

# IN THE HIGH COURT OF SINDH, KARACHI.

Suit No.1044 of 2008

Present:

***Mr. Justice Nazar Akbar***

Plaintiff : Cecrisa Revestimentos Ceramicos S.A  
through Mr. Abdul Razzak, Advocate.

Defendant No.1 : Mr. Qamar Shamim, through Mr. Ghulam  
Shabbir Baloch, Advocate

Defendant No.2. : Mr. Waleed A. Khan

Defendant No.3 : Sun Bird Corporation.

Date of hearing : 06<sup>th</sup> December 2013

## **JUDGMENT**

**NAZAR AKBAR, J.--** The plaintiff has filed this suit for recovery of US\$ 58,513.80 against the defendants, stating therein that the plaintiff is engaged in the business of manufacturing, import and export of varied tiles all over the world. On 05.08.2005, the defendants Nos.1 and 2, who are proprietors/manager of the defendant No.3, sent a purchase order to the plaintiff for purchase of tiles. The plaintiff shipped the goods valuing US\$ 58,513.80 to the defendants in accordance with bill of lading dated 30.11.2005, which were duly received by the defendants. On 30.11.2005, the plaintiff sent an invoice along with shipping documents to the defendants for payment of the said amount but the defendant failed to settle the same. On 03.04.2006, the defendants sent an email to the plaintiff, denying the payment on the pretext that the goods are defective and made of the substandard material and the same have been warehoused in a public warehouse and not in their custody. The said email was replied to by the

plaintiff, requesting the defendants to notify the defect(s), if any, in the subject goods. In reply there to, the plaintiff received a letter through facsimile from the defendants in which they refused to pay the suit amount. Whereupon, the plaintiff sent a legal notice dated 03.07.2007 to the defendants but the same was returned unserved with the remarks that, “*no one exists in Hussain Trade Centre by this name, hence returned*”. Therefore, the plaintiff filed instant suit with the following prayers:

to pass judgment/decree in favour of the plaintiff and against the defendants for a sum of US\$ 58,513.80 (*presently equivalent to Pak Rs.4,154,480*) payable at the applicable rate of exchange at the time of payment upon conversation with interest/profit/compensation @ 18% per annum from the date the amount became due on receipt of goods till the date of payment with costs.

2. Notices were served upon all the defendants. Perusal of diary sheet dated 20.02.2009 reveals that the defendant No.1 was debarred from filing written statement. The matter was adjourned to be fixed in Court 23.04.2009 for *exparte* orders against defendants Nos.2 and 3.

3. On 30.03.2009, Mr.Ghulam Shabbir Baloch, Advocate filed CMA No.2984/2009 on behalf defendant No.1, for recalling the order dated 20.02.2009, whereby the defendant No.1 was debarred from filing the written statement and the Plaintiff contested the application by filing counter affidavit to the CMA. However, after filing the said CMA, the matter was fixed in Court on 18.05.2009, 02.09.2010, 26.10.2010, 23.02.2011, 12.04.2013 and 06.12.2013, but neither the defendant No.1 nor his counsel Mr. Ghulam Shabbir Baloch, turned up. On 02.09.2010, consequently the said CMA No.2984/2009 was dismissed and the matter was adjourned for final disposal, allowing the plaintiff to file his affidavit in *exparte* proof.

5. On 12.04.2013, examination-in-Chief of PW.1 Ahmed Saeed was recorded in Court. In support of his pleadings the plaintiff has filed affidavit-in-exparte as Exh.PW-1/3 and other documents as Exh.PW-1/4 to Exh.PW-1/13 and he also produced photocopies of the documents marked as 'X' and 'X/1', all the original documents.

6. I have perused the record and heard counsel for the plaintiff. There is no contest to the claim of Plaintiff. The Defendant No.1 who did appear in Court through his counsel Mr. Ghulam Shabbir Baloch, Advocate, had not pursued the case and after filing CMA No.2984/2010 under Rule 159 of the Sindh Chief Court Rules, he chose to remain absent. Plaintiff has arrayed in the pleadings the defendants Nos.1, 2 and 3, but since the defendants Nos.2 and 3, in spite of service, did not turn up, they were also ordered to be proceeded *ex-parte*. The version of the plaintiff, supported by evidence, has gone un-rebutted and unchallenged. Therefore, there is no option but to believe the unchallenged version of the plaintiff with regard to recovery of US\$ 58,513.80 on account of goods purchased by the defendants from him.

7. In the circumstances mentioned above, the suit of the plaintiff is decreed as prayed with cost.

JUDGE

*Karachi, dated*  
*Dec. \_\_\_\_ 2013*

*Gulsher/PA*