

IN THE COURT OF THE CIVIL JUDGE, SONITPUR, TEZPUR

Present: **Dr. C. Khanikar**
Civil Judge
Sonitpur, Tezpur

13th September, 2022

MONEY APPEAL NO. 02/2018

Sri Dilip Kumar Sinha

Son of Late Rameswar Rai

Resident of Kamar Chuburi

PO- Tezpur, PS- Tezpur

Mouza- Mahabhairab

Dist - Sonitpur, Assam

----- Appellant/Plaintiff

-Versus-

The Union of India

Represented by:

- (1) The Secretary to the Govt. of India,**
Ministry of Human Resource Department,
Department of Education, Shatry Bhavan,
Dr. Rajendra Prasad Road, Delhi:110001
- (2) The Commissioner,**
Jawahar Navodaya Vidyalaya Samitee,
Department of School, Education &
Literacy, Kailash Coloyne, A-28 Govt. of
India, New Delhi:110048

(3) The Assistant Commissioner,
Jawahar Navodaya Vidyalaya,
Regional Office, Lower Lachumire,
Barik Point, Temple Road,
Sillong:793001

(4) The Principal,
Jawahar Navodaya Vidyalaya,
P.O: Seppa, East Kameng District,
Arunachal Pradesh

----- Respondents/Defendants

This appeal has been preferred u/O-XLI Rule 1 of CPC, against judgment and decree dated 27-01-2017 passed by the learned Munsiff, No.1, Tezpur, in Money Suit No. 9 of 2011, dismissing the suit, and came up for final hearing on 07-09-2022 in presence of following Advocates:-

For the Appellant : - Sri P. Saikia, Advocate

For the Respondents : - Sri A.K Paul, Advocate

J U D G M E N T

1. This appeal is preferred against the judgment and decree dated 27-01-2017 passed by Id. Munsiff No.1, Tezpur in Money Suit No. 9 of 2011.

2. Before I go into the grounds of appeal, I would precisely refer here to the case of both the parties in the aforementioned Title Suit.

3. The case of the plaintiff in brief is that the plaintiff is the proprietor of M/S Raj Kumar Sinha, Furniture and Timber Suppliers, situated at Kamar Chuburi, Tezpur town. On 27-01-2010, defendant No. 4 who is the Principal of Jawahar Navodaya Vidyalaya, Seppa, placed supply order No. JNV/EKM/S-1/2009-2010/1071 dated 27-01-2010 in the name of plaintiff's firm at Tezpur and asked to supply the items like Office Almirah, Revolving Chair, S. Type Chair with cushion and Pin-Hole Almirah, on or before 11-02-2010 as per the tender rate and specification. Accordingly, the plaintiff supplied and delivered the items to the defendant No.4 on 10-02-2010 along with Bill No. 1444 dated 10-02-2010 through Purvanchal Transport Carrier which were received by defendant No. 4 on 10-02-2010 through Principal (I/C), Jawahar Navodaya Vidyalaya, Seppa. But defendant No. 4 failed to make payment of the said bill for which the plaintiff vide letter dated 29-06-2010 requested the defendant No. 4 to pay Rs. 1,00,430/- as price of supplied furniture, within 7 days from the date of receipt of the letter. But the defendant No. 4 did not pay any heed to the said letter for which the plaintiff, again on 31-07-2010 sent a pleader's notice to defendant No. 4 by demanding payment of Rs. 1,00,430/-, within 15 days from the date of receipt of the notice. But surprisingly defendant No. 4

with a malafide intention, instead of making of payment, vide letter No. JNV/EKM/S-1/2010-2011/1377(88) dated 10-08-2010, informed the plaintiff that the supplied furniture were of poor quality and damaged and also not fully matched with the specification. The act of the defendant No. 4 of alleging the supplied items as damaged and not as per specification on 10-08-2010 which was after 6 months of the receipt of the items (10-02-2010) caused heavy loss to the plaintiff for which the plaintiff having no other way filed the present suit for recovery of the price of items supplied, the freight and labour charge, interest and the cost of the suit.

