

OCD-9

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
[Commercial Division]

CS-COM/757/2024

RAJIV KUMAR GARG ALIAS RAJIV GARG
VS
PRAVAS GAYEN

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : July 17, 2025.

Appearance :
Mr. K. C. Garg, Adv.
...for the plaintiff

1. Mr. K. C. Garg, learned advocate, is appearing for the plaintiff.
2. Plaintiff's witness is present and during his examination documents were exhibited being Exhibit A to H. Examination in chief is concluded.
3. Counsel for the plaintiff submits that he will not adduce any further evidence. Accordingly, evidence on the side of the plaintiff is closed.
4. The plaintiff has filed the suit praying for a decree for a sum of Rs.57,90,680/- along with the interest at the rate of 18% per annum. The plaintiff is carrying the business under the name and style of "Jaya Hosiery". The defendant is carrying the business under the name and style of "Gita Enterprise". As per the negotiation between the plaintiff and the defendant, the plaintiff agreed to sell Knitted Cloth (Goods) to the defendant. Defendant had placed orders and as per the requirement of the defendant, the plaintiff has

supplied the goods and raised invoices. As per the terms and conditions the defendant would pay the amount against the goods received by the defendant within seven days from the date of receipt of the goods, failing which the defendant would pay interest at the rate of 18% per annum if the same was not paid within the seven days from the date of receipt of the goods.

5. The plaintiff has supplied the materials for a total sum of Rs.95,66,475/- out of which the defendant has paid an amount of Rs.51,43,426/- by leaving the balance amount of Rs.44,23,049/-. As the defendant has not paid the balance amount, the plaintiff had sent a legal notice calling upon the defendant for payment of the amount and on receipt of the said notice, the defendant through his learned Advocate requested the plaintiff to send the details of outstanding claimed by the plaintiff. In reply to the said notice, by a notice dated 9th December, 2022, the plaintiff had sent the details of the amount dues against the defendant. After receipt of the said details, the defendant has not paid any amount.

6. It is the further case of the plaintiff that the defendant had also issued three cheques of Rs.10,00,000/-, Rs. 11,10,000/- and Rs.17,09,605/-. The plaintiff has presented the said cheques for encashment but all the cheques have been dishonoured with the reason "insufficient fund". Accordingly, the plaintiff had initiated a pre-institution mediation but the defendant failed to come forward for settlement. Accordingly, the plaintiff has filed the present suit.

7. To prove the case, the plaintiff had examined one witness namely, Rajiv Kumar Garg, who is the proprietor of the plaintiff company and during his evidence, he has produced the documents showing that the materials have been supplied to the defendant and the defendant had received the materials. The tax invoices issued by the plaintiff to the defendant is marked as Exhibit A collectively. The plaintiff has also disclosed E-way bills, wherein it proves that the materials have been transported from the shop of the plaintiff to the shop of the defendant. The plaintiff has also exhibited the cheques which have been dishonoured, which proves that the defendant had issued the cheques but the same could not be encashed. Plaintiff had sent the notices but in spite of the notice, the defendant failed to pay the amount. The plaintiff also intended to settle the dispute and initiated the pre-institution mediation process but in spite of the notice, the defendant failed to come forward.

8. After filing of the suit, a writ of summons was served upon the defendant through the bailiff as well as through postal services but the defendant failed to appear before this Court. Accordingly, the suit proceeded undefended against the defendant.

9. This Court has considered the evidence of the plaintiff and the documents relied by the plaintiff. This Court finds that the plaintiff has proved the materials have been supplied to the defendant and the defendant had received the materials. The plaintiff had supplied the materials for a total sum of Rs.95,66,475/- but the defendant paid only Rs.51,43,426/- leaving the balance amount of Rs.44,23,049/-. The plaintiff has also proved that till date

the defendant has not paid any balance amount. This Court also finds that the last payment of Rs.1 lakh was made by the defendant to the plaintiff on 10th November, 2022 and since then no payment has been made.

10. Considering the above, this Court finds that the plaintiff has proved the case and is entitled to get an amount of Rs.44,23,049/- from the defendant being the principal amount.

11. This Court also finds that the plaintiff is also entitled to get interest at the rate of 12% per annum from 11th November, 2022 till the realization of the said amount.

12. Hence, the defendant is directed to pay an amount of Rs.44,23,049/- along with interest at the rate of 12% per annum 11th November, 2022 till the realization of the total amount.

13. Before initiation of the suit, the plaintiff has issued notice upon the defendant calling upon the defendant to pay the amount, the plaintiff has also initiated mediation process but the defendant failed to come forward to settle the dispute. The defendant compelled the plaintiff to institute the suit, thus the defendant is also liable to pay cost of Rs.1,00,000/- to the plaintiff.

14. CS-COM/757/2024 is disposed of.

15. Decree be drawn up accordingly.

(KRISHNA RAO, J.)