IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Civil Suit No.778 of 2017

M/s.Ultratech Cement Limited,
Having its registered office at
Ahura Centre, B-Wing, 2nd Floor,
Mahakalai Caves Road, Andheri (East)
Mumbai – 400 093. ..Plaintiff

.Vs.

Mr.Rajesh Khanna Popu Karan
Proprietor
M/s.Rajesh & Co.,
No36/11, Sivakami Illam,
Ground Floor, Canal Bank Road
R.A. Puram, Chennai – 28.
..Defendant

Prayer: Civil Suit has been filed under Order VII, Rule 1 of the Original Side Rules read Order XXXVIII Rule 1 of C.P.C, praying to pass a judgment and decree for:-

(a) To pay the Plaintiff Company a total sum of Rs.1,26,30,801/- (One Crore Twenty Six Lakhs Thirty Thousand Eight Hundred and One Rupees) being the total invoice amount of Rs.71,75,120- (Rupees Seventy One Lakh Seventy Five Thousand One Hundred and Twenty Only) due and payable as on date and interest of Rs.54,55,681/- calculated @ 21% from the date the invoice became due and payable till 26.09.2017.

(b) To pay the Plaintiff Company future interest at the rate of 21% p.a., from the date of this suit till the date of actual realization.

(c) Cost of the suit.

For Plaintiff : M/s.King and Partridge

For Defendant : Set exparte

J U D G M E N T

This suit has been filed as a summary suit under Order VII, Rule 1 of the Madras High Court Original Side Rules read with Order XXXVIII Rule 1 of C.P.C.

2.The plaintiff is a manufacturer of cement and concrete and is a part of Aditya Birla Group. The defendant, during the course of its business placed purchase orders with the plaintiff which are dated 01.10.2013, 21.12.2013 and 27.01.2014 for supply of Ready Mix Concrete (RMC) to various locations in Chennai.

3.Based on the purchase orders placed by the defendant, the plaintiff also sold and delivered Ready Mix Concrete to the defendant at its various sites in Chennai. The details of the invoices raised by the plaintiff on the defendant for the supplies effected are detailed hereunder:

S.No.	Invoice Date:	Invoice No:	Invoice Amount (Rs.)	NOD as on 26.09.2017	Interest @ 21% (Rs.) as on 26.09.2017	Total Outstanding (Rs.)
1	30.01.2014	3615205791#	79800.00	1335.00	61293.00	141093.00
2	05.02.2014	3615205898	239400.00	1329.00	183052.00	422452.00
3	05.02.2014	3615205897	20400.00	1314.00	15422.00	35822.00
4	06.02.2014	3615205908	171000.00	1328.00	130653.00	301653.00
5	06.02.2014	3615205907	171000.00	1328.00	130653.00	301653.00
6	07.02.2014	3611207974	139200.00	1327.00	106276.00	245476.00
7	07.02.2014	3611207975	139200.00	1327.00	106276.00	245476.00
8	07.02.2014	3616202452	40800.00	1312.00	30798.00	71598.00
9	08.02.2014	3611207990	69600.00	1326.00	53098.00	122698.00
10	11.02.2014	3615205938	239400.00	1323.00	182226.00	421626.00
11	19.02.2014	3612206442	104400.00	1315.00	78986.00	183386.00
12	20.02.2014	3616202506	102600.00	1314.00	77566.00	180166.00
13	20.02.2014	3612206448	174000.00	1314.00	131544.00	305544.00
14	24.02.2014	3615206081	205200.00	1310.00	154659.00	359859.00
15	24.02.2014	3615206082	205200.00	1310.00	154659.00	359859.00
16	24.02.2014	3615206083	171000.00	1310.00	128882.00	299882.00
TOTAL			**22,72,200.00**		**17,26,043.00**	**39,98,243.00**

NOTE:
Invoice No. 3615205791# Total Amount is Rs.1,04,400/- Part payment of Rs.24,600/- vide Cheque No.264093, dated 30.04.2014 is adjusted against this invoice and remaining pending amount is Rs.79,800/-