4. The defendant Nos. 4 appeared and contested the suit by filing Written Statement on behalf of defendant No. 2, 3 and 4 and the case proceeded ex-parte against defendant No. 1.

5. According to the defendants, there is no cause of action, the court has no territorial jurisdiction to try the suit, no outstanding amount was due by the defendants, the plaint is not properly signed and verified, the suit is bad for suppression of material facts and hence the plaintiff is not entitled to any relief.

6. The defendants' case is that the alleged supply was by M/S Raj Kumar Sinha and not by the plaintiff Sri Dilip Kumar Sinha. As per the quotation, the proprietor of M/S Raj Kumar Sinha firm is Sri Raj Kumar Sinha son of Rameswar Sinha. Signature of proprietor in the quotation

and bill are also different from the signature of the plaintiff in the plaint. The defendants have further stated that defendant No. 4 has not collected the quotation from the principal business place of the plaintiff at Tezpur. Jawahar Navodaya Vidyalaya, Seppa, Arunachal Pradesh required some furniture urgently and due to paucity of time the defendant No. 4, instead of publishing the tender in the newspapers, it was hanged in the notice board. Thereafter, M/S Raj Kumar Sinha along with two other firms submitted quotation for supply of furniture in the office of the defendant No.4 by sending their representatives. The quotation of the firm M/S Raj Kumar Sinha was found more suitable and it was accepted. On 10-02-2010 by the evening, the furniture were arrived at the office of defendant No.4 which were sent by carrier against the supply order of the defendant No.4 dated 27-01-2010. As the loaded truck with furniture reached the office of defendant No. 4 in the evening, it was not allowed to unload on that day and in the following morning on 11-02-2010, as per the rule of Jawahar Navodaya Vidyalaya, Seppa, Arunachal Pradesh, a three member verification committee was appointed to physically verify the furniture. On 11-02-2010, the verification committee recommended that the furniture should not be accepted as those were not up to the specification in the quotation. Accordingly the defendant No. 4 asked the carrier to take back the furniture and the proprietor M/S Raj Kumar Sinha was also informed about

the same over phone. However, the truck driver requested the defendant No. 4 to allow him to unload the furniture in the Jawahar Navodaya Vidyalaya, Seppa, campus for that day with assurance that he will take back those on the next day if the proprietor so directs him. But the said truck did not come again and the proprietor of the firm also has not taken back the furniture which are still lying unused in the godown of Jawahar Navodaya Vidyalaya, Seppa. The Jawahar Navodaya Vidyalaya, Seppa, neither received the furniture nor received the bill/challan of the furniture. The defendant No. 4 has not received any letter dated 29-06-2010 as stated in the plaint. On receipt of pleader's notice dated 31-07-2010, defendant No. 4 vide letter No. JNV/EKN/S-1/2010-11/1377(88) dated 10-08-2010 has denied the liability of the defendants to pay any money to the plaintiff. The defendants have claimed that the defendants are not bound to make any payment for the furniture or any interest or freight charge as claimed by the plaintiff and plaintiff's suit is liable to be dismissed.

7. Upon the pleadings of both the parties the following issues have been framed:-

1. Whether this Court has territorial jurisdiction to try the suit?
2. Whether there is any cause of action for the suit?
3. Whether the plaintiff has supplied any furniture as claimed to the Jawahar Novodaya Vidyalaya?

4. Whether the plaintiff has due an amount of Rs. 1,00,430/- only as price of furniture allegedly supplied to defendant No. 4?
 5. Whether the plaintiff is entitled to 12 % interest on alleged outstanding due to defendant?
 6. Whether the plaintiff is entitled to amount of Rs. 20,402/- as freight and labour charge?
 7. Whether the plaintiff is entitled to any relief as claimed?
8. At the trial the plaintiffs have adduced two witnesses and also placed reliance on eleven documents in support of his case which are marked as Exhibits. The defendants have not adduced any witnesses and also not adduced any documentary evidence.
9. At the end of the trial both sides have adduced oral arguments in support of their case.
10. After hearing both sides, the Id. trial court dismissed the suit with cost.
11. Having been highly aggrieved by the said judgment and decree, dated 27-01-2017, the plaintiff/appellant preferred this appeal on the grounds enumerated in the Memorandum of Appeal, such as that the Id. trial Court did not properly discussed the facts and evidences on record and in deciding issue No. 3, has not considered the admissions of the defendants in para No. 9

of the W/S. The Id. Trial Court also has not given any judicial findings in issue No. 5 and issue No. 6.

