

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MARCH, 2019

BEFORE

THE HON'BLE MR.JUSTICE ASHOK G. NIJAGANNAVAR

CIVIL REVISION PETITION NO.484 OF 2012 (SC)

BETWEEN:

M/S.SAGAR SILK,
A PROPRIETARY CONCERN,
NO.3, VUH COMPLEX,
NO.29/3, ANNADANAPPA LANE,
AVENUE ROAD CROSS,
BENGALURU – 560002.

REPRESENTED BY ITS PROPRIETOR,
SRI ASHOK KUMAR,
S/O LATE G.BHABOOTMAL,
AGED ABOUT 56 YEARS.

...PETITIONER

(BY SRI.J RAVI SUNDAR, ADVOCATE)

AND:

M/S.SREE RAJYALAKSHMI,
SAIDURGA SAREES,
A PROPRIETARY CONCERN,
NO.118, VASTRALATHA,
VIJAYAWADA – 520001,
ANDHARA PRADESH,
REPRESENTED BY ITS
PROPRIETOR SRI GARLAPATHI SAI,
CHANDRA SEKHARA RAO.

...RESPONDENT

(BY SRI.POONAM D N, ADVOCATE FOR
SRI SIDDHARTH B MUCHANDI, ADVOCATE)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 18 OF COURT OF SMALL CAUSE ACT, FILED AGAINST THE JUDGMENT AND DECREE DATED 14.09.2012 PASSED IN S.C.NO.1851/2011 ON THE FILE OF THE I ADDL. SMALL CAUSE JUDGE AND MEMBER MACT, BANGALORE, PARTLY DECREEEING THE SUIT FOR RECOVERY OF MONEY.

THIS PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This revision petition is filed for setting aside the judgment and decree dated 14.09.2012 in S.C.No.1851/2011 passed by the I Addl. Small Cause Judge & MACT, Bengaluru.

2. For the sake of convenience, the parties are referred to as per their ranking before the Court below.

3. The facts briefly stated are that the petitioner/plaintiff, being a dealer in silk sarees and dress materials, had supplied silk sarees to respondent/defendant on credit basis in terms of an invoice No. 349 dated 24.02.2011 for a sum of

Rs.21,660/-. The plaintiff dispatched the goods along with the invoice. Despite delivery of goods, the defendant did not make the payment and was not ready to pay the amount towards credit purchase. The plaintiff got issued a legal notice for recovery of a sum of Rs.21,660/- with interest @ 18% p.a. The defendant acknowledged the receipt of legal notice, but has not complied with the demand made in the legal notice. Hence, the suit was filed for recovery of a sum of Rs.21,660/- along with interest. On service of summons, the defendant appeared and has filed written statement, wherein the defendant has admitted the transaction namely the supply of goods worth Rs.21,660/-, but has denied all other contentions. The defendant has taken up specific defence that the plaintiff had supplied the materials at high price. The materials supplied were different from the colours and quality of the samples as such, the defendant could not dispose off the said materials. Therefore, the defendant

had informed the plaintiff's agent Naidu many times, but there was no response from the plaintiff.

4. On receiving the legal notice dated 01.06.2011, the defendant has tried to settle the matter amicably. As a last resort, the defendant has returned the undisposed materials worth Rs.13,342/- to the plaintiff along with a cheque for Rs.6,900/- and a covering letter dated 30.07.2011 with details of settlement of account. But the plaintiff did not take the delivery of returned materials. The defendant, having no other alternative, has kept the undisposed materials as it is with him and is ready to deliver the same and make payment of Rs.6,900/- at any point of time.

5. On the basis of the pleadings, the trial Court framed the following issues:

i. *Whether the plaintiff proves that defendant has purchased silk sarees worth Rs.21,660/- and had delivered the same, accepted by the defendant*

and the defendant has to pay to the plaintiff sale price amount of Rs.21,660/- and interest with cost of notice in total Rs.23,959/- with future interest @ 24% p.a.?

ii. To what order?

6. The Proprietor of the plaintiff firm has got examined as P.W.1 and got marked the documents Exs.P-1 to P-8. The Proprietor of the defendant firm has got examined as D.W.1 and got marked the documents Exs.D-1 to D-8(a).

7. On appreciating the oral and documentary evidence, the trial Court partly decreed the suit and the defendant was directed to pay an amount of Rs.6,900/- to the plaintiff within two months from the date of order failing which the amount payable shall carry interest @18%p.a. from the date of the suit till realization. Being aggrieved by the said judgment and decree, the plaintiff has preferred this revision petition.

8. It is an admitted fact that the plaintiff had supplied the goods worth Rs.21,660/- to the defendant along with invoice and the same was received by the defendant. The defendant failed to pay the amount of Rs.21,660/- as per the invoice. Therefore, the plaintiff issued a legal notice for recovery of the said amount along with interest, but the defendant did not respond to the said legal notice.

