

# Electronics & Controls Power Systems ... vs M/S.Powerwin Systems on 25 July, 2015

IN THE COURT OF THE XLI ADDL.CITY CIVIL JUDGE  
AT BANGALORE [CCH.No.42]

PRESENT: SRI.BASAVARAJ B.COM., LL.M.  
XLI Addl. City Civil Judge

Dated this the 25th day of July 2015.

O.S.No.7764/2013

PLAINTIFF : Electronics & Controls Power Systems Pvt.  
Ltd., A Company incorporated under the  
Companies Act, 1956, Having its  
Registered Office at No.29/A, 2nd Phase,  
Peenya Industrial Area, Bangalore-560  
058. Rep. by its Director and Authorized  
Representative Mrs.Vidya Iyer.

(By Sri.K.D.O., Advocates)

V/s.

DEFENDANTS : 1. M/s.Powerwin Systems,  
Building No.E-2-XXIII/363  
Vichattumadom Building,  
Vayaskarakunna, M.C. Road,  
Kottayam-686 039 (Kerala)  
Rep. by its Propreitor/Managing Director  
Mr.Francis Joseph  
Also At: Blue Mount Building,  
Near Head Postal office, M.C. Road,  
Kottayam-686 039, (KErala)  
Branch office at : Plot No.164,  
H.No.10-2-229, West Marredpally,  
Secunderabad-500 026. Rep. by its  
Proprietor/Managing Director,  
Mr.Francis Joseph.

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2. Mr.Francis Joseph,  
Proprietor/Managing Director  
M/s.Powerwin Systems  
Blue Mount Building,  
Near Head Post Office, M.C. Road,  
Kottayam-686 039.  
Kerala State

(By Sri S.K., Advocate)

## JUDGMENT

The plaintiff has filed this suit for the recovery of Rs.2,04,718/- from the defendants with interest @ 24% p.a. from the date of suit till realization and for such other relief's in the facts and circumstances.

2. The plaint averments in brief are as under:-

The plaintiff is a company registered under the companies Act, 1956. It has Registered Office at Bangalore. The plaintiff is a manufacturer and dealer in online UPS Systems, Inverters, stabilizers, DC Power Supplies Etc., The defendant No.1 is a proprietary concern. The 2nd defendant is its proprietor. The defendants being one of the customers of the plaintiff, used to purchase goods on credit from the plaintiff. The defendants had entered into a rate contract dt.18.2.2010 with the plaintiff for the supply of TWO KVA UPS Systems with 72V DC with single Phase input and out put with 8 AMPS Charger to support 80 AH Battery for a value of Rs.17,000/- each plus applicable taxes for a period from 17.2.2010 to 31.7.10 for 125 numbers on terms and conditions contained in the said agreement dt.18.2.2010. Accordingly, the defendants had placed following purchase orders with the plaintiff for the supply of goods described therein viz., Sl. Purchase Amount Date No. Order (Rs.) 1 610 21.10.2010 51,969/-

2 611 23.10.2010 34,646/-

3 612 27.10.2010 17,323/-

4 613 03.11.2010 17,323/-

TOTAL VALUE 1,21,261/-

Accordingly, the defendants had purchased the goods worth Rs.1,21,261/- on credit and took delivery of the same under the following credit invoices:

Sl.	Credit Bill	Date	Amount
No.	No.		(Rs.)
1	230	23.10.2010	34,646/-
2	233	25.10.2010	51,969/-
3	234	27.10.2010	17,323/-
4	238	18.11.2010	17,323/-
	TOTAL VALUE		1,21,261/-

The details of the Delivery Challans are as under:

(a) Delivery Challan No.400 dt.23.10.2010

(b) Delivery Challan No.403 dt.25.10.2010

(c) Delivery Challan No.404 dt.27.10.2010 and

(d) Delivery Challan No.409 dt.18.11.2010 As on 18.11.2010, apart from accrued interest, the defendants were due to the plaintiff in a sum of Rs.1,21,261/- due and payable to the plaintiff. When the plaintiff, by its letter dt.1.3.2011, demanded and called upon the defendant to pay the said sum of Rs.1,21,261/-