12. Having considered the ground arisen in the Memorandum of Appeal, I have formulated the following point for determination in this appeal :

POINT FOR DETERMINATION :

Whether the impugned judgment and decree passed by the Id. trial court is just and proper or needs any interference in this appeal?

DECISION AND REASONS THEREOF

13. I have heard arguments advanced by Id. counsels appearing for the appellants as well as respondents and carefully examined the entire materials on record for arriving at a just decision in the case. To decide the appeal, let me deal with the findings of the Id. trial court issue wise :

Issue No. 2 – Whether there is any cause of action for the suit?

14. Cause of action is nothing but the bundle of facts based on evidence averred by one party and denied by the other which gives rise to filing of a suit. In the present case the plaintiff has averred that the plaintiff supplied furniture as per the quotation to defendant No. 4 on the

basis of supply order placed by the defendant No.4. After receiving the said furniture, in spite of several request and demand letters, the defendants failed to make payment of the said furniture. However, the defendants have claimed that the defendant No.4 has not received any furniture from the plaintiff, no payment was due to plaintiff by defendant No.4. The furniture received from M/S Raj Kumar Sinha firm was not as per specification of the quotation and hence the defendant No. 4 asked the supplier to take back the furniture. Thus, these averments and denial of the parties have given rise to the cause for filing of this suit. As such, I find no infirmity in findings of the Id. Trial Court and I concur and **uphold the decision of Id. Trial Court in issue No. 2 that there is cause of action for this suit.**

Hence, issue No. 2 is decided **affirmative.**

Issue No.1 – Whether this Court has territorial jurisdiction to try the suit?

15. Section 16 to 18 of CPC states about place of suing in respect of immovable property and section 19 states about suit for compensation for wrongs to person or movables. Section 20 of CPC states about other suits and according to **section 20 CPC**, those **suits to be instituted where defendants reside or personally works for gain or carries on business or where cause of action wholly or in part arises.**

16. This is a money suit where section 20 of CPC is applicable. In this suit neither of the defendants resides or carries business or personally works for gain within the territorial jurisdiction of this court. Here the plaintiff claims that the defendant No. 4 came to his place of business at Tezpur and collected quotations and place the supply order. Accordingly, the plaintiff sent the furniture to defendants No.4 and delivered the same at the office of defendant No. 4 at Seppa. On the other hand, the defendants have claimed that the tender notice was published on the notice board of the office of defendant No. 4 at Seppa, where the plaintiff submitted his quotation and after being the quotation accepted the furniture were delivered at the office of the defendant No. 4. No transaction was mad within the territorial jurisdiction of this court.

17. The plaintiff as PW.1, during his cross-examination has deposed that the tender was floated at Seppa. As per clause 17 of the tender, that tender will be accepted at the office of defendant No.4 on 06-01-2010. As per the terms and conditions of the tender, the supply was to be made at Seppa and payment was made through the cheque. As such, none of the abovementioned acts took place at Tezpur and those were done at Seppa, Arunachal Pradesh only. However, as there was offer and acceptance, the transaction here is a contract. At this point Id. Trial Court has discussed the decision of Hon'ble Kalkata High Court passed in ***Sreenivasa Pulvarising Vs***

Jal Glass & Chemicals Pvt. Ltd. : AIR 1985 Cal 74

wherein it is held that:

“..... In a contract of the nature now under consideration performance of the contract consists not only of delivery of the goods but also of payment of the price. Therefore, cause of action for a suit on breach of such a contract would arise not only where the goods were to be delivered but also where the price would be payable on such delivery...”

