

OC-25

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
[Commercial Division]

IA No. GA-COM/1/2023
In CS-COM/1/2023
[Old No. CS/241/2023]

BHANWARI LAL JAIN
-VS-
RKD INFRASTRUCTURE PVT. LTD.

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : June 10, 2024.

Appearance:
Mr. Kumarjit Banerjee, Adv.
Ms. Sanchari Chakraborty, Adv.
Ms. Tanishka Khandelwal, Adv.
... for the plaintiff

The Court: Mr. Kumarjit Banerjee, learned senior counsel, is
appearing for the plaintiff.

The plaintiff has filed this suit for decree for a sum of
Rs.26,78,993/- along with interest at the rate of 12% per annum.

At the time of filing of the suit, the plaintiff has also filed an
application praying for ad interim injunction which was granted on 17th
January, 2024. The plaintiff has served the notice upon the defendant
but in spite of service of notice none appears on behalf of the defendant.
The plaintiff has also obtained service report from the department
wherein it reveals that the writ of summons was served upon the
defendant on 9th May, 2024 but in spite of service of writ of summons,

none appears on behalf of the defendant. The plaintiff has also obtained report from the department wherein it reveals that the defendant has not entered appearance in the suit.

The plaintiff has filed the present application praying for judgment upon admission. The defendant has placed purchase order upon the plaintiff on 11th November, 2022 for supply of 24.5 MT of TMT bars. On 12th November, 2023, the plaintiff has raised invoice of Rs.18,09,229/- which was duly accepted by the defendant. The defendant has again issued the supply order for purchase of 32 MT of TMT bars of various specifications on 12th November, 2022 and accordingly, the plaintiff has supplied the same and raised two e-Way Bill on 16th November, 2022 and 17th November, 2022 for a total sum of Rs. 21,21,897/- and Rs.3,37,052/-. The defendant has again issued supply order on 28th November, 2022 for supply of 28.312 MT of TMT bars of various specifications and accordingly, the plaintiff has supplied the same and raised invoices. The total cost of the materials supplied by the plaintiff was of Rs.60,75,537/-, out of which the defendant has paid an amount of Rs.33,07,419/- till 30th November, 2022. There was an outstanding due of Rs.27,68,118/-. As the balance amount was not paid, the plaintiff had issued notices and on several occasions, the defendant has agreed to pay the said amount but in spite of the admission, the defendant has not paid the same. Before filing of the suit, the plaintiff had also initiated mediation process but the defendant has not participated in the said mediation process. On 3rd April, 2023

the plaintiff has issued legal notice to the defendant calling upon the defendant for payment of Rs.27,68,118/- along with interest and after receipt of the said notice, the defendant has paid the part payment of Rs.4,00,000/- i.e. Rs.1,00,000/- on 25th July, 2023 and Rs.3,00,000/- on 18th August, 2023. After receipt of the said amount, the balance amount due to be paid by the defendant is Rs.23,68,118/-.

By an e-mail dated 6th May, 2023, the defendant has informed the plaintiff as follows :

“Dear Sir,

This is to inform you that your outstanding payment will be clear in 3 phases, full and final outstanding will be paid within 1st week of June-2023.”

In the communication dated 24th May, 2023, the defendant has informed the plaintiff as follows :

“Dear Sir,

As per information received from our accounts department we would like to inform you that our fund is stuck due to our internal reasons, your outstanding payment will be clear from 15/06/2023 to 30/06/2023.”

By a communication dated 19th July, 2023, the defendant has informed the plaintiff as follows :

“Dear Sir,

In reference to your letter No. PLM/MS/737/2023 dated : 11.07.2023 and we received this letter on 19.07.2023 regarding the outstanding amount of J.M. Enterprise.

We RKD Infrastructure Pvt Ltd assure you that we will pay your total outstanding within 25th September 2023. The payment schedule as given below

- 1) Initial Payment for Rs.1,00,000/- (Rupees One Lac Only)
- 2) 16th August 2023 Rs.6,00,000/- (Rupees Six Lac Only)
- 3) 31st August 2023 Rs.6,00,000/- (Rupees Six Lac Only)
- 4) 10th September 2023 Rs.6,00,000/- (Rupees Six Lac Only)
- 5) 19th September 2023 Rs.6,00,000/- (Rupees Six Lac Only)
- 6) 25th September 2023 balance Rs.2,60,000/- (Rupees Two Lac Sixty Thousand Only).

