

M.S. C/No. 30/2018

Dated: 31.08.2019

**HIGH COURT FORM NO. (J) 2
HEADING OF JUDGMENT IN ORIGINAL SUIT.
IN THE COURT OF MUNSIFF NO. 1 AT TINSUKIA.
DISTRICT-TINSUKIA**

Money Suit Case No. 30/2018

Present: Zafreena Begum, LL.M., A.J.S

Munsiff No. 1 Tinsukia

**SRI SUNIL KR. VERMA
S/O-SRI KISHORE YADAV
RESIDENT OF TAMULBARI TRUK STAND
P.O., P.S. AND DISTRICT- TINSUKIA ,ASSAM**

.....PLAINTIFF

-VS-

**1. TRIVENI PERIWAHAN PVT. LTD.
HAVING ITS OFFICE AT
13/4B BRIJDHAM, 212 CANAL STREET,
KOLKATA, WEST BENGAL**

**2. SRI SUMEET PERIWAL
DIRECTOR OF TRIVENI PARIWAHAN PVT. LTD.
13/4B BRIJDHAM, 212 CANAL STREET,
KOLKATA, WEST BENGAL**

..... DEFENDANTS

This suit coming on for final hearing on 03.08.2019 in the presence of:

Smti Urmila Verma : Advocate for the plaintiff; and

None : Advocate for the defendant.

And having stood for consideration to this day, the court delivered the following Judgment.

JUDGMENT

1. This is a suit filed by the plaintiff for recovery of Rs 63,500/- along with future interest with other reliefs.

Plaintiff's Case:

2. The brief facts of the plaintiff's case is that the Plaintiff is a permanent resident of Tamulbari Truck Stand, P.O. P.S. and District of Tinsukia, Assam, whereas the defendant No. 1 is the business establishment running the business of transportation having its registered office at 13/4B/Brijdham, 212 Canal Street, Kolkata, West Bengal. The defendant no. 2 is the Director of defendant No. 1. It is averred that Plaintiff is running his Transport Commission business at Tamulbari Truck Stand, Tinsukia, Assam and the defendants appointed the Plaintiff as their local agent for transporting the consignments of Tinsukia and surrounding areas. Which are/were entrusted to the defendants during their course of business.
3. It is also averred that it was agreed between the plaintiff and the defendants that the all the expenses for the transportation of goods of the defendants from Tinsukia and its surrounding areas to other places of the country shall be borne by the plaintiff and he shall forward the accounts of all such expenses including his commission to the defendants for the payment of the same. It is further stated that initially the defendants made payment of all the expenses including the commission of the plaintiff regularly but later became irregular in making the payments and as such a huge amount became pending and that the plaintiff on several occasions sent emails requesting the defendants to clear the payment but they failed and neglected to do so.
4. It is further stated that after several telephonic calls, mails and messages, when the defendant did not make any payment, the plaintiff went to the office of the accused at Kolkata and the total due was settled at Rs. 4,85,189/- (Rupees Four Lakhs Eighty Five Thousand One Hundred Eighty Nine) only, as full and final payment payable to the plaintiff by the defendant.

The defendant no. 2 in the capacity of Director of the defendant no. 1 also issued seven nos. of post dated Cheques (Cheques bearing Nos. 645368 dated 28/09/2015 of Rs. 85168/-; 645371 dated 07/10/2015 of Rs. 50,000/-; 645373 dated 14/10/2015 of Rs. 50,000/-; 645370 dated 27/10/2015 of Rs. 50,000/-; 645369 dated 07/11/2015 of Rs. 50,000/-; 645373 dated 21/11/2015 of Rs. 1,00,000/- and 645374 dated 30/11/2015 of Rs. 1,00,000/-) in the name of the plaintiff all payable between 28/09/2015 to 30/11/2015, all drawn at UCO Bank, Brabourne Road, Kolkata, Main Branch.

