

**Form no. (J) 2**

Heading of judgment in original suit/ case

**In the original court of the Munsiff No.2, Kamrup(M)**

Present: SMTI .BARNALI SARMAH, A.J.S

18<sup>th</sup> day of March,2017

MONEY SUIT NO. 293 OF 2011

1. SARDAR SAVINDER SINGH SETHI,  
S/O - SARDAR UJAGAR SINGH SETHI,  
SOLE PROPRIETOR OF M/S. G.D. MOTORS AND  
M/S. S.S. MOTOR VORKS,  
CHHATRIBARI ROAD, GUWAHATI – 781001  
DIST: KAMRUP, ASSAM

Plaintiff /s  
Petitioner/s

*versus*

1. SHRI GITAM KAKATI,  
PROPRIETOR OF M/S. JBS TRADING  
G.N.B. ROAD, NEAR M.L. BARUAH ROAD,  
SILPUKHURI, GUWAHATI - 781003  
DIST: KAMRUP (M), ASSAM

Defendant/s  
Opposite party/s

This suit/ case coming on for final hearing on 8-03-17 in the presence of –

Mr.M.JAIN , Advocate for the plaintiff; and  
S.K. GOSWAMI, R. KATHKATIA for the defendant,

and having stood for consideration to this day, the court delivered the following judgment-

**T.S. No – 293/2011**

**JUDGMENT**

1. This suit has been filed for realisation of Rs.1,04,763.84/- from the defendant.

2. The brief of the suit is that the plaintiff is carrying on the business of repairing & servicing of vehicles and also dealings in motor parts under the name and style of M/S. G.D. Motors and M/S. S. Motor Works as sole proprietor thereof having his places of businesses at Chatribari Road, Guwahati – 781001, Dist: Kamrup(M), Assam. The defendant is a businessman and is carrying on his business under the name and style of M/S JBS Trading, as sole proprietor thereof having his place of business at G.N.B. Road, near Silpukhuri, Guwahati – 781003, Assam. The defendant approached the plaintiff and requested for dealership of Relstar Lubricants. The plaintiff agreed to the same and the credit period of 30 days was decoded with mutual consent of the defendant. On assurance of the defendant, the plaintiff, believing bona fide and in good faith, supplied materials to the defendant on credit basis, the details of which is as follows:

Sl. No.	Bill No.	Date	Amount
1	225100005	06-05-2010	17,686.80
2	225100006	06-05-2010	19,927.50
3	225100007	06-05-2010	23,332.00
4	225100010	13-05-2010	16,088.80

5	TI-477	15-05-2010	3,030.00
6	TI-478	15-05-2010	2,345.00
			82,410.10

Inspite of repeated demands and reminders, the defendant did not make the payment of the outstanding dues amounting to Rs.82,410.10. Finding no other alternative, the plaintiff sent legal notice date 06-08-2011 demanding the payment of the outstanding dues with interest thereon, but inspite of service of notice, the defendant did not make the payment of the outstanding dues. The principal claim of plaintiff is Rs.82,410.10. The plaintiff is also entitled to interest @ 21% per annum from the date of bill which comes to Rs.23,353.74 till the date of filing of the suit. Thus the total claim of the plaintiff comes to Rs.1,04,763.84. The cause of action for the suit arose at Guwahati on 06-05-2010, 13-05-2010, 15-05-2010, 06-08-2011, and on various other dates when the plaintiff made the demand of the outstanding dues and the defendant did not make the payment thereof within the jurisdiction of this court.

3. Defendant has filed written statement and stated that the present suit is not maintainable in law as well as in the facts of the case. There is no cause of action for filing the present suit. The present suit is liable to be dismissed for not having any cause of action under Order VII, Rule 11 of Code of Civil Procedure. That present suit is not properly verified as per provision of Order VI Rule 15 of the Code of Civil Procedure and as such the present suit is liable to be dismissed for not filing proper form. The statement made in paragraph no. 1 that plaintiff is carrying on business of repairing and servicing of Vehicles and also dealing in Motor parts in the name and style M/S. G.D. Motors and M/S. S.S. Motor Works as a sole proprietor having place of business at Satribari Road, Guwahati is for the plaintiff to prove. The statement made in paragraph no. 2 that the defendant is doing business in the name of M/S. JBS Trading as a sole proprietor is true and the answering defendants admit the same. The statement made in paragraph no. 3 that the answering defendant approached the plaintiff and requested for dealership of Relstar Lubricants is false and untrue. This answering defendant has never approached the plaintiff and requested for dealership. There is no such