Please give us this much time to clear our outstanding debt as our financial condition is very much critical nowadays.”

By a communication dated 4th October, 2023, the plaintiff has informed the defendant as follows :

“I write to you with grave concern and deep disappointment regarding the unresolved matter of outstanding payment, which is now in flagrant violation of your commitment.

As stipulated in the mail provided, you unequivocally committed to remit the sum of Rs.27,60,000 in accordance with the terms and conditions outlined therein. Despite my full and faithful compliance with all obligations, you have brazenly failed to meet your

obligation to make the aforementioned payment within the agreed-upon time frame.

The details pertinent to this default are as follows :

- 1) Initial Payment for Rs.1,00,000/- (Rupees One Lac Only)
- 2) 16th August 2023 Rs.6,00,000/- (Rupees Six Lac Only)
- 3) 31st August 2023 Rs.6,00,000/- (Rupees Six Lac Only)
- 4) 10th September 2023 Rs.6,00,000/- (Rupees Six Lac Only)
- 5) 19th September 2023 Rs.6,00,000/- (Rupees Six Lac Only)
- 6) 25th September 2023 balance Rs.2,60,000/- (Rupees Two Lac Sixty Thousand Only)
- 7) Payment Received till date- Rs.4,00,000/-

Your inexcusable and repeated failure to honour this commitment has left me no choice but to resort to more stringent measures to secure the payment rightfully owed to me.

Be advised that, in accordance with applicable laws and the terms of your commitment, I hereby demand that you IMMEDIATELY remit the FULL outstanding amount of 23,60,000 without any further delay. You are granted a grace period of 7 days from the date of this letter to satisfy this demand.”

During the pendency of the suit, the defendant by a communication dated 28th December, 2023 has informed the plaintiff as follows :

“So this is our humble request to please understand this and give us some more time to pay back the money. We have already moved to court for arbitration and hope to get our claims but it will take some time. We have every endeavor to pay our outstanding but situation does not permit at this moment. So once again, please bear with us for some more time.”

Learned counsel for the plaintiff by referring the said documents submits that in one hand the defendant is not participating in the proceeding in spite of receipt of notice, on the other hand from the said communications it reveals that the defendant unequivocally admitted the amount due and payable to the plaintiff.

Counsel for the plaintiff submits that after going through the said admission made by the defendant, there cannot be any defence remains with the defendant to contest the suit.

Counsel for the plaintiff submits that as the defendant has admitted the amount payable to the plaintiff and as such the plaintiff is entitled to get the decree on admission.

Heard learned counsel for the plaintiff. Perused the documents.

This court finds that after receipt of the legal notice, though the defendant has not sent any reply by denying the claims made by the plaintiff, on the other hand, the defendant has paid Rs.4,00,000/- in two occasions i.e. Rs.1,00,000/- and Rs.3,00,000/- on 25th July, 2023 and 18th August, 2023. Subsequent to making payment, the defendant

by a communication dated 6th May, 2023, 24th May, 2023 and 19th July, 2023 admitted the claim of the plaintiff.

Considering the above, this Court finds that though the defendant is not contesting the suit and if at all the defendant contests the suit, there will be no defence and accordingly, as per the admission made by the defendant as mentioned above, the plaintiff is entitled to get a decree upon admission for a sum of Rs.23,60,000/-.

This Court also finds that since the beginning the defendant has admitted the claim of the plaintiff but has not paid the total dues to the plaintiff. The defendant has made the last payment on 18th August, 2023, accordingly, from 19th August, 2023 till the payment of the decretal amount of Rs.23,60,000/-, the plaintiff is also entitled to get interest at the rate of 10% per annum.

The defendant is directed to pay Rs.23,60,000/- along with interest at the rate of 10% per annum from 19.08.2023 till the payment is made.

IA No. GA-COM 1 of 2023 is allowed.

Accordingly, CS-COM/1/2023 [Old No. CS/241/2023] is disposed of. Decree be drawn accordingly.

(KRISHNA RAO, J.)