due and payable by the defendants towards the afore said Credit transactions, over phone the 2nd defendant had admitted the liability and sought for grant of time to make the payment. In spite of the plaintiff granting them sufficient time, the defendants have failed and neglected to pay the amount due and payable to the plaintiff. The defendants have rendered themselves liable to pay interest at 24% p.a. on the outstanding amount of each invoice to the plaintiff. As on 19.9.2013 the defendants were due to the plaintiff in a sum of Rs.2,03,718/- i.e., Rs.1,21,261/- towards principal and Rs.82,457/- towards accrued interest @ 24% per annum on the said principal amount from 18.11.2011 to 19.9.2013. The plaintiff got issued a legal notice dt.27.9.13 calling upon the defendants to pay the amount. The said notice is duly served on the defendants and the defendants have replied the same by admitting the transactions but refusing to meet the liability on untenable grounds. In spite of service of notice of demand and in spite of plaintiff granting time to the defendants, the defendants have failed and neglected to pay the said sum due and liable to be paid by them to the plaintiff. The plaintiff has maintained the books of accounts of day today transactions of its business in the computer including the account of all the transactions of the defendants reflecting the credit purchases, the return of goods, the cash, cheques payment and return of cheques. So, prays to decree the suit.

3. The defendants appeared through their counsel and filed written statement and pleaded ignorance regarding the branches of the plaintiff across the country. The defendants admitted that defendant No.1 is a proprietary concern and having its office at Kottayam (Kerala) and they were the customers of the plaintiff and the goods were purchased on credit basis under certain terms and conditions and the rate contract was accepted by the defendants upon the terms and conditions agreed upon by the plaintiff and defendants. The defendants inter alia contended that they had placed orders for supply of goods described in the plaint and they have made some payments towards the orders placed by the defendants. The defendants are not liable to pay the amount of Rs.1,21,261/- towards the bill amount raised by the plaintiff. The defendants have never disagreed of the receipt of the goods which was supplied by the plaintiff. The defendants are not liable to pay any amount claimed by the plaintiff. The defendant has never received any letter stated by the plaintiff. The business was done by both the parties understanding the terms of the business and there by there is no illegality. The defendant has not committed any breach of any terms and conditions agreed between the plaintiff and the defendant where by the defendant is not liable to pay any

interest as claimed by the plaintiff. The defendant has replied to the notice issued by the plaintiff with detailed breach of terms and conditions agreed between the plaintiff and the defendant. Since, the agreement stated by the plaintiff was signed at Kerala and the materials was supplied at Kerala therefore this Court has no jurisdiction to try the suit. The agreement was signed by both the parties at the defendants office hence this Court is barred from trying this suit. The purchase of goods were done upon certain terms and conditions wherein both the parties have agreed upon. As per the terms the plaintiff company or their representatives had to give service to the goods supplied to the customers of the defendants. All the goods were under the warranty and to be serviced as and customers call upon. The defendant had done several business transaction with the plaintiff and till today has not kept any balance amount which had to be paid to the plaintiff company. The defendants have placed huge orders to the plaintiff company believing that they shall follow the agreed terms and conditions entered between them and from the date of supply and installation of the goods. The defendants customers were facing some or the other problems in the goods supplied that is UPS and other allied products. The plaintiff being a registered company and as they claimed that it is a reputed company and believing the same the defendants fell into the trap of the plaintiff and due to which the defendant had to face several threats and loss of business by the defendants customers. The defendants were producing the email correspondence done between the defendants and one of its customers to show its bonafide and one of the customers to whom the defendants had supplied goods of the plaintiff company and the said customer had several branches to which a huge volume of goods were supplied by the defendants and from the date of inspection itself the complaints were lodged to the defendants and the same was forwarded to the plaintiff company also. The plaintiff company have never bothered to rectify the same inspite of the goods being under warranty period. The plaintiff did not initiate any action to repair or rectify the goods supplied by them. Therefore the defendant did not have any other means but to engage a third party to rectify and service the goods supplied by the plaintiff for which the defendant had to spend huge money to pay the third party who serviced and rectified the goods supplied by the plaintiff. The defendant had suitably replied to the notice issued by the plaintiff company. The defendants are not liable to pay any amount to the plaintiff company as such the plaintiff company since they have breached the terms of the agreement due to which the defendant had to spend huge amount to rectify and replace the defected parts in the goods supplied by the plaintiff. The plaintiff is liable to pay damages for causing damage to the reputation of the defendant and the amount spend to rectify the defects through third party by paying their service to maintain the defective goods supplied by the plaintiff hence the defendant is not liable to pay any amount as claimed by the plaintiff in the suit. Except the above the defendants denied the entire plaint averments. Hence, prayed to dismiss the suit.

