

HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT.

IN THE COURT OF MUNSIF NO. 3 AT GUWAHATI.

DISTRICT-KAMRUP

Money Suit Case No. 580/2010

Present:

***Naguib Ahmed, A.J.S.
(M.Sc-Agriculture, LL.B)
Munsiff No.3, Kamrup,
Guwahati.***

6th day of August, 2012

1. Indico Remedies Ltd.

(A Public Limited Company registered under the Company's Act 1956)

2. Candida Enterprise

C & F of Indico Remedies Ltd.

3. Gautam Banerjee

S.O: Late Durga Charan Banerjee.

(Proprietor and authorized signatory of Candida Enterprise,

C & F of Indico Remedies Ltd.....: Plaintiff(s)

-Versus-

1. Choudhury Drug Distributer

Choudhury Market

LNB Road, Nalbari

District: Nalbari, Assam

2. Manash Pratim Choudhury
Proprietor of Choudhury Drug Distributer
Choudhury Market
LNB Road, Nalbari
District: Nalbari, Assam.....: Defendant(s)

This suit coming on for final hearing on 19.07.2012 in the presence of:-

1. Sri. A. Sattar : Advocate for the plaintiff(s).

And

2. None : Advocate for the defendant(s).

and having stood for consideration to this day, the court delivered the following Judgments.

JUDGEMENT
(Suit for realization of money)

1. **Plaintiff's case:** The Plaintiff No.1 is a *Public Limited Company registered under the Company's Act 1956*. The said company is represented by its C & F agent namely Candida Enterprise, Plaintiff No.2. The affairs of Candida Enterprise is looked after by its proprietor and authorized signatory namely Gautam Banerjee, Plaintiff No.3, who is duly authorized by the Plaintiff No.1 to file suits against the defendant business establishment vide resolution dated 31.05.2010 which is duly signed by Jagdish B. Salin Company Secretary of the Plaintiff No.1 company. The Defendant No.1 is a proprietorship concern represented by its proprietor, Defendant No.2 and is having its office and place of business at the address at Nalbari. The Defendant No.1 is engaged in the business of buying and selling of Drugs, Cosmetic and Medicines which is being brought from and supplied by the plaintiff on placement of written as well as verbal orders. Accordingly medicines were supplied by the plaintiff to the Defendant No.1 through transporters. During the course of the dealings several cheques

issued by the defendant had got dishonored and a hefty amount stood as outstanding in the accounts of the defendants maintained by the plaintiff. The account of the Defendant No.1 as maintained by the plaintiffs for all intent and purpose is a continuing one and as per the same the net outstanding on deduction of the payments comes to Rs. 74,720/- (Seventy Four Thousand Seven Hundred Twenty) only. The plaintiff sent a pleader's notice dated 12.04.2010 demanding payment of Rs. 74,720/- (Seventy Four Thousand Seven Hundred Twenty) only being the net amount due on account of the goods supplied and then demanded payment of the due amount within 7 (Seven) days. The defendant failed to make the payment within 7 (Seven) days of receipt of notice and hence the plaintiffs have become entitled to charge interest @18% per annum on the net outstanding amount of Rs. 74,720/- (Seventy Four Thousand Seven Hundred Twenty) only from 19.04.2010 till filing of the instant suit. That in view of the above the defendants are liable to pay a sum of Rs. 84,416/- (Eighty Four Thousand Four Hundred Sixteen) only on all counts for unlawfully withholding the lawful dues of the plaintiffs and also future interest.

2. Thereafter summons were issued to the defendants and the defendants filed the written statement on 25.03.2011 jointly. However the defendants did not cross examine the plaintiff witness (PW) and accordingly the PW was discharged. The defendants did not file any evidence.

