVII Rule 2 (3) is reproduced hereunder:

“(3) The Defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.”

Thus, the plaintiff shall be entitled to a decree for a sum not

exceeding the sum mentioned in the summons together with interest as the rate specified, up to the date of the decree and such sum for costs and forthwith execution of the decree.

7. I accordingly pass the following order.

- (i) The suit is made absolute in terms of prayer clause (a), for the sum of Rs.2,18,40,204/- along with interest there on.
- (ii) The cost of the suit that shall be awarded would be a sum of Rs.1.5 lakhs which costs will be in addition to the deficit arising from the refund of court fees.
- (iii) The plaintiff shall be entitled to refund of court fees as per High Court Rules.
- (iv) The award of costs will be without interest.
- (v) Decree to be drawn up expeditiously.
- (vi) The plaintiff is at liberty to move an execution without awaiting the sealing of the decree.
- (vii) The summary suit is disposed of in the above terms.

(KAMAL KHATA, J.)