18. Although this is not a binding precedent, being a persuasive precedent it brings sufficient light in deciding the suit in hand, the circumstance being almost similar. In the present suit M/S Raj Kumar Sinha firm is situated at Kamar Chuburi, Tezpur and the supply was made from the firm at Tezpur. In Ext. 1, the supply order nothing was mentioned as to the place of payment. The pleadings of the parties are also silent as to the place of payment. As no place of payment was specified in the contract/bills/invoices, in absence of any plea or proof that it is not the office of M/S Raj Kumar Sinha firm at Kamar Chuburi, Tezpur, ordinarily the place of payment in such case is the office of the supplier i.e the office of M/S Raj Kumar Sinha firm which is situated at Kamar Chuburi, Tezpur. The goods were also supplied from the firm M/S Raj Kumar Sinha at Kamar Chuburi, Tezpur. Therefore, in this suit part of cause of action arose at Kamar Chuburi, Tezpur. As such, I am of the opinion that the Id. Trial Court has rightly held that a part of cause of action of this suit arose within the territorial limits of jurisdiction of this court and that **the Id. Trial Court has territorial jurisdiction**

to try the suit. Hence, I uphold the decision of Id. Trial Court in issue No. 1.

Issue No.3 – Whether the plaintiff has supplied any furniture as claimed to the Jawahar Nobodaya Vidyalaya?

19. The plaintiff has stated that the plaintiff Sri Dilip Kumar Sinha is the proprietor of M/S Raj Kumar Sinha firm and the plaintiff under the name and style M/S Raj Kumar Sinha has supplied the ordered items to defendant No. 4. On the other hand, the defendants have taken the plea that the plaintiff is not the proprietor of M/S Raj Kumar Sinha firm. The plaintiff has to prove that he is the proprietor of the Firm of M/S Raj Kumar Sinha. The defendant No.4 placed supply order in the name of the proprietor M/S Raj Kumar Sinha. The defendants have also claimed that the signatures of the proprietor in the quotation and bills are different from the signatures of the plaintiff in the plaint.

20. While going through the evidences, it appears that the plaintiff has adduced his own evidence as PW.1 and also adduced the evidence of Sri Uttam Chetry as PW.2. Both the witnesses have stated that the plaintiff is the proprietor of M/S Raj Kumar Sinha Firm. The defendants have claimed that the name of proprietor of M/S Raj Kumar Sinha was shown in the quotation as Sri Raj Kumar Sinha but in support of their plea the defendants neither adduced any oral testimony nor

adduced any documentary evidence. The quotation which was alleged to be submitted in the name of Raj Kumar Sinha at the office of defendant No.4 was also not adduced by the defendants' side. On the other hand, the plaintiff side has adduced the supply order of the defendants as Ext. 1, which was in the name of the firm only and not in the name of Sri Raj Kumar Sinha. The plaintiff has also exhibited the bill as Ext. 3 which was also in the pad of M/S Raj Kumar Sinha and not in the name of Sri Raj Kumar Sinha. The said bill was signed by Dilip Kumar Sinha on behalf of the Firm M/S Raj Kumar Sinha. Apart from that vide letter No.JNV/EKM/S-1/2010-2011/1377(88) dated 10-08-2010 issued by defendant No. 4 which was exhibited as Ext.8, defendant No.4 has stated in para No.1 that:

“ the articles of furniture supplied by your client Shri Dilip Kuamr Sinha Proprietor of M/S Raj Kumar Sinha, Furniture timber supplier Tezpur, District- Sonitpur, Assam reached the Vidyalaya on 10-02-2010 as stated in your notice, but on verification of the said articles by the Vidyalaya level committee and the then Principal it was found that the articles were of poor quality and damaged and also did not fully match the specifications as stated in the supply order of this office vide letter No. JNV/EKM/S-1/2009-2010/1071(88) dated 27-01-2010. Hence, the articles were immediately rejected and you client was asked to take the articles back immediately as their receipt was not good in the general interest in the Vidyalaya.”

21. Thus, it appears that although the defendants have taken the plea that the plaintiff is not the proprietor of M/S Raj Kumar Sinha Firm, through the Ext.8 letter, the defendant No.4 himself has admitted that the furniture were supplied by the plaintiff, being the proprietor of M/S Raj Kumar Sinha Firm. As per section 58 of Indian

Evidence Act, no fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings. Thus, the fact that the plaintiff is the proprietor of the Firm M/S Raj Kumar Sinha is admitted by the defendant No.4 through Ext.8. Hence, this being an admitted fact need not be proved by the plaintiff.

