IN THE HIGH COURT AT CALCUTTA

(ORIGINAL SIDE)

COMMERCIAL DIVISION

Presents

The Hon'ble Justice Krishna Rao

CS (COM) No. 11 of 2024

With

G.A. (COM) No. 1 of 2024

Skipper Limited

Versus

Prabir Kumar Sasmal

Mr. Sayantan Bose
Mr. Shounak Mukhopadhyay
Ms. Priyanka Gope
Ms. Manisha Das
Ms. Ankita Chowdhury

... For the plaintiff.

Hearing Concluded On : 20.01.2025

Judgment on : 28.01.2025

Krishna Rao, J.:

1. The plaintiff has filed the suit against the defendant for recovery of an amount of Rs. 40,57,708.03 along with interim interest and interest upon judgement at the rate of 24% per annum on the sum of Rs. 20,08,276.03 from 1st January, 2024.

2. The plaintiff is engaged in the business of manufacturing and supplying of PVC pipes and fittings of various specifications to customers across India.

3. The defendant is engaged in the business of dealership of PVC Pipe and Fittings.

4. The defendant approached the plaintiff for supply of PVC pipes and fittings of different specifications and it was agreed between the parties that the orders will be placed orally by the defendant. The plaintiff would, in the usual course of business accept such orders of the defendant and supply the materials to the defendant at its work place through third-party transporters.

5. On supply of materials, invoices were raised and in the invoices, it was stipulated that the payment for delivery of goods would be made within 10 or 21 days from the date of the invoice, interest at the rate of 24% per annum would be charged for non-payment of full invoice value within the stipulated due date.

6. The defendant has accepted the materials and invoices raised by the plaintiff. The plaintiff in the usual course of its business maintained an open, running and current ledger account in respect of the invoices raised and payments received by the plaintiff from the defendant.

7. The plaintiff through the ledger account kept a track of payments made by the defendant at the end of the financial year and the remaining balance would be struck of the aggregate value of invoices raised and payments received and accordingly the balance outstanding would be carried forward to the next financial year's ledger account.

8. The plaintiff states that as on 1st April, 2017, the outstanding amount owed by the defendant to the plaintiff was a sum of Rs. 1,06,12,192/-. In course of the financial years 2017-2018, 2018-2019 and 2019-2020, further supplies of the goods were made and invoices were raised. The last of such invoices was raised on 28th September, 2019 and the last payment was made by the defendant on 3rd October, 2019.

9. The plaintiff states that during the financial years 2017-2018, 2018-2019 and 2019-2020, the plaintiff had supplied goods amounting to Rs. 1,02,02,982/- and during the same financial years, the defendant has made a payment of Rs. 1,88,06,897.97. Therefore, as on 1st April, 2020, a sum of Rs. 20,08,276.03 remained due and payable by the defendant to the plaintiff on account of goods sold and delivered by the plaintiff to the defendant.

10. The defendant in order to clear its due, had issued a cheque dated 8th February, 2019 for a sum of Rs. 23,50,228/-, however, the same was returned by the plaintiff's bankers on account of mismatch of the amount written in words with the amount in numbers and figures.

11. Thereafter, the plaintiff through its Advocate had issued a letter dated 5th March, 2019, calling upon the defendant to make payment of the due amount of Rs.23,50,228/- but the defendant had failed to do so, hence, the plaintiff was constrained to initiate a criminal proceedings against the defendant by way of a complaint before the Learned Chief Metropolitan Magistrate at Calcutta, being the Case No. CS/18592/2019, which is still pending for adjudication.

12. The plaintiff has also initiated pre-institution mediation process but inspite of receipt of notice, the defendant did not appeared before the mediation centre and non starter report was filed and accordingly, the plaintiff has filed the present suit.

13. Writ of summons was also duly served upon the defendant even after service of notice, the defendant has not entered appearance in the suit. The plaintiff has obtained report issued form the Deputy Registrar, Legal, dated 30th April, 2024, wherein it reveals that the defendant has not entered appearance either in person or through any legal representatives, therefore, the matter was directed to be listed as an "Undefended Suit" by an order dated 10th May, 2024.