agreement with the plaintiff that there will be credit period of 30 days, is totally false and untrue. It is false and untrue that plaintiff has supplied materials to this answering defendant on credit vide bill No. 225100005 dated 06.05.2010 for an amount of Rs.17,686.80; Bill No. 225100006 dated 06.05.2010 for an amount of Rs. 19,927.50; Bill No. 225100007 dated 06.05.2010 for an amount of Rs.23,332.00; Bill No. 225100010 dated 13.05.2010 for an amount of Rs. 16,088.80; Bill No. TI-477 dated 15.05.2010 for an amount of Rs.3,030.00 and Bill No. T-478 dated 15.05.2010 for an amount of Rs.2,345.00. This defendant has not received any goods as stated in this paragraph for an amount of Rs.82,410.10. The plaintiff has intentionally did not disclosed the name of the supplied materials in this paragraph by the aforesaid bill.

4. The statement made in paragraph no. 4 is false and untrue. There is no such outstanding dues of Rs.82,410.10, as stated in this paragraph. The answering defendant has no any transaction with the plaintiff and there was no liability for such amount as stated in this paragraph. The statements made in paragraph no. 5 regarding notice demanding payment, this answering defendant deny the same as because there is no such liability as stated in this paragraph. The statements made in paragraph no. 6 that plaintiff is entitled for an amount of Rs.82,410.10 is not admitted as because defendant has no any such liability as stated in this paragraph. There is no cause of action for filing the present suit and same is liable to be dismissed with exemplary cost as per provision of section 35 A of Code of Civil Procedure.

On the basis of pleadings and materials available on record my predecessor has framed the following issues.

**ISSUE:**

1. **Whether there is any cause of action for the suit?**
2. **Whether the defendant had any transaction with the plaintiff as alleged in the plaint?**
3. **Whether the defendant is liable to pay Rs.1,04,763.84/- to the plaintiff?**

4. **To what other relief(s) if any the parties are entitled?**

5. The plaintiff has examined himself as witnesses in support of his case; whereas the defendant examined himself in support of his case.

I have heard the learned counsels for both the parties.

6. **DISCUSSION, DECISION AND REASONS FOR THE DECISION:**

Now let us discuss the materials on record and try to arrive at a definite finding as regards the issues in this suit.

**ISSUE NO.1--Whether there is any cause of action for the suit?**

7. The defendant would contend that the plaintiff does not have the cause of action for institution of this suit.
8. The cause of action is nothing but a bundle of material facts which a party must allege and prove to succeed in his case. The brief facts of the case is narrated above and the perusal of the same reveals that the plaintiff has alleged that On assurance of the defendant, the plaintiff, believing bona fide and in good faith, supplied materials and goods to the defendant on credit basis, the details of which is as follows:

Sl. No.	Bill No.	Date	Amount
1	225100005	06-05-2010	17,686.80
2	225100006	06-05-2010	19,927.50
3	225100007	06-05-2010	23,332.00
4	225100010	13-05-2010	16,088.80
5	TI-477	15-05-2010	3,030.00
6	TI-478	15-05-2010	2,345.00

82,410.10

But In spite of repeated demands and reminders, the defendant did not make the payment of the outstanding dues amounting to Rs.82,410.10. Thus the amount of Rs.85,000/- has remained outstanding. The above clearly shows that the plaintiff has the cause of action for instituting this suit for recovery of the same.

9. In view of the above it is held that the plaintiff has the cause of action for institution of the suit.

10. DECISION: The plaintiff has the cause of action for institution of the suit.

**ISSUE NO .2—**

**Whether the defendant had any transaction with the plaintiff as alleged in the plaint?**

11. The plaintiff alleged that is carrying on the business of repairing & servicing of vehicles and also dealings in motor parts under the name and style of M/S. G.D. Motors and M/S. S. Motor Works as sole proprietor thereof having his places of businesses at Chatribari Road, Guwahati – 781001, Dist: Kamrup(M), Assam. The defendant is a businessman and is carrying on his business under the name and style of M/S JBS Trading, as sole proprietor thereof having his place of business at G.N.B. Road, near Silpukhuri, Guwahati – 781003, Assam. The defendant approached the plaintiff and requested for dealership of Relstar Lubricants. The plaintiff agreed to the same and the credit period of 30 days was decoded with mutual consent of the defendant. On assurance of the defendant, the plaintiff, believing bona fide and in good faith, supplied materials to the defendant on credit basis and the details of the goods supplied to the defendant and its bills and outstanding amounts are as follows