S.No.	Invoice Date:	Invoice No:	Invoice Amount (Rs.)	NOD as on 26.09.2017	Interest @ 21% (Rs.) as on 26.09.2017	Total Outstanding (Rs.)
1	31.01.2014	3615205822#	500.00	1334.00	384.00	884.00
2	01.02.2014	3611207901	68400.00	1333.00	52458.00	120858.00
3	01.02.2014	3615205846	67020.00	1333.00	51400.00	118420.00
4	01.02.2014	3615205845	136800.00	1333.00	104916.00	241716.00
5	01.02.2014	3615205844	205200.00	1333.00	157374.00	362574.00
6	01.02.2014	3615205843	68400.00	1333.00	52458.00	120858.00
7	01.02.2014	3615205842	68400.00	1333.00	52458.00	120858.00
8	01.02.2014	3615205841	68400.00	1333.00	52458.00	120858.00

9	02.02.2014	3615205860	136800.00	1332.00	104838.00	241638.00
10	04.02.2014	3612206344	20400.00	1315.00	15434.00	35834.00
11	07.02.2014	3611207982	34200.00	1327.00	26111.00	60311.00
12	08.02.2014	3611207998	171000.00	1326.00	130457.00	301457.00
13	09.02.2014	3611208006	102600.00	1325.00	78215.00	180815.00
14	10.02.2014	3615205932	20400.00	1309.00	15364.00	35764.00
15	11.02.2014	3611208036	68400.00	1323.00	52065.00	120465.00
16	11.02.2014	3615205943	20400.00	1308.00	15352.00	35752.00
17	11.02.2014	3615205944	171000.00	1323.00	130161.00	301161.00
18	12.02.2014	3611208051	307800.00	1322.00	234114.00	541914.00
19	12.02.2014	3615205956	171000.00	1322.00	130063.00	301063.00
20	12.02.2014	3615205957	171000.00	1322.00	130063.00	301063.00
21	13.02.2014	3615205975	239400.00	1321.00	181951.00	421351.00
22	13.02.2014	3615205976	239400.00	1321.00	181951.00	421351.00
23	14.02.2014	3615205993	205200.00	1320.00	155840.00	361040.00
24	14.02.2014	3615205992	20400.00	1305.00	15317.00	35717.00
25	14.02.2014	3615205991	205200.00	1320.00	155840.00	361040.00
26	14.02.2014	3615205990	205200.00	1320.00	155840.00	361040.00
27	15.02.2014	3611208096	68400.00	1319.00	51907.00	120307.00
28	15.02.2014	3615206007	171000.00	1319.00	129768.00	300768.00
29	15.02.2014	3615206008	171000.00	1319.00	129768.00	300768.00
30	15.02.2014	3615206009	171000.00	1319.00	129768.00	300768.00
31	15.02.2014	3615206010	136800.00	1319.00	103814.00	240614.00
32	16.02.2014	3611208101	102600.00	1318.00	77802.00	180402.00
33	16.02.2014	3615206015	136800.00	1318.00	103736.00	240536.00
34	16.02.2014	3615206016	136800.00	1318.00	103736.00	240536.00
35	16.02.2014	3615206017	136800.00	1318.00	103736.00	240536.00
36	16.02.2014	3615206018	136800.00	1318.00	103736.00	240536.00
37	17.02.2014	3615206029	136800.00	1317.00	103657.00	240457.00
38	18.02.2014	3615206037	136800.00	1316.00	103578.00	240378.00
39	19.02.2014	3615206046	68400.00	1315.00	51750	120150.00
TOTAL			**49,02,920.00**		**37,29,638.00**	**86,32,558.00**

NOTE:
Invoice No. 36152055822 Total Amount is Rs.2,39,400/- Part payment of Rs.2,38,900/- vide Cheque No.264092, dated 30.04.2014 is adjusted against this invoice and remaining pending amount is Rs.500/-

4.The plaintiff had sent several remainders to the defendant demanding payment of the outstanding invoices. Despite several remainders, the defendant failed and neglected to pay. The defendant has also acknowledged its liability through their letter to the plaintiff dated 27.10.2014. As seen from the acknowledgement of liability, the defendant has acknowledged that a sum of Rs.71,75,120/- is due and payable by them to the plaintiff. According to the plaintiff, despite acknowledging the liability, the defendant failed to pay the admitted debt to the plaintiff. In such circumstances, the suit has been filed.

5.The defendant has already been set ex-parte by this Court. The procedure contemplated under Order VII of the Madras High Court Original Side Rules has been followed by the plaintiff. Order VII of the Original Side Rules deals with summary suits. As seen from Order VII of Original Side Rules, the plaintiff can file a summary suit if the amount claimed is a liquidated sum of money based on a contract. The suit summons have been served through substituted service and the defendant was set ex-parte on 02.11.2023. The following documents have been filed by the plaintiff along with the plaint and have been marked as exhibits by this Court.

