

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

IA No. GA-COM/1/2024
In CS-COM/762/2024

MADAN CHANDRA KOLA
-VS-
M/S. SENCO JEWELLERS PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : January 17, 2025.

Appearance:

Mr. Sunil Kumar Singhanian, Adv.

Ms. Kalpana Singhanian, Adv.

...for the plaintiff

The Court: Mr. Sunil Kumar Singhanian, learned counsel, is appearing for the plaintiff.

None appears on behalf of the defendant.

The plaintiff has filed the present application under Order 13A of the Code of Civil Procedure as amended under the Commercial Courts Act for summary judgment. Counsel for the plaintiff submits that writ of summons of the present suit was duly served upon the defendant on 10th September, 2024 but in spite of receipt of writ of summons, the defendant has not entered appearance. The plaintiff has also relied upon the report of the Deputy Registrar (Legal) dated 3rd January, 2025 wherein it is certified that the defendant has not entered appearance.

The plaintiff has supplied new gold ornaments to the defendant on 13th February, 2024 for a total sum of Rs.18,40,996/-, on 15th February, 2024 for a total sum of Rs.18,84,947/- and on 16th February, 2024 for a total

sum of Rs.16,39,438/-. In spite of receipt of the said gold ornaments and the invoices raised by the plaintiff, the defendant has not paid the amount. Subsequently, the defendant has issued two cheques dated 18.04.2024 for an amount of Rs.18,84,947/- and Rs.18,40,996/- and further two cheques have been issued on 22nd April, 2024 for a sum of Rs.10,00,000/- and Rs.6,39,438/- respectively. Counsel for the plaintiff submits that the cheques issued by the defendant were presented by the plaintiff for realisation of the said amount but all the cheques have been returned with the endorsement "Fund Insufficient". After dishonour of the cheques issued by the defendant, the plaintiff has issued notice to the defendant on 26th April, 2024 calling upon the defendant to pay the amount as per the gold ornaments received by the defendant as the cheques issued by the defendant have been dishonoured with the reason "Fund Insufficient". The notice issued by the plaintiff was duly served to the defendant but in spite of receipt of the notice, the defendant has neither sent any reply nor has paid any amount to the plaintiff. The plaintiff had initiated pre-institution mediation process before the Mediation Centre of this Court. In spite of receipt of notice of the Mediation Centre, the defendant has not appeared in the said mediation process and non-starter report has been submitted by the authority on 26th July, 2024 and on receipt of the non-starter report, the plaintiff has filed the present suit.

Learned counsel for the plaintiff submits that the documents which the plaintiff has relied upon prove that the plaintiff has supplied the gold ornaments and the cheques issued by the defendant to the plaintiff admit that the defendant is liable to pay the said amount and as the defendant is not

having any defence to defend the suit, the plaintiff is entitled to get the summary judgment.

Considered the submission made by the counsel for the plaintiff. Perused the application and the documents available on record.

This Court finds that the plaintiff has supplied the gold ornaments as per the requirement of the defendant and the defendant has accepted the same along with the tax invoices raised by the plaintiff. After receipt of the gold ornaments and the tax invoices, the defendant issued four cheques for realisation of the said amount but when the plaintiff has presented the said cheques for realisation, all the cheques issued by the defendant have been dishonoured with the endorsement "Fund Insufficient". After dishonour of the cheques, the plaintiff has sent notice to the defendant informing that the cheques issued by the defendant have been dishonoured and, as such, the plaintiff has called upon the defendant to pay the said amount. In spite of receipt of the said notice, neither the defendant has sent any reply nor has paid the amount to the plaintiff and even the defendant chose not to appear before the Medication Centre in the mediation process initiated by the plaintiff. This Court also finds that even after receipt of the writ of summons as well as the notice of the present application, the defendant chose not to appear before this Court to contest the suit and the application filed by the plaintiff.

Considering the above, this Court finds that the defendant has no defence and the plaintiff is entitled to get the summary judgment.

In view of the above, the defendant is directed to pay Rs.53,65,381/- to the plaintiff along with interest at the rate of 18% per annum from 16th February, 2024 till the realisation of the said amount.

The suit filed by the plaintiff is commercial in nature and is filed in the Commercial Division of this Court. In spite of receipt of writ of summons and copy of this application, the defendant failed to appear before this Court and in spite of receipt of notice after the dishonour of the cheques, the defendant failed to pay the amount to the plaintiff which compelled the plaintiff to file the present suit, accordingly, the plaintiff is entitled to costs of Rs.1 lakh. The defendant is directed to pay cost of Rs.1 lakh to the plaintiff within 60 days from date, failing which the cost of Rs.1 lakh shall carry interest at the rate of 8% per annum till the realisation of the said amount.

CS-COM/762/2024 is disposed of. Consequently, GA-COM/1/2024 is disposed of.

Decree be drawn accordingly.

(KRISHNA RAO, J.)