OCD-86

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM/6/2024

SAI SULPHONATES PVT LTD
-VS-
ADO ADDITIVES MFG PVT LTD

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : December 3, 2024.

Appearance:
Mr. Debdatta Saha, Adv.
Mr. Subhamay Dewanji, Adv.
...for the plaintiff

The Court: Mr. Debdatta Saha, learned counsel, is appearing for the plaintiff.

The case is fixed today for argument.

The plaintiff has filed the suit for recovery of an amount of Rs.12,24,444.55 along with interest at the rate of 18% per annum till realization of the said amount.

It is found from the record that after filing of the suit, the plaintiff has taken appropriate steps for issuance of writ of summons. On receipt of writ of summons, the defendant entered appearance but has not filed written statement. The defendant has filed an application being GA-COM/1/2024 praying for extension of time to file written statement but when the matter is taken up on 5th July, 2024, none has moved the said application. Accordingly, the same was rejected on the ground that the defendant failed to file the written statement even within the extended period of 120 days and the suit is proceeded undefended against the defendant.

The plaintiff has examined one witness in support of the case of the plaintiff. During his examination, altogether eight documents were marked as Exhibits A to H. As per the case of the plaintiff, during the course of the business between the plaintiff and the defendant, the defendant has placed the purchase orders to the plaintiff for supply of HDPE Barrels and, accordingly, as per the purchase orders issued by the defendant, the plaintiff has supplied the materials to the defendant and defendant without any objection received the materials supplied by the plaintiff. The plaintiff has supplied the materials for a total sum of Rs.11,65,368/- after adjustment of an amount of Rs.12,447.25 from the previous excess amount. In the month of March, 2023, the plaintiff has paid an amount of Rs.1,50,000/- out of the total amount of Rs.11,65,368/- and thereafter the defendant has issued two cheques of Rs.1,98,240/- each dated 20th August, 2022 and 25th August, 2022 and two cheques of Rs.2 lakh each dated 3rd October, 2022 and 17th September, 2022 but when the plaintiff has presented the said cheques for encashment, all the four cheques have been dishonoured with the endorsement 'funds insufficient'. After the dishonor of the cheques, the plaintiff has issued a legal notice dated 17th July, 2023 to the defendant calling upon the defendant to pay the principal amount of Rs.10,02,920.75 along with interests at the rate of 18% per annum total amounting to Rs.11,89,515.64. The notice was duly delivered to the defendant but the defendant has neither paid the amount nor sent any reply. On 27th September, 2023, the defendant has lastly paid an amount of Rs.50,000/-. Thereafter, the defendant has not paid any amount.

The plaintiff has initiated pre-institution mediation process but in spite of receipt of notice, the defendant has not come forward to settle the dispute and, accordingly, non-starter report was issued and the plaintiff has filed the present suit.

To prove the case, the plaintiff has exhibited the purchase orders being Exhibit-B collectively, delivery challans being Exhibit-C collectively, tax invoices being Exhibit-D collectively, the details of the statement of account maintained by the plaintiff in the Yes Bank being Exhibit-E collectively, four cheques and the cheque return memo being Exhibit-F collectively, legal notice along with tracking report issued by the plaintiff to the defendant being Exhibit-G collectively and the non-starter report being Exhibit-H.

From the documents produced by the plaintiff during his evidence which were duly exhibited before this Court is proved that the defendant has issued the purchase orders and as per the purchase orders the plaintiff has supplied the materials which were duly received by the defendant. The plaintiff has supplied materials total amounting to Rs.11,65,368/- and the plaintiff has adjusted the previous excess amount of Rs.12,447.25 and the defendant is liable to pay Rs.11,52,920.75. The defendant has paid only Rs.1,50,000/- out of total amount of Rs.11,52,920.75. Subsequently, the defendant has issued four cheques which were dishonoured and the plaintiff has issued notice. After issuance of the notice, the defendant has paid further amount of Rs.50,000/- leaving aside an amount of Rs.9,52,920.75. As the defendant has not paid the total amount, the plaintiff has filed the present suit.

From the documents it is found that the plaintiff has proved the case that the plaintiff has supplied the materials for a total sum of Rs.11,65,368/- and adjusted Rs.12,447.25 out of which the defendant has paid only Rs.2,00,000/- leaving the balance amount of Rs.9,52,920.75.

In one of the tax invoices, it is categorically mentioned that the payment is to be made within 15 days from the date of receipt of the materials and in the other tax invoices it is mentioned that the payment is to be made within 30 days from the date of receipt of the materials. It is also mentioned in the tax invoices that if the defendant fails to pay the amount within the prescribed time, the defendant is liable to pay interest at the rate of 18 percent per annum.

Considering the above, this Court finds that the defendant has duly received the materials and invoices but the defendant has paid only Rs.2,00,000/- leaving the balance amount of Rs.9,52,920.75.

In view of the above, this Court finds that the plaintiff has proved the case and is liable to get an amount of Rs.9,52,920.75 as on 28th September, 2023. The plaintiff is also entitled to get interest at the rate of 18% per annum. The defendant is directed to pay the principal amount of Rs.9,52,920.75 along with interest at the rate of 18% percent per annum from 28th September, 2023 till realization of the total decretal amount.

CS-COM/6/2024 is disposed of. Decree be drawn accordingly.

(KRISHNA RAO, J.)

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