4. The plaintiff in order to prove the case has examined its Director cum authorized representative Mrs.Vidya Iyer as PW-1 and has got marked 20 documents at Ex.P.1 to Ex.P.20. The defendants have examined defendant No.2 as DW-1 and has got marked 7 documents at Ex.D1 to Ex.D7.

5. Heard the arguments of the learned counsel for the plaintiff and the defendant.

6. On the basis of the above materials, the following issues are framed by my learned predecessor in office:-

1. Whether the defendant proves that the goods supplied by the plaintiff were defective and the plaintiff failed to rectify the same?

2. Whether the defendant proves that this suit has no territorial jurisdiction to try this suit?

3. Whether the plaintiff is entitled to recover an amount of Rs.2,04,718/-

from the defendant with interest at 24% p.a.?

4. What decree or order?

7. My findings to the above issues are as under:

ISSUE No.1 - In the Negative, ISSUE No.2 - In the Negative, ISSUE NO.3 - In the Affirmative, ISSUE NO.4 - As per the final order, for the following:

#### REASONS

8. Issue No.1:- It is the case of the defendants that the goods supplied by the plaintiff were defective and the plaintiff failed to rectify the same.

9. There is no dispute that the defendant purchased the 2 KVA UPS systems with 72 V DC with single phase input and output with 8 AMPS charger to support AH battery for value of Rs.17,000/- each + applicable taxes. The Ex.P.2 is the rate agreement which shows the same. There is no dispute that the plaintiff supplied the goods to the defendants as per the Ex.P.16 to Ex.P.19 delivery challans. There is no dispute that the plaintiff has raised Ex.P.3 to Ex.P.6 and Ex.P.12 to Ex.P.15 invoices against the purchase orders of the defendants. As stated above the defendant contended that the goods supplied by the plaintiff were defective and the plaintiff failed to rectify the same and hence not liable to pay the amount.

10. The Director and the authorized representative of the plaintiff firm in view of the authorization under the Ex.P.1 Board of Resolution filed her affidavit in lieu of examination in chief as P.W.1, wherein she has reiterated the averments made in the plaint. During the course of the cross-examination the PW-1 denied that there was only oral contract between the plaintiff and the defendants. The PW-1 admitted that they will provide service to the instruments during the warranty period which they have supplied where there is manufacturing defect. It is suggested to the PW-1 that the company people of the plaintiff rectified the defects that were in the products which are mentioned in Ex.P.2 and she admitted the same. The PW-1 denied that the plaintiff company supplied faulty products to the defendants and did not provide the services to repair and as a result of it the defendants had to incur huge loss. During the course of the cross-examination of PW-1 the Ex.D.1 and 2 are confronted to him. Also during the further examination in chief of DW-1 the defendants produced the same copies which are confronted to the PW-1 as per Ex.D.1 and Ex.D.2 and they are also marked as Ex.D.1 and 2. On perusal of the Ex.D.1-Email copies of complaints by

the customers and Ex.D.2-Service reports of the plaintiff it is clear that the customers have purchased the UPS and other materials supplied by the plaintiff and they have complained to the defendants regarding the defects in the products and the same were repaired by the persons of the plaintiff company. Though the defendants contended in the written statement that they have written many letters to the plaintiff to correct the defect in the goods but any one of such letters is produced by them. The plaintiff got issued legal notice dt.27.9.2013 through his counsel at Ex.P.8 calling upon the defendants to pay the suit claim. To this the defendants replied as per Ex.P.10 and in that it is stated that because of the irresponsible attitude of the plaintiff in correcting the defects the defendants have engaged another company by name PAE Limited for doing the warranty machine service and incurred Rs.32,775/-, Rs.60,000/- and Rs.32,775/- and in all Rs.1,60,000/- and after deducting the cost they are liable to pay Rs.47,261/-. The defendants in their written statement not at all stated the amount spent regarding servicing charges and also there is no suggestion to the PW-1 during the course of cross-examination. If, really the defendants have spent any amount then they would have stated the same in the written statement and also suggested the same to the PW-1 during the course of the cross-examination. So, the plaintiff company has rectified the defects in the materials supplied by it which are normal defects or repairs. Hence, it cannot be said that the goods supplied by the plaintiff were defective and the plaintiff failed to rectify the same. Hence, issue No.1 is answered in the negative.