S.No	Date	Particulars of the Document	Nature of Document	Exhibits
1	01.10.2013 21.12.2013 & 27.01.2014	Purchase Orders	Office Copy	EX.P1
2	31.01.2014 to 24.02.2014	Invoices	Office Copy	EX.P2
3	27.10.2014	Balance Confirmation Letter	Original	EX.P3
4	01.04.2013 to 26.09.2017	Ledger account for the period 1st April, 2013 to 26th September, 2017	Office Copy	EX.P4
5	2014 - 2017	Statement of balance as per books of Plaintiff	Office Copy	EX.P5

6.As seen from the aforementioned documents/exhibits filed on the side of the plaintiff, it is clear that the plaintiff had supplied Ready Mix Concrete to the defendant based on purchase orders placed by the defendant on 01.10.2013, 21.12.2013 and 27.01.2014 for a total value of Rs.71,75,120/- The office copy of the purchase orders marked as EX.P1 and the office copy of the invoices marked as EX.P2, confirm the same. The defendant has also acknowledged their liability to the plaintiff through its original Balance Confirmation Letter dated 27.10.2014, which is marked as Ex.P3. As per the Balance Confirmation Letter (EX.P3), the defendant has acknowledged its liability to the plaintiff to the extent of Rs.71,75,120/- which is the total value of the supplies effected by the plaintiff on the defendant. The office copy of the ledger account filed by the plaintiff for the period from 01.04.2013 to 26.09.2017, which is marked as EX.P4 and office copy of the Statement of balance for the period from 2014 - 2017 which is marked as EX.P5 also confirm the total outstanding amount due and payable by the defendant to the plaintiff.

7.The suit has been filed by the plaintiff to recover a liquidated sum of money from the defendant which is confirmed by the invoices as well as the balance confirmation letter dated 27.10.2014 (EX.P3) wherein, the defendant has acknowledged that there is a sum of Rs.71,75,120/- due and payable by the defendant to the plaintiff towards the supplies effected by the plaintiff. The requirement under Order VII of the Original Side Rules for filing the suit as a summary suit has been satisfied by the plaintiff. However, in the plaint, the plaintiff has sought for interest at 21% p.a., from the date of invoices till the date of realization. However, it is seen from the invoices raised by the plaintiff that the defendant never agreed to pay the interest at the rate of 21% for the delayed payment. However, in accordance with the provisions of Order VII of Original Side Rules, this Court is empowered to grant interest at the Bank rate of interest even if the contract does not stipulate payment of interest at a particular rate. Therefore, this Court is awarding the interest at the rate of 6% p.a., from the date of the last invoice till date of payment, instead of 21% p.a., as claimed in the plaint. For the foregoing reasons, the suit claim insofar as the principal amount is concerned has been proved by the plaintiff. Insofar as the interest claim is concerned, this Court is awarding interest at the rate of 6% p.a., from the date of last invoice instead of 21% p.a., claimed in the plaint.

8.Accordingly, the suit is decreed by directing the defendant to pay the plaintiff a sum of Rs.71,75,120/- together with the interest at the rate of 6% per annum from the date of last invoice i.e., from 27.10.2014 till the date of realization and the defendant is also directed to pay the cost of the suit.

09.11.2023

Index: Yes/No
Speaking / Non speaking
ssr

<u>List of Witness examined on the side of the Plaintiffs:- Nil</u>

<u>List of Witness examined on the side of the Defendant :-</u> Nil

<u>List of the Exhibits marked on the side of the Plaintiff:-</u>

S.No.	Exhibits	Dscription of Documents
1.	EX.P1	Office Copy of the Purchase Orders dated 01.10.2013, 21.12.2013 & 27.01.2014
2.	EX.P2	Office Copy of the Invoices dated 31.01.2014 to 24.02.2014
3.	EX.P3	Balance Confirmation Letter dated 27.10.2014
4	EX.P4	Office Copy of the Ledger account for the period 1st April, 2013 to 26th September, 2017
5	EX.P5	Office Copy of the Statement of balance as per books of Plaintiff from the year 2014 to 2107

<u>List of the Exhibits marked on the side of the Defendants:- Nil</u>

ABDUL QUDDHOSE, J.,

ssr

Civil Suit No.778 of 2017

09.11.2023