

1.07.2025
Item No.08
Court No.01
SK(AR(CR))

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri**

FAT/6/2022

**DHARAM CHAND AGARWAL
VS
SAKUMA EXPORTS LIMITED**

Mr. Bikramaditya Ghosh,
Mr. Ved Rai,
.....for the appellant.

Mr. Kumar Shantanu,
.....for respondent

This is an appeal against a judgment and decree dated 21 January, 2022 passed by the Civil Judge (Senior Division) at Siliguri in Money Suit no. 41/2016.

Briefly, the suit is for price of goods sold and delivered. Upon the filing of the suit the defendant filed their Written Statement. Thereafter, evidence was adduced on behalf of the plaintiff. There were three witnesses namely Vishal Agarwal, Kisan Agarwal and Rakesh Satyarthi who had deposed on behalf of the plaintiff. It is an admitted position that the impugned decree had been passed ex parte.

By the impugned decree, the suit has been dismissed on the ground that the Constituted Attorney who had deposed on behalf of the plaintiff was neither a competent nor authorized witness. The Court had also refused to take into

consideration any of the e-mails and electronic evidence relied on by the plaintiff on the ground that there had been no compliance with section 65B of the Evidence Act, 1872.

It is fairly submitted by both the parties that the impugned decree is unsustainable both in law and on merits and the same be remanded back for hearing afresh. In view of the above and by consent of the parties, the impugned decree dated 21 January, 2022 is set aside.

The matter is remanded back for hearing afresh to the Civil Judge Senior Division at Siliguri by granting an opportunity of hearing to both the parties and if necessary also permitting the defendant to adduce evidence in accordance with law.

With the above directions and to the above extent, FAT/6/2022 stands allowed.

Affidavit of Service filed on behalf of the appellant be kept with the records.

(RAVI KRISHAN KAPUR, J.)

(MD. SHABBAR RASHIDI, J.)