22. Now the burden shifted to the defendant to disprove the same, as the defendants claimed that the plaintiff is not the proprietor of the firm M/S Raj Kumar Sinha. But the defendants, except taking the mere plea, has not adduced any evidence in support of it. Under such circumstance as appeared from Ext.8 as well as Ext. 3, I found no reason to hold that the plaintiff is not the proprietor of the Firm M/S Raj Kumar Sinha.

23. Now the next question to be decided here is that whether any furniture was supplied by the plaintiff or his Firm. It is not disputed by the defendants that the furniture mentioned in the plaint were received by the defendant No.4. Their plea was that the furniture were not as per the specification of the quotation order. But sending the furniture to the office of defendant No. 4 is admitted by the defendants.

24. Hence, in view of the aforesaid discussion I am of the opinion that the plaintiff is the proprietor of Firm M/S Raj Kumar Sinha and being so the plaintiff has supplied the furniture to Jawahar Navodaya Vidyalaya, Seppa. As such, I am of the opinion that the Id. Trial Court has committed error by ignoring the clear admission made by the defendant No.4, in writing, that the plaintiff is the proprietor of the firm M/S Raj Kumar Sinha, which led the Id. Trial Court to hold the plaintiff has not supplied any furniture to Jawahar Navodaya Vidyalaya, Seppa.

Hence, issue No. 3 is decided **affirmative**.

Issue No.4 – Whether the plaintiff has due an amount of Rs. 1,00,430/- only as price of Furniture allegedly supplied to defendant No. 4?

25. The plaintiff has claimed that the firm M/S Raj Kumar Sinha had supplied furniture to defendant No. 4 of Rs. 1,00,430/- as per the supply order of defendant No. 4. In support of that plea the plaintiff has exhibited the supply order as Ext.1 which shows order of furniture of total amount of Rs. 1,00,430. The bill which was signed under the seal of Principal Jawahar Navodaya Vidyalaya showing amount of Rs. 1,00,430 is also exhibited as Ext. 3. The amount was not disputed by the defendants. The plea of the defendants is that the furniture supplied were of poor quality and not as per the specification of the

quotation. As per the pleadings of the parties, the quotation was submitted by the plaintiff at the office of defendant No.4. Thus, it is in the possession of the defendants side. But the said quotation was not adduced by the defendants side to prove the plea of dissimilarity of the article supplied with the quoted items. In the supply order no specific quality of items is mentioned, of except the item mentioned in serial No.2. In serial No.2 the particulars of item is described as "revolving chair (Godrej)/ good quality". From the cross-examination of PW.1, it appears that the plaintiff has supplied revolving chair of Godrej Company which was mentioned in serial No.2. The said evidence could not be rebutted by the defendants side. Regarding other items no specific quality is mentioned in the supply order. Apart from that, the defendants side has claimed that a three member verification committee of Jawahar Navodaya Vidyalaya has reported that the furniture are not up to the specification of the quotation. The defendants side has not adduced the said report of the verification committee, nor adduced the evidence of any member of the said verification committee. Again, the defendants have stated that they have not received the letter dated 29-06-2010 issued by the plaintiff demanding the payment of the furniture. However, the plaintiff side has proved the said letter by exhibiting the same as Ext.4 and the postal receipt dated 29-06-2010 as Ext.5. The defendants side has admitted the fact of receipt of the pleader's notice dated 31-07-2010 which was