5. It is further averred that the collection of amount of Cheque No. 645372 dated 14/10/2015 of Rs. 50,000/- (Rupees Fifty Thousand) only; the plaintiff presented it in his bank (UCO Bank, Tinsukia Branch) on 16/10/2015 but the banker of my client returned the Cheque unpaid, with a Cheque returning memo no. 17/10/2015 showing the reasons therein as "Fund Insufficient". That the plaintiff thereafter through his lawyer Smti Urmila Verma, Advocate, Tinsukia, sent a registered with A/D. notice on 02/11/2015 to the defendants vide Registered Letter No. RS454758948IN and RS454758900IN both dated 02/11/2015 through Tinsukia Head office, Dist-Tinsukia, Assam, asking the defendants to pay the said amount of Rs. 50,000/- (Rupees Fifty Thousand) only, to the plaintiff within 15(Fifteen) days from the date of receipt of the said notice.
6. It is also averred in the plaint that cause of action for this suit arose on and from on 14/10/2015 being the date of Cheque; on 16/10/2015 being the date of presentation of the Cheque in the UCO Bank, Tinsukia Branch for collection of the Cheque amount; on 17/10/2015 being the date of Cheque Returning Memo; on 02/11/2015 being the date of Legal Notice; on 07/11/2015 being the date of refusal of the Legal Notice by the defendant; on 22/11/2016 being the date due for payment of cheque amount as per legal Notice; on 18/01/2016 being the date of filing of the N.I. Case No. 16/2016 and on each and every date thereafter within the jurisdiction of this Hon'ble court.
7. **Plaintiffs Prayer** : The plaintiff has therefore filed the suit praying for decree:

- (i) Recovery of Rs. 63,500/- (Rupees Sixty Three Thousand Five Hundred) only; along with interest of Rs. 13,500/- (calculated @ 12% p.a. from 02/11/2015 (being the date of Notice) to 30/04/2018, making a total or Rs. 63,500/- (Rupees Sixty Three Thousand Five Hundred) only.
- (ii) Recovery of future interest @ 12% p.a. on the said amount of Rs. 63,500/- from the date of filing of this suit till realization of the amount.
- (iii) Cost of the suit
- (iv) Any other reliefs as to which the plaintiff if found entitled under the law, equity and justice.

Proceedings of the Suit

- 8.** Notice was served upon the defendants but as the defendants did not appear to contest the suit, the suit was directed to proceed ex parte against the defendants vide order dated 15-07-2019.
- 9.** The Plaintiff adduced documentary evidence to prove its case and exhibited nine numbers of documents.

10. Points for Determination:

- I. Whether the suit is maintainable in its present form?
 - II. Whether the defendants issued cheque No. 645372 dated 14/10/2015 of Rs. 50,000/- in favour of the plaintiff and the plaintiff would not receive the amount as the cheque returned unpaid with a memo of 'Insufficient fund'?
 - III. Whether the Defendants are liable to pay an amount of Rs. 63,500/- to the plaintiff?
 - IV. To what other relief the Plaintiff is entitled to?
- 11.** I have heard the learned counsel for the Plaintiff and have perused the case record and documents exhibited in detail.

Decision on Point No. I:

12. PW-1, Sri Sunil Kumar Verma, in his examination-in-chief reiterated as to what was stated in the plaint. In the plaint and examination-in-chief of PW-1, it is mentioned that the instant suit is filed by the plaintiff against the defendants for recovery of alleged amount of Rs. 63,500/- from the defendants pursuant to the alleged cheque being returned by the bank due to reason of 'Insufficient fund'.
13. In this context, the Hon'ble Supreme Court in **D. Purushotama Reddy v. K. Sateesh, (2008) 8 SCC 505**, held that *a civil suit for recovery of money on a cheque issued by the defendant which was dishonoured, is maintainable*. In view of the above judgement of Hon'ble Supreme Court, this suit is maintainable. Moreover, upon close perusal on documentary evidence on record, it is found that the suit is filed within the period of Limitation.

Decision on Point No. II, III and IV:

14. For the sake of convenience all the points are clubbed together for discussion. PW-1, Sri Sunil Kumar Verma, in his examination-in-chief reiterated as to what was stated in the plaint. PW-1 proved the cheque dated Exhibit 1 and Exhibit 1 is the Cheque No. 645372 dated 14/10/2015 of Rs. 50,000/- (Rupees Fifty Thousand) only, drawn on UCO Bank, Brabourne Road, Kolkata (Main), which proves that defendants issued cheque in favour of plaintiff. Exhibit 2 is the Deposit Slip 06/10/2015, which proves that plaintiff has deposited the cheque.
15. Now, coming to Exhibit 3, it is the Cheque returning Memo of UCO Bank, Tinsukia dated 17/10/2015, which proves that the cheque returned for the reason of 'Insufficient fund'. Exhibit 4(i) and Exhibit 4(ii) are the Copy of demand notices both dated 02/11/2015. Exhibit 4(iii) and Exhibit 4 (iv) are the Signature of the plaintiff advocate, Smti Urmila Verma. Exhibit 5(i) and Exhibit 5(ii) are the Postal Registration Receipts Nos. RS454758948IN and RS454758700IN both dated 02/11/2015, Exhibit 6(i) and Exhibit 6(ii) Acknowledgement Cards of the above two Notices. Exhibit 7 is the Copy of mails sent to the defendant dated 18/08/2015 and Exhibit 8 is the Statement of Account. PW-1 also prove Exhibit 9, which is the Copy of Paper Publication, which shows that after paper publication also the defendants did

not appear in the Court to contest the suit. The documents filed by the plaintiff are admissible and proves that the defendants have the liability to pay the amount of cheque with interest to the plaintiff.

16. The Defendants did not appear to rebut the evidence of the Plaintiff and as such on the basis of unrebutted evidence of the Plaintiff, I hold that Plaintiff is entitled to recover an amount of Rs. 63,500/- with including interest and also entitle future interest @ 6% per annum from the date of institution of the suit till recovery. In addition, the plaintiff is also entitled to the cost of the suit.

ORDER

In view of the above discussion and the decisions reached in the foregoing points for determination, the suit of the plaintiff is decreed ex-parte with cost. It is hereby decreed and directed that the defendants are liable to pay to the plaintiff an amount of Rs. 63,500/- (Rupees Sixty Three Thousand Five Hundred) only with future interest @ 6% per annum from the date of institution of the suit till recovery.

Prepare decree accordingly.

Accordingly, this case is disposed of.

Given under my hand and seal of the Court on this the 31st day of August, 2019

Munsiff No. 1, Tinsukia

APPENDIX

PLAINTIFF WITNESSES:

PW-1: Sri Sunil Kumar Verma

DEFENDANTS WITNESSES: NONE

PLAINTIFF EXHIBITS:

1. **EXHIBIT 1:** Cheque No. 645372 dated 14/10/2015 of Rs. 50,000(Rupees Fifty Thousand) only, drawn on UCO Bank, Brabourne Road, Kolkata (Main).
2. **EXHIBIT 2:** Deposit Slip 16/10/2015.
3. **EXHIBIT 3:** Cheque returning Memo of UCO Bank, Tinsukia dated 17/10/2015.
4. **EXHIBIT 4 (i) and EXHIBIT 4 (ii):** Copy of demand notices both dated 02/11/2015.
5. **EXHIBIT 4 (iii) and EXHIBIT 4 (iv):** Signature of the plaintiff advocate, Smti Urmila Verma.
6. **EXHIBIT 5 (i) and EXHIBIT 5 (ii):** Postal Registration Receipts Nos. RS454758948IN and RS454758700IN both dated 02/11/2015.
7. **EXHIBIT 6 (i) and EXHIBIT 6 (ii):** Acknowledgement
8. **EXHIBIT 7:** Copy of mails sent to the defendant dated 18/08/2015.
9. **EXHIBIT 8:** Statement of Account.
10. **EXHIBIT 9:** Copy of Paper Publication.

DEFENDANTS EXHIBITS: NIL

Smti. Zafreena Begum
Munsiff No. 1, Tinsukia