

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL SUMMARY SUIT NO.357 OF 2019

Executive Trading Company Private Limited,
a company incorporated under the provisions
of the Companies Act, 1956 having its
registered office at G-1, Ashirwad Building,
Ahmedabad Street, Carnac Bunder,
Mumbai 400009.

... Plaintiff

Vs.

Geeta Mercantile Private Limited,
206, Zafryn Chambers, 2nd Floor,
Near LOC, Sewree,
Mumbai 400015.

... Defendant

Mr. Mikhail Behl with Ms. Vibha Joshi i/by M/s RHP Partners, Advocates
for the Plaintiff.
None for the Defendant.

CORAM : ABHAY AHUJA, J.

DATE : 30 APRIL, 2024.

PC. :

1. This matter has been listed for ex-parte decree in as much as the Defendant has not entered appearance, although Writ of Summons has been served on 8th March, 2019. Learned counsel for the Plaintiff has filed affidavit dated 14th March, 2019 of service of Writ of Summons.

2. Since despite service of Writ of Summons, no appearance has been

entered by the Defendant, in view of Order XXXVII Rule 2 Sub-Rule 3 of the Code of Civil Procedure, 1908 ("CPC"), the allegations in the plaint are deemed to be admitted and the Plaintiff is entitled to Judgment forthwith. In the circumstances, the Plaintiff has sought a decree in the Suit under Order XXXVII of the CPC.

3. The claim in the suit arises out of a supply of miscellaneous metal bars, coins and sheets in respect whereof the Defendant had placed several orders on the Plaintiff in the month of June, 2017. The agreed terms were :

- a. The bill amounts would be payable immediately or would attract 24% p.a. interest;
- b. Any complaints as regards quality, quantity or condition were to be raised/notified to the Plaintiff within 2 days of the dispatch of the goods.
- c. The goods would be collected by the Defendant from a warehouse maintained by the Plaintiff at Taloja, Navi Mumbai.
- d. The parties agreed that only the courts in Mumbai would have jurisdiction.

4. Seven invoices were accordingly raised by the Plaintiff on the Defendant based on which the claim of the Plaintiff has been filed in the suit. The particulars of claim at Exhibit B is extracted as under :-

Sr. No.	Invoice Date	Invoice No.	Products	Total Bill Amount (in Rs.)	Amount Received	Outstanding Amount
1	June 7, 2017	COM/00002/2017-18	TMT BARS	28,889,784		28,889,784
2	June 7, 2017	COM/00003/2017-18	TMT BARS	26,582,556		55,472,340
3	June 8, 2017	COM/00007/2017-18	MS ROUND BAR	40,495,487		95,967,827
4	June 8, 2017	COM/00008/2017-18	H.R.COIL/ SHEET	42,695,100		138,662,927
5	June 10, 2017	COM/00009/2017-18	H.R.COIL/ SHEET	40,946,535		179,609,462
6	June 10, 2017	COM/00011/2017-18	CR COIL/SHEET	39,696,589		219,306,051
7	June 12, 2017	COM/00014/2017-18	H.R.COIL/ SHEET	34,067,219		2,53,373,270
			TOTAL PRINCIPAL AMOUNT	2,53,373,270		
			TOTAL RECEIVED AMOUNT			

5. The Plaintiff raised the aforesaid invoices from time to time in relation to the goods supplied to the Defendant for a period from 7th June,

2017 to 12th June, 2017. It has been submitted in the plaint that the Defendant never raised any dispute as to the quality, weight, condition of the goods supplied to them. That the goods supplied by the Plaintiff have been accepted by the Defendant in the usual course of business without any protest/demur about the quality/quantity of the terms of the invoices raised. It has been submitted that the invoices and the goods sold thereunder have been duly received by the Defendant. The Defendant collected the goods from the warehouse of the Plaintiff at Taloja, Navi Mumai.

6. The Plaintiff has submitted that the Plaintiff was diligently supplying goods to the Defendant and was also raising the invoices on the Defendant in terms of orders placed and the total invoices raised by the Plaintiff upon the Defendant from 7th June, 2017 to 12th June, 2017 amounted to Rs.25,33,73,270/- against the goods supplied and that Defendant had made no payment against the said invoices raised in the year 2017. That despite multiple reminders and assurance, the entire amount from the Defendant remained outstanding.