11. ISSUE NO.2:- The defendant taken contention that in the written statement as this Court has no jurisdiction to try the suit as the agreement is signed at Kerala and materials was supplied at Kerala. It is elicited in the cross-examination of the PW-1 that the materials pertaining to this case was stocked at Hyderabad Office and from there it was delivered to the defendant at the place of destination. It is clear from the cause title address of the defendants that the office of the defendants situated at Kottayam, Kerala State. As stated above the Ex.P.1 is undisputed document. In Ex.P.1 it is clearly mentioned as all disputes are subject to competent courts in Bangalore jurisdiction only. It is established position of law that generally by agreement the jurisdiction of the Court cannot be decided and when the place of business is more than one then at any one place the suit can be filed. The cause title of the plaintiff shows the address of Bangalore. The Ex.P.1 shows the address of the plaintiff as Palarivattom, Kochi. The Ex.P.5 to 7 discloses the address of the plaintiff as Secundrabad. Hence, the plaintiff can file the suit for recovery of money in Bangalore. So, this Court has got jurisdiction to try this suit. Hence, the defendant failed to prove that this court has no territorial jurisdiction to try this suit. So, issue no.2 is answered in the negative.

12. ISSUE NO.3:- In view of my findings on issue No.1 that the defendant failed to prove the good supplied by the plaintiff were defective and the plaintiff failed to rectify the same and the Ex.P.11 and Ex.P.20 ledger account shows that the defendants are due of Rs.1,21,261/-. Though the DW-1 voluntarily deposed that one UPS was returned to the plaintiff but in this regard no document is produced by the defendants. The Ex.P.10 which is the reply notice of the defendants dt.9.10.2013 also do not disclose anything regarding returning of one UPS to the plaintiff. It is suggested to the PW-1 that the defendants have paid the entire amount and they are not due of any amount. But to prove the same the defendants have not produced any document. So, defendants are liable to pay Rs.2,04,718/- to the plaintiff along with interest @ 24% per annum from the date of suit till the date of realization. Hence, issue No.3 is answered in the Affirmative.

13. ISSUE No.4: In view of my finding on issue no.1 to 3, the suit filed by the plaintiff has to be decreed with costs. In the result, I proceed to pass the following :

ORDER The suit of the plaintiff is decreed with costs. The defendants are liable to pay an amount of Rs.2,04,718/- to the plaintiff with interest at 24% per annum from the date of suit till realization.

Draw the decree accordingly.

(Dictated to the Stenographer directly on the computer, thereafter corrected and then pronounced by me in the open court, on this the 25th day of July 2015).

( BASAVARAJ ) XLI Addl. City Civil Judge, Bangalore.

ANNEXURE I. List of witnesses examined on behalf of :

a) Plaintiff's side:

P.W.1                      Mrs.Vidya Iyer

b) Defendant's side:

D.W.1                      Francis Joseph

II. List of documents exhibited on behalf of :

a) Plaintiff's side:

Ex.P.1	Copy of board of resolution
Ex.P.2	Copy of agreement of rate contract
Ex.P.3 - Ex.P6	4 invoices
Ex.P.7	Office copy of demand notice
Ex.P.8	Office copy of legal notice
Ex.P.9	Unserved postal cover
Ex.P.10	Reply
Ex.P.11	Ledger extract
Ex.P.12-Ex.P.15	4 copies of invoices
Ex.P.16-Ex.P.19	4 delivery challans
Ex.P.20	Ledger Account

b) defendants side :

Ex.D.1	Office copy of service report dt.8.12.10
Ex.D.2	Invoice entered with PAE Ltd.,
Ex.D.3	Invoice
Ex.D.4	Office copy of reply
Ex.D.5	Guarantee card
Ex.D.6	Purchase order

Ex.D.7

Office copy of complaint

( BASAVARAJ )  
XLI ADDL.CITY CIVIL JUDGE  
BANGALORE

25.07.2015  
P-KD0  
D1& D2-SK

Judgment pronounced in the  
open court vide separate order.

ORDER

The suit of the plaintiff is decreed with costs.

The defendants are liable to pay an amount of Rs.2,04,718/- to the plaintiff with interest at 24% per annum from the date of suit till realization.

Draw the decree accordingly.

( BASAVARAJ ) XLI ADDL.CITY CIVIL JUDGE BANGALORE