

OCD-8

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM/315/2024
[Old No. CS/194/2021]
IA No. GA-COM/2/2024

SONIA KOTHARI, PROPRIETOR OF M/S. KRISHNA KREATION
-VS-
RUPNATH PAL, PROPRIETOR OF M/S. GULMOHAR

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : April 17, 2025.

Appearance:

Mr. Rohit Mukherji, Adv.

Mr. Pankaj Agarwal, Adv.

Ms. Champa Pal, Adv.

...for the plaintiff

1. Mr. Rohit Mukherji, learned counsel, is appearing for the plaintiff.
2. None appears on behalf of the defendant.
3. In terms of the order passed by this Court dated 3rd January, 2025, the plaintiff had again sent a notice to the defendant and has filed affidavit-of-service. It reveals that the notice was sent to the defendant by speed post but the same was returned with the endorsement 'addressee cannot be located'. In the meantime, the plaintiff has obtained a report from the Deputy Registrar (Legal) dated 9th January, 2025 wherein the plaintiff found that the defendant has entered appearance through its Learned Advocate Mr. Soumya Bhattacharya on 14th December, 2022. When the plaintiff came to know about the same, the plaintiff had served a notice to

the Learned Advocate on Record of the defendant on 28th January, 2025. On receipt of the said notice, learned advocate for the defendant had sent an e-mail to the Advocate-on-Record of the plaintiff intimating that he has retired from all the briefs in connection with the present case. Let the affidavit-of-service be kept with the record.

4. The plaintiff has filed the present application being GA-COM/2/2024 praying for judgment upon admission for an amount of Rs.10,98,243/- along with the interest at the rate of 12% per annum.
5. Learned counsel for the plaintiff submits that in between 4th July, 2019 to 19th November, 2019, as per the request of the defendant, the plaintiff has supplied the goods sold and delivered to the defendant being the readymade garments total amounting to Rs.16,35,934/-. The supply made by the plaintiff was duly received and accepted by the defendant without any demur or protest. Till 5th March, 2020, the defendant had made part payments amounting to Rs.5,29,611/- out of total amount of Rs.16,35,934/-. Subsequently, the defendant has not paid any amount in spite of several requests made by the plaintiff.
6. On 9th August, 2020, a meeting was held between the plaintiff and the defendant in presence of two individuals and minutes of meeting was recorded in writing wherein it was agreed between the plaintiff and the defendant that the defendant will pay an amount of

Rs.11,06,323/- within 30th November, 2020 and no interest shall be charged on payment of the said amount in its entirety by 30th October, 2020. It was further agreed between the parties that if the defendant fails to pay the amount by 30th October, 2020, an interest at the rate of 12% per annum shall be charged for delayed payment.

7. Post meeting of August 9, 2020, the plaintiff had again sold and delivered goods to the tune of Rs.3,21,920/- and the said goods were duly received by the defendant without any demur and protest. On receipt of the said materials, the defendant had paid an amount of Rs.3,30,000/- and as such the plaintiff had adjusted the said amount of Rs. 8,080/- with the previous dues which was payable to the plaintiff. Accordingly, the defendant is liable to pay the further amount of Rs.10,98,243/- (Rs. 11,06,323 – Rs. 8,080 = Rs. 10,98,243).

8. In spite of the Minutes of Meeting entered between the parties, the defendant has failed to pay the said amount. The plaintiff had issued a legal notice to the defendant on 25th August, 2021, calling upon the defendant for payment of Rs.10,98,243/- along with interest at the rate of 12% per annum total amounting to Rs.12,92,465.69. The said notice was duly received by the defendant but in spite of receipt of the said notice, the defendant has not paid the amount. Accordingly, the plaintiff has filed the instant suit for recovery of the said amount.

9. After filing of the suit, writ of summons was served but in spite of receipt of writ of summons, the defendant has not entered appearance and, accordingly, the suit was placed in the list of “undefended suit”. The plaintiff has filed the present application praying for judgment upon admission. The notice of the present application was also sent to the defendant but the same cannot be served as the addressee cannot be located but it was found that the defendant has entered appearance and the learned counsel for the plaintiff has served the copy of the notice to the learned advocate appearing for the defendant but the learned advocate for the defendant has informed the plaintiff that he has retired from the case. Accordingly, the matter is taken up for hearing.