7. The copies of the invoices have been annexed to the plaint at Exhibits A-1 to A-7.

8. The learned counsel further tenders across the Bar affidavit dated 25th April, 2024 of Mr. Pankaj Sureka, Director of the Plaintiff in lieu of examination-in-chief on behalf of the Plaintiff under Order XVIII Rule 4 of the CPC alongwith documents including the certificate dated 4th April, 2024 issued by the Deputy Commissioner of Sales Tax, Mumbai containing the audit report in Form-704 of the Defendant indicating that supplier-wise VAT purchases made by the Defendant including that from the Plaintiff of a gross total amount of Rs.25,33,73,270/- as well as the certificate.

9. It is submitted that in order to show delivery and acceptance of the goods by the Defendant, the Plaintiff on the advice of its lawyers, through its Advocates made an application to the Deputy Sales Tax Commissioner, Mumbai for issuance of Form-704 filing of the Defendant for the relevant period. That in pursuance of the said Application dated 3rd April, 2024, the Deputy Commissioner, Sales Tax, Mumbai has issued certified copy of the Defendant's audit report in Form-704 under the Maharashtra

Value Added Tax Act, 2002 (“MVAT”) which indicates that the Defendant has shown the purchases as local tax purchase from the Plaintiff, identifiable through its VAT and CTS TIN No.27040237964 that the gross total amount is Rs.25,33,73,270/- i.e. aggregate of the invoices that form the subject matter of the claim in the suit. It is submitted that the Defendant has claimed input VAT credit for the price of the goods covered by the subject matter invoices.

10. I have perused the said annexure-J which has been issued by the Deputy Commissioner of the Sales Tax and also signed by him and the same indicates that the Plaintiff who was one of the suppliers of the Defendant has sold to the Defendant purchase of a gross total amount of Rs.25,33,73,270/- which tallies with the total amount of the invoices.

11. The Plaintiff has submitted that the Defendant received and accepted the goods without demur and/or protest and/or used the same for their commercial benefit but wrongfully failed to make payment towards the invoices in respect of the goods supplied and that the outstanding sum as on 31st December, 2018 alongwith interest of 24% p.a. aggregates to Rs.34,11,71,279/- and the same is due and payable

in terms of the invoices with a further interest at the rate of 24% p.a. from 31st December, 2018 till the date of the filing of the suit and thereafter, till payment and/or realization as set out in the particulars of claim reproduced above.

12. Mr. Mikhail Behl, learned counsel for the Plaintiff submits that the present Suit has been filed for recovery of the outstanding amount and as the Defendant had agreed to make payments to the Plaintiff immediately upon raising of invoices as per terms and condition No.1 of the invoices and in the event of failure to make immediate payment, as per Clause-I the Plaintiff is entitled to 24% interest p.a.

13. That the invoices having raised from 7th June, 2017 to 12th June, 2017 and the suit that has been filed on 30th January, 2019 is within the period of limitation.

14. That the invoices were drawn and raised on the Defendant in Mumbai; the goods were sold and supplied from Mumbai; the payment to the Plaintiff was to be made at Mumbai and therefore, the entire cause of action has arisen within the jurisdiction of this Court and that this Court has jurisdiction to try, entertain and dispose of the suit.

15. In the above circumstances and in view of the fact that the Defendant has been served with the Writ of Summons on 8th March, 2019 and has failed to enter appearance before this Court within the stipulated period of 10 days, the allegations in the plaint are deemed to be admitted, the Plaintiff is entitled to a decree.

16. In the circumstances, I pass the following order :-

(i) Suit is decreed in terms of prayer clause (a) which reads thus :-

(a) that Defendant be ordered and decreed to pay to the Plaintiff the sum of Rs.34,11,71,279 (Rupees Thirty Four crores Eleven lakhs Seventy One thousand Two hundred Seventy Nine) as per Particulars of Claim (Exhibit B herein) with further interest on the principal sum at the rate of 24% per annum from the date of the suit till payment and/or realization.”

(ii) The Plaintiff will be entitled to interest on the decretal amount of Rs.34,11,71,279/- at the rate of 24% p.a. from the date of the suit till payment and /or realization and costs.

(iii) Refund of court fees as per rules.

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(ABHAY AHUJA, J.)