The defendant has admitted in the written statement that he had returned the goods worth Rs.13,342/- along with a cheque for a sum of Rs.6,900/- and a letter with details of settlement, but the plaintiff did not receive the goods and has not encashed the cheque. The plaintiff has not received the goods returned by the defendant and has sent back the same to the defendant only and they are kept as it is and the defendant is ready and willing to return the goods to the plaintiff and pay a sum of Rs.6,900/-.

9. Learned counsel for the petitioner/plaintiff would strenuously contend that the defendant failed to make payment within reasonable period, hence, the legal notice was issued. The defendant did not reply to the said notice, but after filing of the suit, the defendant returned the goods along with a cheque for Rs.6,900/- in respect of the goods utilized, but the goods sent by the defendant were not received by the plaintiff. Hence, the defendant is liable to pay the amount in respect of the goods supplied by the plaintiff along with interest @18% p.a.

10. Per contra, learned counsel for the respondent/defendant has submitted that the goods supplied by the plaintiff were at high price, even the colours and quality of the samples and the materials supplied to the defendant were different, as such, the defendant was unable to dispose off the materials. The defendant orally informed the plaintiff's agent about the

same, but the plaintiff issued a legal notice. Hence, the plaintiff, being at fault, is not entitled to claim the amount. The defendant had returned the unutilized goods and cheque for Rs.6,900/- but the same was not accepted by the plaintiff. Since the plaintiff had not encashed the cheque issued by the defendant, the trial Court came to the conclusion that the plaintiff is entitled to Rs.6,900/-, the defendant is ready and willing to pay the said amount.

11. In view of the rival contentions, the only question that arises for consideration is :

“Whether the trial Court has committed error in partly decreeing the suit?”

12. The only controversy is that the defendant failed to make payment for the goods received worth Rs.21,660/- within six months. Therefore, the plaintiff had issued legal notice, but the defendant did not reply to the said notice. It is only after filing of the suit, the

defendant returned the goods worth Rs.13,342/- along with a cheque for Rs.6,900/-.

13. According to the respondent/defendant the goods sent by the plaintiff were of different quality and they were of high price, as such, the defendant could not dispose off the same. Therefore, the defendant returned the goods along with cheque for Rs.6,900/- for the goods utilized.

14. But the main contention of the counsel for the petitioner/plaintiff is that the defendant, having purchased the goods, is deemed to have accepted the goods when he does not complain about the quality of the goods or supply of defective goods to him within reasonable time and if the defendant returns the goods beyond reasonable time it is a deemed acceptance and the defendant is liable to pay the said amount.

15. Section 42 of Sale of Goods Act, reads as under:

42. Acceptance.—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

16. On going through the oral and documentary evidence, it is evident that the defendant did not reject the goods within reasonable time. The evidence placed on record discloses that the goods were supplied on 24.02.2011 and the plaintiff issued legal notice on 01.06.2011 i.e., after three months from the date of supply of goods. But the defendant did not reply to the said legal notice and no explanation was given either for non-payment for the supply of goods or regarding supply of defective goods. The defendant himself has

admitted in the written statement that he had returned the goods along with a cheque for Rs.6,900/- after filing of the suit, but the same was not accepted by the plaintiff. Even now the defendant is ready and willing to return the goods and pay the sum of Rs.6,900/- in respect of the goods disposed off by him. The trial Court has directed the defendant to pay Rs.6,900/- only without considering the relevant materials placed on record by the plaintiff.

17. It is pertinent to note that the goods worth Rs.13,000/- are with the defendant. The cheque sent by the defendant was also not encashed by the plaintiff. The defendant failed to respond/complain immediately after receipt of the goods either regarding supply of defective goods or the quality of the said material. The plaintiff has waited for almost three months for payment, but the defendant has not even made the payment after issuance of legal notice.

18. D.W.1 has admitted in the cross-examination that after filing of the suit he has returned some of the consignment and issued cheque for Rs.6,900/- towards part of the goods. Further D.W.1 has stated that he returned remaining materials but the plaintiff without receiving the materials sent back to him and has not encashed the cheque issued by him.

19. In view of the clear admissions in the cross-examination, the defendant, being in possession of the goods, becomes liable to pay the entire amount of Rs.21,660/-. The finding given by the trial Court that the defendant is liable to pay Rs.6,900/- only is erroneous and not sustainable in law.

20. For the foregoing reasons, revision petition is allowed. The judgment and decree dated 14.09.2012 passed in S.C.NO.1851/2011 by the I Addl. SCJ &

MACT, Bengaluru, directing the defendant to pay Rs.6,900/- is set-aside.

The plaintiff's suit/claim is decreed with proportionate cost. The defendant is directed to pay a sum of Rs.21,660/- along with interest @ 9% p.a. from the date of suit till realization of decreetal amount.

**Sd/-
JUDGE**

BSR