10. It is found from the record that the plaintiff has claimed an amount of Rs.12,92,465.69 along with the interest at the rate of 24% per annum from the defendant on the ground that as per the request of the defendant, the plaintiff has supplied the materials to the total amount of Rs.16,35,934/- out of which the defendant has paid only Rs.5,29,611/- and subsequently a meeting was held on 9th August, 2020 wherein both the parties in presence of two independent witnesses have agreed as follows:

- 1) Old dues of Rs.11,06,323/- shall be cleared within 30.11.2020.
- 2) No interest shall be charged on payments remitted upto 30.10.2020
- 3) Interest @ 12% per annum shall be charged for the delayed period only after 75 days of interest

free credit for the amount remitted in November 2020.

- 4) New Billing shall be At discount of 26% and payments for the same to be made in 45 days.
- 5) Billing would be done as per the order received from M/s. Gulmohar only.
- 6) Delivery shall be done as per mutual discussions in Princep Street, Kasipure and can be self picked as well.

11. After the said agreement, the plaintiff had again supplied the materials for a total tune of Rs.3,21,920/- out of which the defendant has paid Rs.3,30,000/- in which the plaintiff had adjusted the remaining amount of Rs. 8,080/- out of the total balance amount of Rs.11,06,323/-. In the meantime, the defendant has also paid an amount of Rs.2000/- to the plaintiff on 13th September, 2021. Thereafter, the defendant has not paid any further amount.

12. On 25th August, 2021, the plaintiff had sent legal notice calling upon the defendant to pay the amount of Rs.12,92,465.69 which was duly received by the defendant on 28th August, 2021 but in spite of receipt of the said notice, the defendant has not paid any amount.

13. Considered the submission made by the Counsel for the plaintiff.
Perused the materials on record.

14. This Court finds that by a meeting dated 9th August, 2020, the defendant had admitted the claim of Rs.11,06,323/- as on 9th

August, 2020. In the said meeting, it was also agreed that he will clear the dues by 30th November, 2020 and it was also agreed that by 30th October, 2020 if the defendant paid the total amount, no interest will be charged and if the defendant fails to pay the amount by 30th October, 2020, interest at the rate of 12% per annum shall be charged.

15. After the said agreement, the plaintiff had supplied materials for a total tune of Rs.3,21,920/- but the plaintiff has paid Rs.3,30,000/- thus, this balance amount of Rs. 8,080/- was adjusted by the plaintiff to the earlier balance amount. The defendant has not paid the balance amount of Rs.10,98,243/-as agreed by the defendant.
16. The plaintiff has relied upon the judgments in the case of ***Himani Alloys Limited Vs. Tata Steel Limited*** reported in ***(2011) 15 Supreme Court Cases 273, Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India And Ors.,*** reported in ***(2000) 7 SCC 120*** and an unreported judgement passed by this Court in the case of ***Usha Martin Limited Vs. Hema Springs Private Limited & Ors.*** in CS-COM/387/2024 dated 28th June, 2024 and submitted that the defendant in the present case has admitted the claim of the plaintiff by executing Minutes of the Meeting in presence of the plaintiff as well as two independent witnesses but in spite of the admission of the claim, the defendant failed to pay the said amount.

17. Counsel for the plaintiff submits that the judgment relied upon by the plaintiff is squarely applicable in the present case and is entitled for judgement upon admission.
18. Considered the materials on record and the judgments relied by the plaintiff. This Court finds that the defendant in the Minutes of Meeting dated 9th August, 2020, has admitted that he will clear the amount of Rs.11,06,323/- on 30th November, 2020 but the defendant has not paid the said amount. As per the agreement, the plaintiff has supplied further materials for a total sum of Rs.3,21,920/- but the defendant has paid an amount of Rs.3,30,000/- and the plaintiff has adjusted Rs.8,080/- in the balance amount of Rs.11,06,323/- The remaining balance is required to be paid by the defendant is Rs.10,98,243/- which the defendant has not paid.
19. The defendant has admitted the claim of the plaintiff but has not paid the amount. The defendant has also agreed that if the defendant fails to pay said amount, defendant will pay interest at the rate of 12% per annum.
20. Considering the above, this Court finds that the plaintiff is entitled to get the judgment upon admission for a total sum of Rs.10,98,243/- along with interest at the rate of Rs.12% per annum with effect from 14th September, 2021 till the realization of the decretal amount.

21. The defendant is directed to pay an amount of Rs.10,98,243/- along with interest at the rate of 12% per annum with effect from 14th September, 2021 till the realization of the decretal amount.
22. GA-COM/2/2024 is disposed of.
23. CS-COM/315/2024 is also disposed of.
24. Decree will be drawn accordingly.

(KRISHNA RAO, J.)