Sl. No.	Bill No.	Date	Amount
1	225100005	06-05-2010	17,686.80
2	225100006	06-05-2010	19,927.50

3	225100007	06-05-2010	23,332.00
4	225100010	13-05-2010	16,088.80
5	TI-477	15-05-2010	3,030.00
6	TI-478	15-05-2010	2,345.00
			82,410.10

In spite of repeated demands and reminders, the defendant did not make the payment of the outstanding dues amounting to Rs.82,410.10.

The plaintiff as pw.1 exhibited the aforesaid bills vide exhibit no. 1 to 6 to substantiate their claim that there was monetary transaction between the plaintiff and the defendant. The defendant has denied about the monetary transactions with the plaintiffs however failed to adduced any sufficient evidence to rebut the evidence of the plaintiff in this regard.

12. The exhibits 1 to 6 containing the seal of M/S JBS Trading as purchaser of goods and materials from the plaintiffs but during cross-examination the Dw.1 denies about the seals. However the defendant is failed to substantiate his claim by establishing evidence that such seals are not belonged to M/S JBS Trading. On the contrary the exhibits 1 to 6 the bills in the form of tax invoices clearly establishing the monetary transaction between the plaintiff and the defendant.

Hence this issue is decided in positive.

**ISSUE NO.3:**

**Whether the defendant is liable to pay Rs.1,04,763.84/- to the plaintiff?**

13. The plaintiff would plead that plaintiff supplied materials to the defendant on credit basis and the details of the goods supplied to the defendant and its bills reveals that the outstanding amount against such bills is Rs.82,410.10, which the defendant is failed to pay within the specified time period.

14. The defendant has denied the above pleading and would contend that he had not purchased any materials from M/S Faredeal Overseas and the matter has already been settled ; it is pertinent to mentioned here that M/S Faredeal Overseas is not a party to this suit , hence the contention of the defendant is not sustained here in this present context ,he further contend that there is no outstanding amount to be paid .
15. The plaintiff has examined himself in support of his case. The plaintiff would depose that the defendant approached to plaintiff and requested for dealership of Relstar\_Lubricants. The plaintiff agreed to the same and the credit period of 30 days was decoded with mutual consent of the defendant. On assurance of the defendant, the plaintiff, believing bona fide and in good faith, supplied materials to the defendant on credit basis. The defendant inspite of several request did not paid the outstanding amount of Rs 82,410.10 /- to the plaintiff.
16. The plaintiff has produced the said tax invoices cum bills showing the monetary transaction between the parties and same are marked as exhibit 1 to 6 .The exhibits 1 to 6 showing the transactions as follows :Exhibit no.1- tax invoices no 225100005 dated 6/5/2010 containing the amount of Rs. 17 ,686.80, Exhibit no.2- tax invoices no 225100006 dated 6/5/2010 containing the amount of Rs. 19,927.80 , Exhibit no.3- tax invoices no 225100007 dated 6/5/2010 containing the amount of Rs.23,332.00 , , Exhibit no.4- tax invoices no 225100010 dated 13/5/2010 containing the amount of Rs. 16,088.80, Exhibit no 5 and 6 containing the bills as per the contention of the plaintiff in the form of tax invoices such as TI-477 dated 15-05-2010 for Rs.3,030.00 and TI-478 dated 15-05-2010 for Rs. 2,345.00.and seal and signature of the defendant are denied by the defendant but admittedly not adduced any evidence to show that such seal and signature on the exhibits 1 to 6 are manufactured and fabricated .
17. The plaintiff would state that the defendant did not repay the outstanding amount of Rs 82,401.10 /- as promised as such he requested the defendant to repay the same, the exhibit s no 8 is the notice issued to the defendant dated 25/8/2010 to pay the outstanding amount as



shown in the exhibits no 1 to 4, exhibit 8 (i) is the seal of G.D Motors .Exhibit .9 is the reminder of the said notice contains the total outstanding amount of Rs 82,401.10 /- contains the seal of G.D Motors as exhibit no 9 (i).Again the exhibit no .11 is the demand notice send to the defendant along with the postal receipt marked as exhibit no 12.