exhibited by the plaintiff as Ext.6. The defendants side also sent reply to the said notice dated 31-07-2010 through the reply letter being No. JNV/EKM/S-1/2010-11/1377(88) dated 10-08-2010 (Ext.8). In the said reply letter the defendant No.4 has communicated the plaintiff to take back his furniture which was after six months of the delivery of the said furniture. It was mentioned in the said letter that the defendant No.4 has issued letter to plaintiff on 21-03-2010 also, asking to take back the furniture, the said furniture being of poor quality. During cross-examination of PW.1, he was suggested that the defendant No.4 has issued a letter asking the plaintiff to take back the furniture on 21-03-2010, but the PW.1 has denied that suggestion. PW.1 has admitted that in the letter dated 10-08-2010, it was mentioned that another letter was issued on 21-03-2010. However, this is an admission regarding the fact that the letter dated 10-08-2010 also states about another letter dated 21-03-2010. This is not an admission that any letter dated 21-03-2010 was issued to plaintiff or received by the plaintiff. So, by this, the defendants could not lead any evidence that any letter was sent by the defendant No.4 to the plaintiff on 21-03-2010. It is just about the contents of letter dated 10-08-2010, which was issued by defendant No.4. This is admission by defendant No.4 only on his favour. However, according to section 21 of the Indian Evidence Act, 1872, admissions can not be proved by or on behalf of the person who makes it or by his representative in interest, subject to some exceptions

like dying declaration, or when it states about existence of any state of mind or body when such state of mind or body existed and is accompanied by conduct rendering its falsehood improbable or if it is relevant otherwise then as an admission. The defendants side could not adduce the said letter dated 21-03-2010. Under such circumstance, it appears that though the defendants side has claimed that the furniture supplied were of poor quality and not up to the specification of the quotation, no proof is found in support of that plea. Hence, due to absence of any evidence I have not found any reason to hold that the plaintiff has not supplied the furniture as per the specification of the quotation. Ld. counsel for the plaintiff has cited the decision of Hon'ble Supreme Court passed in *Vidhyadhar vs Mankikrao & another: AIR 1999 SC 1441*, wherein it is held that not entering the witness works by a party gives rise to inference against him. Seen. On the other hand, the plaintiff side by adducing oral as well as documentary evidence has proved that the plaintiff has supplied furniture of Rs. 1,00,430/- to defendant No. 4.

26. The plaintiff has claimed that the defendants/defendant No.4 have/has not paid the price of the furniture supplied. The defendants side also has not disputed the fact that the price of the furniture was not paid to the plaintiff. From the discussion of forgoing paragraphs, it appears that the plaintiff has supplied the furniture of Rs. 1,00,430/- to the defendant No.4 and it is not disputed that no payment was made to the plaintiff for

the furniture supplied. Hence, I am of the opinion that the Id. Trial Court has committed error by holding that no amount was due to the plaintiff by defendant No.4 and I hold that an amount of Rs. 1,00,430/- was due to the plaintiff by defendant No.4 for furniture supplied to defendant No.4.

Hence, issued No. 4 is decided **affirmative**.

Issue No.5 – Whether the plaintiff is entitled to 12 % interest on alleged outstanding due to defendant?

27. I have carefully gone through the entire pleadings of the parties and the evidences. On perusal of those nothing is found as to the date of payment or any interest. As this suit arose out of a contract by inviting tender, due to absence of any interest clause or fixed date of payment, I am of the opinion that the plaintiff is not entitled to any interest as claimed for from the date of submission of bill till filing of this suit.

28. Again the plaintiff has claimed future interest at the rate of 12% per annum from the date of institution of the suit till the recovery of decretal amount. There is no clause in the tender or in the contract regarding any interest. As such, it appears to me that a compensation at the rate of 6.5% p.a, which is the present interest rate of fixed deposit in SBI, would be a reasonable compensation that can be granted to the plaintiff from filing of the suit till recovery of the decretal amount. Hence, I hold that the plaintiff is entitled to compensation **at the rate of 6.5% p.a on the decretal amount from the date of**

institution of the suit till recovery of the decretal amount.

Issue No.6 – Whether the plaintiff is entitled to amount of Rs. 20,402/- as freight and labour charge?