14. The plaintiff in order to prove its case, one Mr. Shyam Sunder Mantri, who is the Manager (Legal) of the plaintiff company has examined as P.W.1 and during his evidence, altogether 7 (Seven) documents were exhibited and are marked as **"Exhibit A to Exhibit G"** which are as follows:

> ***Exhibit A –*** *Copies of Ledger of the defendant as maintained in the books of the plaintiff for the period from 1st April, 2017 to 31st December, 2023.*
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> ***Exhibit B Collectively –*** *Copies of Invoices raised, and e-way bills generated by the plaintiff.*
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> ***Exhibit C –*** *Details of goods supplied during financial year for 2017 to 2020.*
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> ***Exhibit D –*** *Details of payment received during financial year 2017 to 2020.*
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> ***Exhibit E –*** *Original Copy of the cheque dated 8th February, 2019.*
>
> ***Exhibit F –*** *Original Copy of the bank deposit slip dated 7th February, 2019.*
>
> ***Exhibit G Collectively –*** *Original Copy of the Advocate's letter dated 5th March, 2019 with speed post receipt and track report.*

15. The suit is proceeded as undefended suit against the defendant as even after receipt of writ of summons, the defendant choose not to contest the suit. **Exhibit-A** is the ledger account maintained by the plaintiff with respect to the business between the plaintiff and the defendant, wherein it is proved that as on 3rd October, 2019, an amount of Rs.20,08,276.03 is pending against the defendant. **Exhibit – B** collectively proved that the plaintiff has raised invoices and Excise-cum-tax invoices against the defendant with respect to the materials supplied by the plaintiff to the defendant. **Exhibit –E** proved that the defendant has issued cheque no. 591923 dated 8th February, 2019 of the Punjab National Bank in the name of the plaintiff company for an amount of Rs. 23,50,228/- but when the plaintiff has presented the said cheque for encashment on 11th February, 2019, the bank has informed the plaintiff that the amount mentioned in the cheque with figure and with the word differs due to which, the cheque was returned to the plaintiff. The pay-in-slip by which the plaintiff has presented the cheque for encashment and on the said document, the bank mentioned about the reason for returning the cheque is marked as **Exhibit-F**.

16. **Exhibit-G** collectively proved that after return of the cheque, the plaintiff has sent legal notice dated 5th March, 2019 to the defendant by speed post on 12th March, 2019 which was received by the defendant on 22nd March, 2019 but the defendant has neither sent any reply to the said notice nor the defendant has paid the amount to the plaintiff.

17. The plaintiff has also initiated pre-institution mediation process but inspite of service of notice, the defendant has not appeared before the mediation centre. From the evidence and the documents produced by the plaintiff, this Court finds that the plaintiff has proved that the plaintiff has supplied materials to the defendant and raised invoices which were duly received by the plaintiff. As per the ledger maintained by the plaintiff as on 1st April, 2020 an amount of Rs. 20,08,276.03 was due and payable by the defendant to the plaintiff. As per the tax invoices, it is the condition that if the defendant failed to pay the bill amount within 21 days from the date of receipt of the invoices, the defendant is liable to pay interest at the rate of 24% per annum. The defendant has issued the cheque but the said cheque was not encashed due to defer of the amount in word and figure. The plaintiff has sent notice but inspite of receipt of notice, the defendant has not paid the amount due to the plaintiff.

18. Considering the above, this Court finds that the plaintiff is entitled to get a decree against the defendant for an amount of Rs. 20,08,276.03 along with interest at the rate of 24% per annum from 1st April, 2020 till the realization of the said amount. This Court also finds that the suit filed by the plaintiff is commercial in nature and before initiation of the case, the plaintiff has issued notice to the defendant calling upon the defendant to pay the amount due and the plaintiff has also initiated pre-institution mediation process but the defendant has neither sent any reply nor has participated in the pre-institution mediation process and compelled the plaintiff to filed the suit for recovery of money, thus the defendant is also liable to pay cost of the proceeding accessed at Rupees One Lacs.

19. The defendant is directed to pay Rs. 20,08.276.03 along with interest at the rate of Rs. 24% per annum from 1st April, 2020 till realization of the said amount and also to pay Rs. 1,00,000/- being the cost within 60 days from date failing which the cost amount shall also carry interest at the rate of 6% per annum till realization of the cost.

20. **C.S. (Com) No. 11 of 2024** is **dispose of**. **GA (COM) No. 1 of 2024** is accordingly **disposed of.** Decree be drawn accordingly.

(Krishna Rao, J.)