The plaintiff as pw.1 would further depose that inspite of several demand notices and reminders the defendant has not cleared the outstanding amount ; as such he issued a legal notice marked as exhibit no 11demanding the balance outstanding, but to no avail., the defendant neglected to make the payments; hence this suit for recovery of the same.

18. The defendant cross examined the plaintiff, but nothing material could be elicited from the cross examination so as to doubt or disbelieve him. The plaintiff would unequivocally state in his cross examination that the defendant put her seal marked as exhibit 1(2),2 (2), 3(2), 4(2), 5(2), 6 (2) in the bill cum tax invoices showing the monetary transactions and outstanding amount . However, the defendant as Dw.1 deposed during cross examination that such seal is not belong to his business establishments JBS Trading , the Dw.2 deposed that those seals are manufactured but in order to establish the same that such seals are manufactured and fabricated the defendants have not adduced any evidence not even asserted the same facts in the written statement. Hence the contention of the defendant is not established.

19. There is nothing to doubt or disbelieve the said PW1 and on the documents exhibited in this case. The perusal of the evidence of the PW1 shows that the evidence of plaintiffs witness is consistent and lend support and credibility to the contentions raised by the plaintiff himself..

20. In addition to the above, except Dw.1 other listed witnesses of defendant did not appear to adduce evidence and not appeared in the witness box to support the evidence of defendant .

21. In view of the above discussion it is held that on perusal of the exhibit 1 to 6 shows that the defendant is liable to pay the outstanding amount of Rs 82,410.10 /- with interest at the rate of 21 % per annum ,as regards to which the defendant failed to adduced evidence in order to rebut the evidence adduced by the plaintiff .As such the evidence adduced by plaintiff is become confirmed and absolute. .The plaintiff is entitled to Rs.1,04,763.84/- from the defendant.

This issue is decided in positive.

**ISSUE NO.4----**

**To what other relief(s) the parties are entitled to?**

22.In view of the discussions made above and the decisions reached in the foregoing issues wherein it is held that the plaintiff is entitled to the decree as prayed for.

23. ORDER

24.The suit of the plaintiff is decreed on contest with cost plaintiff is entitled to Rs.1,04,763.84/- from the defendant.

Prepare decree accordingly.

Given under my hand and the seal of this court on this the 18<sup>th</sup> day of March ,2017 at Guwahati.

Smti.B.Sarmah,A.J.S  
Munsiff No.2, Kamrup(M).

APPENDIX -

Evidence of Plaintiff witness no. 1 : PW.1 – Sardar Savinder Singh Sethi

Exhibit – 1 to 6 – Are the Tax Invoices.

Exhibit – 1(1) to 4(1) – Are the signatures of Shri Jitumoni Baruah.

Exhibit – 1(2) to 4(2) – Are the signatures of the employees under seal of the concern of the defendant in acknowledgement of the receipt of the materials.

Exhibit – 5(1) and 6(1) – Are the signatures of Shri Prasanta Sarkar.

Exhibit – 7 – Is the Challan.

Exhibit 7(1) – Is the signature of Shri Debasis Das.

Exhibits – 8 & 9 – Are the office copies letters dated 09-07-211 and 25-+08-2010 respectively.

Exhibits – 8(1) & 9(1) – Are the signatures of Shir Prasanta Dhar.

Exhibit – 8(2) – Is the signature of one of the employees of the defendant in acknowledgment of receipt of the exhibit-8.

Exhibit – 10 – Is the postal receipt dated 25-08-2010.

Exhibit – 11 – Is the office copy of the legal notice dated 06-08-2011..

Exhibit – 11(1) and 11(2) – Are the signature of plaintiff's advocate, Shri M.K. Jain, Advocate.

Exhibit – 12 – Is the postal receipt dated 09-08-2011.

Evidence of Defendant as defendant witness no. 1: DW.1 – Sri Gitam Kakati.

Exhibits –nil.

Smti.B.Sarmah,A.J.S  
Munsiff No.2, Kamrup(M)