

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

**CS (COM) No. 498 of 2024
(Old No. CS 81 of 2023)**

Bhag Chand Mundra

Versus

Sanjay Kumar Prasad

Mr. Tanish Ganeriwala

Ms. Shreya Goerka

Mr. Karamjeet Sharma

... For the plaintiff.

Hearing Concluded On : 13.01.2025

Judgment On : 31.01.2025

Krishna Rao, J.:

1. The plaintiff has filed the suit for recovery of an amount of Rs. 11,09,221/- along with interest at the rate of 18% per annum from 18th January, 2023 till realization of the said amount. The plaintiff is the proprietor of the proprietorship business under the name and style of

M/s. Keshav Hosiery in the business of wholesale trading and distribution of knitted, crocheted and woven fabrics.

- 2.** The defendant is a proprietor of the proprietorship firm, namely, Bebo Collections and engaged in the business of retail of various types of garments for kids.
- 3.** In the year 2019, the defendant has approached to the plaintiff for supply of different kinds of fabrics to the defendant. As per the meeting between the plaintiff and the defendant, it was agreed between the parties that the defendant would place verbal orders to the plaintiff for supply of specific types and quantities of fabrics at the rates mutually agreed between the parties. The plaintiff would deliver the materials to the defendant and the plaintiff would raise invoices against the goods supplied by the plaintiff. It was agreed between the parties that if there is any delay in making payments, the defendant would pay simple interest at the rate of 18% per annum.
- 4.** As per the agreement between the parties, the defendant started placing verbal orders to the plaintiff and the plaintiff started supply of materials to the defendant as per verbal supply orders. Initially upon receipt of goods from the plaintiff, the defendant has made payment as per the invoices raised by the plaintiff. In between 3rd June, 2019 to 10th October, 2019, the goods supplied by the plaintiff were duly accepted by the defendant and the defendant has not raised any dispute with

regard to the quality and quantity of the goods received by the defendant.

5. The plaintiff has raised altogether 26 bills against the goods supplied by the plaintiff to the defendant in between 3rd June, 2019 to 10th October, 2019 for a total sum of Rs.11,30,307/-. In the meantime, the defendant had made ad hoc payment against the previous orders placed before 3rd June, 2019 as well as part payment against the orders placed on 3rd June, 2019. The defendant has made last payment on 21st January, 2020.
6. As the defendant failed to make the balance payment within 90 days from the date of receipt of goods, the plaintiff has made several requests to the defendant for making payment of the outstanding amount of Rs. 11,09,221/- but inspite of the request, the defendant failed to make the payment of outstanding dues.
7. On 25th August, 2022, the plaintiff has sent a demand notice to the defendant calling upon the defendant for making payment of outstanding dues along with interest but inspite of receipt of the said notice, the defendant has neither sent any reply nor has made payment. The plaintiff has also initiated pre-institution mediation process but even after receipt of notice, the defendant has not appeared before the mediation centre and “non-starter” report was filed.
8. Now the plaintiff has filed the suit for recovery of money along with interest. Writ of summons of the present suit was duly served upon the

defendant but the defendant failed to enter appearance in the suit nor the defendant has filed written statement, accordingly, by an order dated 28th June, 2024, this Court placed the suit in the list of “un-defended suit”.

9. The plaintiff to prove his case has examined one witness, namely, Ramesh Kumar Singh, as P.W.1 and during his evidence altogether 6 documents were marked as **Exhibit A to Exhibit F**.

Exhibit – A: *Copy of Ledger account maintained by the plaintiff reflecting the amount received by the plaintiff from the defendant.*

Exhibit – B (Collectively) : *Copy of Bank statements showing the details of the payment received by the plaintiff from the defendant for the period of 1st April, 2018 to 31st March, 2021.*

Exhibit – C (Collectively) : *Copy of Invoices raised by the plaintiff against the materials supplied by the plaintiff to the defendant.*

Exhibit – D: *Copy of Demand notice dated 25th August, 2022, issued by the Learned Advocate on behalf of the plaintiff to the defendant.*

Exhibit – E: *Copy of the “non-starter” mediation report dated 9th March, 2023, issued by the Mediation Centre, High Court at Calcutta.*

Exhibit – F: *Copy of Computation of amount due and payable by the defendant to the plaintiff.*

- 10.** Exhibit-A, proves that the plaintiff has raised invoices against the defendant from 22nd January, 2019 till 10th October, 2019 and the defendant has made payment from time to time and the last payment of Rs. 1,00,000/- was made by the defendant to the plaintiff on 21st January, 2020 by leaving balance amount of Rs.11,09,221/-.
- 11.** Exhibit – B Collectively proves that the defendant has made payment to the plaintiff by transferring the same in the bank account of the plaintiff maintained with the Kotak Mahindra Bank.
- 12.** Exhibit – C Collectively proves that the plaintiff has raised invoices against the materials supplied to the defendant by way of challans.
- 13.** Exhibit – D proves that the plaintiff has sent notice to the defendant through the Learned Advocate calling upon the defendant for payment of the amount due.
- 14.** The plaintiff has proved that the plaintiff has supplied materials to the defendant and raised invoices. The defendant has received the materials and invoices raised by the plaintiff and has accepted without any objection and has made payment time to time. The defendant has made last payment to the plaintiff on 21st January, 2020 leaving balance amount of Rs. 11,09,221/-. The defendant has not paid the balance amount to the plaintiff.
- 15.** Considering the above, this Court finds that the plaintiff has proved the case and is entitled to get an amount of Rs. 11,09,221/- from the

defendant. In the challans (Exhibit-C Collectively), it is mentioned that interest at the rate of 18% will be levied on delayed payment beyond the due date, thus the plaintiff is also entitled to get interest at the rate of 18 % per annum.

16. The defendant is directed to pay an amount of Rs.11,09,221/- to the plaintiff along with interest at the rate of 18% per annum with effect from 22nd January, 2020 till the realization of the total amount.
17. The plaintiff before initiation of the present suit, has issued notice upon the defendant calling upon the defendant for making payment but the defendant has not paid the amount due to the plaintiff. The plaintiff has also initiated pre-institution mediation process but the defendant chose not to attend the mediation process. The defendant has compelled the plaintiff to file the suit against the defendant for recovery of money. This Court also find that the suit filed by the plaintiff is commercial in nature, thus, the defendant is also liable to pay cost to the plaintiff. The defendant is directed to pay cost of Rs. 1,00,000/- within 60 days from this date. If the defendant failed to pay interest within 60 days, the amount of Rs. 1,00,000/- shall carry interest at the rate of 6% per annum till the realization of the cost.
18. **C.S. (Com) No. 498 of 2024 (Old No. CS 81 of 2023) is disposed of.**
Decree be drawn accordingly.

(Krishna Rao, J.)