29. The plaintiff has claimed Rs. 20,402/- as freight and labour charge. The bill of Purvanchal Transport Carriers of Rs. 20,402/- is exhibited by the plaintiff as Ext. 2. However, from the bill issued by the plaintiff which is exhibited as Ext.3, it appears that the said freight and labour charge was not included in the bill. Nothing is mentioned in Ext. 1 supply order regarding freight or labour charge. The first demand letter dated 29-06-2010 issued by the plaintiff to the defendants which is exhibited as Ext.4 is also silent about any freight or labour charge. The pleader's notice dated 31-07-2010 issued by the plaintiff to the defendants which is exhibited as Ext.6 is also silent about any freight or labour charge. The plaintiff has not adduced any document/agreement or bill to show that the defendant No.4 has to pay the freight or labour charge. At the time of filing the Money Suit, the plaintiff for the first time has claimed that the freight or labour charge was due by defendant No.4. But proof in support of his plea is not adduced by the plaintiff except the oral testimony of PWs. But as the suit arose out of a contract, in absence of any documentary proof showing the terms of contract that the freight or labour charge is due by

defendant No.4, I am of the opinion that the plaintiff side could not prove that the plaintiff is entitled to amount of Rs. 20,402/- as freight and labour charge.

Hence, issued No. 6 is decided **negative**.

Issue No.7 – Whether the plaintiff is entitled to any relief as claimed?

30. From the discussion of the issue No. 1 and 2, it appears that Id. Trial Court has territorial jurisdiction to try the suit and there is cause of action for the suit. From the discussion of the issue No. 3 and 4, it appears that the plaintiff has supplied furniture to Javahar Navodaya Vidyalaya as claimed and for that an amount of Rs. 1,00,430/- was due to the plaintiff by the defendant No.4. From the discussion of issue No. 5, this court has held that the plaintiff is entitled to compensation at the rate of 6.5% p.a on the decretal amount from the date of institution of this suit till the recovery of decretal amount. From the discussion of issue No.6, it appears that the plaintiff is not entitled to any freight or labour charge. As such, I hold that the **plaintiff is entitled to the decree and relief of recovery of Rs. 1,00,430/- with compensation at the rate of 6.5% p.a on the decretal amount from the date of institution of this suit till the recovery of decretal amount from the defendant No.4 along with cost of the suit.**

ORDER

31. The appeal is **allowed on contest with cost.**
32. The judgment and decree dated 27-01-2017 passed by Id. Munsiff No.1, Tezpur in Title Suit No.09 of 2011 is hereby **set aside.**
33. The appellant/plaintiff is **entitled to the decree and relief of recovery of Rs. 1,00,430/- with compensation at the rate of 6.5% p.a on the decretal amount from the date of institution of this suit till the recovery of decretal amount from the defendant No.4 along with cost of the suit.**
34. Prepare the decree accordingly.
35. Send down the case record of M.S No.09/2011 to the trial court with a copy of this judgement and decree.
36. Let copy of this Judgment be furnished to the parties subject to payment of cost.

Given under my hand and seal of this court on this the 13th day of September, 2022.

Dictated and corrected by me.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

APPENDIX

Plaintiff's witnesses:

PW-1: Sri Dilip Kr. Sinha, plaintiff

PW-2: Murali Rai

Defendant's witnesses:

NIL

Exhibits of the Plaintiff:

- Ext.1 : Supply order No. JNV/EKM/S-1/2009-2010/1071 dated 27-01-2010
- Ext.2 : Consignment note of Purvanchal Transport Carriers
- Ext.3 : Bill No. 1444 dated 10-12-2010
- Ext.4 : Letter dated 29-06-2010 addressed to the defendant No. 4
- Ext.5 : Postal receipt being No. SP ES532771857IN dated 29-06-2010
- Ext.6 : Pleader's notice dated 31-07-2010 addressed to the defendant No. 4
- Ext.7 : Postal receipt being No. RLADB2052 dated 31-07-2010
- Ext.8 : Letter being No. JNV/EKM/S-1/2010-11/1377(88) dated 10-08-2010

- Ext.9 : Notice under section 80, CPC dated 19-01-2011 addressed to the Defendants
- Ext.10 : Copy of the letter addressed to the superintendent of the Indian post
- Ext.11 to 14: Certificates issued by the Postal Dept. Tezpur
- Ext.15 : Letter of the reply being No.JNV/EKM/CC/2010-11/304-08 dated 10-02-2011

Exhibits of the defendants :

NIL

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur