

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
[Commercial Division]

CS-COM/428/2024
[OLD NO. CS/229/2022]

ANJANI SARAF
VS
DURABLE POLYMER PRODUCTS PVT LTD

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : 13th January, 2025.

Appearance:

*Mr. K.C. Garg, Adv.
... for the plaintiff*

The Court:-

1. Mr. K.C. Garg, Learned Counsel is appearing for the plaintiff.
2. None appears for the defendant.
3. The plaintiff has filed the present suit praying for decree for a sum of Rs.33,61,939/- along with interest @ 24% per annum.
4. The plaintiff says that in between 1st April 2020 to 31st March, 2021 the defendant has placed diverse orders for supply of Process Oil to the defendant and as per the demand made by the defendant, the plaintiff has supplied the said materials by way of a challan, which was duly received by the defendant without any objection.
5. After supplying of the Process Oil, the plaintiff had raised invoices which were also received by the defendant from time to time.

6. The plaintiff says that the plaintiff had supplied material for a total amount of Rs.59,84,913/- out of which the defendant had paid only Rs.26,22,974/- leaving balance amount of Rs.33,61,939/-.

7. Learned Counsel for the plaintiff submits that as the defendant failed to pay balance amount of Rs.33,61,939/-, the plaintiff had issued a legal notice to the defendant, calling upon the defendant for payment of the balance amount, but on receipt of the said notice, the defendant had sent a reply denying the claim of the plaintiff.

8. The plaintiff had initiated pre-institution mediation process and in the mediation process, initially the defendant had appeared and agreed to pay the amount. But subsequently, the defendant failed to appear before the mediator and on 19th June, 2023, a non-starter report had been filed by the mediation centre and accordingly, the plaintiff has instituted the present suit.

9. After filing of the suit, the plaintiff has taken appropriate steps for issuance of Writ of Summons. In spite of the receipt of the Writ of Summons, the defendant failed to enter appearance and also not filed any written statement.

10. In terms of the report of the Deputy Registrar, this Court has placed the matter in the list of 'Undefended Suit'.

11. To prove the case, the plaintiff has examined one witness before this Court namely, Anjani Saraf and during his evidence altogether, fifteen documents were marked as exhibits being 'Exhibit-A' to 'Exhibit-O'.

12. Counsel for the plaintiff submits that the plaintiff has marked one document being 'Exhibit-A' which is the Trade Licence of the plaintiff. 'Exhibit- B', 'Exhibit-E' and 'Exhibit- H' are the challans which prove that the plaintiff has supplied the process oil to the defendant and the defendant had received the process oil. 'Exhibit- C', 'Exhibit-F' and 'Exhibit- I' are the documents with respect to the tax invoices raised by the plaintiff against the defendant for the goods supplied to the defendant and the same was duly received by the defendant. 'Exhibit- D', 'Exhibit-G' and 'Exhibit- J' are the e-way bills which prove that the plaintiff had transported the goods to the address of the defendant.

13. The legal notice sent by the plaintiff to the defendant dated 3rd June, 2022 and 22nd June, 2022 are marked as 'Exhibit- M', and 'Exhibit- L' and on receipt of the said notice, the defendant had sent a reply dated 20th July, 2022 which is marked as 'Exhibit-N'.

14. From the said documents, it prove that the plaintiff has called upon the defendant for payment of the amount dues, but in reply, the defendant has denied the claim of the plaintiff. The mediation report is marked as 'Exhibit-O' wherein it reveals that the defendant had initially appeared before the mediator and agreed to pay, but subsequently, the defendant failed appear.

15. This Court finds that the plaintiff has received the copy of the plaint and documents but in spite of receipt of the same, the defendant chose not to appear before this Court and also not to file any written statement. The plaintiff in the evidence has produced all the documents to prove that

the plaintiff has supplied the materials as per demand of the defendant and on receipt of the materials, out of the total amount of Rs.59,84,913/- the defendant has paid only Rs.26,22,974/- by keeping the balance amount of Rs.33,61,939/-.

16. Considering the above, this Court finds that the plaintiff has proved the case and the defendant is liable to pay a sum of Rs.33,61,939/-. It is find from the record that last payment was made by the defendant on 8th April, 2022 and thereafter, the defendant failed to pay the balance of Rs.33,61,939/-.

17. As per the terms and conditions of the tax invoices, it is mentioned that “interest will be charged @24% per annum if the bills have not paid on due date”. In the present case, it is admitted that the defendant has paid only part amount leaving aside the balance of Rs.33,61,939/- after 8th April, 2022 and as such, the plaintiff is also entitled to get interest.

18. In view of the above, the defendant is directed to pay an amount of Rs.33,61,939/- along with interest @ 18% per annum from 8th April, 2022 till the date of realization of the total amount. The suit is commercial in nature and the defendant has received the notice, but in spite of the receipt of the notice the defendant failed to appear before this Court and also not filed any written statement. For recovery of the amount, the plaintiff had to approach this Court. Thus, the plaintiff is entitled to get the cost against the defendant. Accordingly, the defendant is directed to pay cost of Rs.1 lakh within 60 (sixty) days from the date of this Order

failing which, the said amount also carry on an interest @ 6% per annum till the realization of the same.

19. CS-COM/428/2024 [OLD NO. CS/229/2022] is disposed of. Decree be drawn up accordingly.

(KRISHNA RAO, J.)