3. **Plaintiff's prayer:** The plaintiff therefore filed the suit with the following prayers:

- i. A decree for realization of a sum of Rs. 74,720/- (Seventy Four Thousand Seven Hundred Twenty) only with a total amount of Rs. 84,416/- (Eighty Four Thousand Four Hundred Sixteen) only payable by the defendants to the plaintiffs.
- II. For realization of interest pendente lite.
- III. Full cost of the suit.
- iv. Any other relief as the plaintiff is entitled to.

4. **Defendant's version:** The defendants jointly stated through their written statements that they deny the amount claimed by the plaintiff. However the defendant did not deny the claim of the plaintiff as regards sum of money due to the plaintiff.

5. **Issues:** Upon perusal of the pleadings and considering other materials on record, the following issues were accordingly framed.

1. Whether an outstanding amount of Rs. 74,720/- (Seventy Four Thousand Seven Hundred Twenty) only remains to be paid by the defendants to the plaintiffs for supply of medicines during the period from 31.10.2006 till 31.10.2009?
2. Whether the plaintiffs are entitled for realization of sum of Rs. 84,416/- (Eighty Four Thousand Four Hundred Sixteen) only as prayed for in the plaint?
3. To what relief/reliefs the plaintiff is entitled to?

6. **Witnesses:** In the instant suit the plaintiffs examined 1 (one) witness and exhibited some documents. The defendant examined none.

7. **Discussion, Decision and Reasons thereof:** I have also heard arguments advanced by the learned counsel for the plaintiff. None argued for the defendants.

8. **Issue no.1, 2 and 3:** In view of the facts and circumstances of the case this issues appears to be the most vital ones. For the convenience of discussion and appreciation of evidence both the issues are taken together. The plaintiff filed evidence of ***PW-1 Gautam Banerjee*** who is the Plaintiff No.3 and who is the authorized signatory of the Plaintiff No.1 Company. PW-1 in his examination-in-chief mostly reiterated the plaint story.

The following documents were exhibited by the PW-1. The following documents were exhibited by the plaintiff bank.

Exhibit-1 : Authorization Certificate.

Exhibit-2 : Accounts Statement maintained by the Plaintiff Company in the name of the Defendant No.1 from 31.10.2006 to 31.10.2009.

Exhibit-3 : Retained copy of pleaders notice.

Exhibit-4 : Postal Receipts.

Exhibit-5 : Postal Receipts.

I have also heard the learned counsel for the plaintiff. There is no discrepancy in the evidence advanced by PW-1. The PW-1 was not cross-examined by the defendants. However there is no reason to disbelieve the pleadings of the plaintiff. The defendants have in fact admitted through their written statements that certain amounts are due to be paid by them to the plaintiffs. The documents exhibited by plaintiff are duly proved. The suit is filed within time. After going through all the evidence on record the court find that the plaintiffs has been able to prove its case. The evidence of the plaintiff remains unrebutted. The written Statement of Defendants doesn't rebut the claims of the plaintiffs.

Hence these issues are decided in affirmative and goes in favour of the plaintiff

9. **ORDER**

In the conclusion the suit is decreed with cost.

The defendants are liable to make payment Rs. 74,720/- (Seventy Four Thousand Seven Hundred Twenty) only to the plaintiffs, with interest rate prayed for and future rate of interest @ 15 % per annum from the date of filling of the suit till repayments.

Prepare decree accordingly.

Given under my hand and seal of the court on *6th day of August 2012.*

*Naguib Ahmed
Munsiff No.-3, Kamrup,
Guwahati.*

APPENDIX

Plaintiff's Witnesses

PW-1: Sri. Gautam Banerjee

Exhibit-1 : Authorization Certificate.

Exhibit-2 : Accounts Statement maintained by the Plaintiff

Company in the name of the Defendant No.1 from
31.10.2006 to 31.10.2009.

- Exhibit-3 : Retained copy of pleaders notice.
Exhibit-4 : Postal Receipts.
Exhibit-5 : Postal Receipts.

Defendants Witnesses:

None

Naguib Ahmed
Munsiff No.-3, Kamrup,
Guwahati.