

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Sugato Majumdar

CS-COM/735/2024

[OLD NO CS/4/2016]

VINOD KUMAR ARUKIA

VS

VASAVI INDUSTRIES LTD.

For the Plaintiff : Mr. K.C. Garg, Adv.
Mrs. Sunita Agarwal, Adv.

Hearing concluded on : 30/08/2024

Judgment on : 02/09/2024

Sugato Majumdar, J.:

This is a suit for recovery of price of goods sold.

The Plaintiff is carrying on business under the name and style of M/S Arukia Industrial Corporation as sole proprietor, having office at 69A, Netaji Subhas Road, Ground Floor, Kolkata – 700001. The Defendant is a company registered under the Companies' Act, 1956, having its' registered office at V.R. Agraham Rajam, District: Srikakulam, Andhra Pradesh. The Defendant had also a place of business at 1/433, Gariahat Road, Kolkata – 700068.

The Defendant agreed to purchase and the Plaintiff agreed to sell to the Defendant M. Seal, Jubilee Clamp, Hydraulic O-Ring and other items. This agreement was arrived at the office of the Plaintiff at 69A, N.S. Road, Kolkata – 700001. It was agreed upon that the Defendant should place orders from SVIL WBIDC Industrial Growth Centre, P.O: Bishnupur, District – Bankura to the Plaintiff at the latter's office at Kolkata. Various terms and conditions, arrived at are detailed in the plaint. Full payment of price of goods to be sold and supplied, would be made within 30 days from the date of receipt of goods, in case of default outstanding price would bear interest at a rate of 18% per annum. Accounts between the parties would be open, continuous and running. Outstanding amount may be carried forward to the next financial year.

The Defendant, from time to time, placed orders and the Plaintiff sold, supplied and delivered the Defendant various goods, as stipulated between the months of October, 2013 and September, 2014. In course of transactions between the parties a sum of Rs.5,79,084/- became outstanding, which, in spite of persuading and repeated demands, the Defendant failed to pay. According to the plaint case, the Plaintiff is entitled to a sum of Rs.11,00,000/- details of which are:

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|----|-----------------------------------|------------------|
| 1. | Price of goods sold and delivered | : Rs. 5,79,084/- |
| 2. | Interest at a rate of 18% p.a | : Rs. 2,23,211/- |
| 3. | Business loss and other expenses | : 2,97,705/- |
| | Total | : 11,00,000/- |

On being constrained, the Plaintiff instituted the suit praying, *inter alia*, for recovery of the outstanding money, damages on account of business loss.

The Defendant did not contest the suit in spite of service of writ of summons, as reported by the Registry. Hence the suit is marked as undefended.

Oral as well as documentary evidences have been adduced by the Plaintiff. Documents have been admitted in evidence and marked.

Ext.1 series collectively are various purchase orders containing terms and conditions. Ext.2 series are challans of various dates, Ext.3 series are invoices of various dates, Ext.4 series are consignment notes of various dates. Ext.5 series are demand notice made on behalf of the Plaintiff.

Oral and documentary evidences, hitherto been unchallenged, establish that the parties agreed upon sale and supply of goods on terms and conditions detailed in Ext.1 series. Other documentary evidences establish that the Plaintiff sold, supplied and delivered goods through a transport agent M/S Om Transport Corporation. It is also established that transactions were made between the months of October, 2013 and September, 2014. The suit was presented on 08/01/2016, within the period of limitation. Unchallenged evidences adduced by P.W.1 establish that the Plaintiff is entitled to the principal amount being the price of goods. No special damage on account of loss of business is proved by cogent and convincing evidences. Ext.1 series do not establish that interest on the outstanding amount was agreed upon at a rate of 18% per annum, although it is in black and white that 100% payment would be made within 30 days of receipt of materials and submissions of bills.

On appreciation of material evidences adduced by the Plaintiff, this Court is of opinion that the Plaintiff is entitled to the principal amount of Rs.5,79,084/- with interest at a rate of 12% per annum with effect from 01/11/2014 till realization.

Hence it is ordered that the Plaintiff do get a decree of principal amount of Rs.5,79,084/- with interest at a rate of 12% per annum with effect from 01/11/2014 till realization.

Let the decree be drawn up.

The instant suit is disposed of along with the pending applications.

(Sugato Majumdar, J.)