

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

**SUMMONS FOR JUDGMENT NO.8 OF 2024
IN
COMMERCIAL SUMMARY SUIT NO.16 OF 2023**

Brainer Impex Limited

... Plaintiff

Vs.

Sanghvi Land Developers Private Limited and ors. ... Defendants

Mr. Harjot Singh Alang i/by M/s Raval Shah & Co., Advocate for the Plaintiff.

Ms. Janhavee Joshi with Ms. Komal Patil i/by Mr. Manmohan Rao, Advocates for the Defendants.

CORAM : ABHAY AHUJA, J.

DATE : 12 APRIL, 2024.

PC. :

1. This matter has been circulated at the behest of the Plaintiff who is currently in liquidation and being represented by a Liquidator viz. Mr. Vishram Panchpor.

2. Mr. Harjot Singh Alang, learned counsel appears for the Plaintiff-Liquidator and submits that since the pleadings were complete and the matter was partly argued earlier, the matter be taken up.

3. This matter was kept back in the morning session, as the learned counsel were to argue the Summons for Judgment. When the matter is called out in the afternoon session and heard for quite some time, it transpires that by order dated 29th January, 2024 of the National Company Law Tribunal, Mumbai (“NCLT”) in a Petition against the Defendant No.1 under section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”), moratorium has been declared under section 14 of the IBC against the Defendant No.1 and has commenced from that date and therefore the Summons for Judgment against the Defendant No.1 cannot be proceeded with.

4. Mr. Singh would submit that therefore in paragraph No.7 of the rejoinder dated 21st February, 2024, the Plaintiff has submitted that no reliefs would be pressed against the Defendant No.1 in the Summons for Judgment.

5. Both the learned counsel for the Plaintiff and the Defendants have argued the Summons for Judgment.

6. At the outset, it is not understood as to how three separate causes

of action against these separate legal entities have been joined by the Plaintiff.

7. Be that as it may, Mr. Singh has submitted that there are three claims of the Plaintiff against the three Defendants who are three companies and that in view of the moratorium under section 14 of the IBC against the Defendant No.1, he would not press any claim against the Defendant No.1 at this stage and that this Court may adjourn the claim against the Defendant No.1 *sine die* until the moratorium is lifted which learned counsel for the Defendants agrees.

8. As regards the Defendant No.2 and the Defendant No.3, Mr. Singh would submit that as against the Defendants No.2 and 3, he has paid 100% advances on the invoices for supply of goods from those Defendants to the Plaintiff which never came through and therefore, as an arrangement between the Plaintiff and the Defendants until the return of the advances the Defendants agreed to pay interest to the Plaintiff and as far as the Defendants No.2 and 3 are concerned, the last of such interest was respectively paid on 25th April, 2016 and 3rd August, 2016 and therefore, the suit has been filed on the basis of the invoices at

pages 69 and 70 and the ledgers at pages 76 and 79 of the plaint.

9. Mr. Singh would submit that there is no defence or any issue raised let alone a triable issue on behalf of the Defendants No.2 and 3 and this Court sign judgment in favour of the Plaintiff and against the said Defendants.

10. Ms. Janhavee Joshi, learned counsel appears for the Defendants and submits that this is not a case of supply of goods but of a loan which was arranged by the Plaintiff for the Defendants against the properties of the Defendants which were mortgaged to a bank and that the Plaintiff is an unlicensed money-lender. Learned counsel seeks to draw this Court's attention to Exhibit A of the sur-rejoinder in support of her contention.

11. The learned counsel also raises the two other issues of privity of contract and limitation. Learned counsel submits that there is no privity of contract between the Plaintiff and the Defendants No.2 and 3 and therefore, this suit is not maintainable. Further learned counsel submits that as can be seen from the invoices from Defendants No.2 and 3, the invoices are dated 22st August, 2011 and 15th September, 2011 and that

since the suit that has been filed on 18th September, 2018, it is barred by limitation.

12. I have heard the learned counsel.

13. A perusal of the invoices suggests that the said invoices are proforma invoices and have been raised by Sanghvi Timber Mart upon Brainer Financial Technologies Limited although neither of these entities appear to be parties to the suit. Clearly there appears to be an issue of privity of contract between the Plaintiff and the Defendants No.2 and 3. Even assuming for a moment that these are the very same parties, it cannot be fathomed as to how in a transaction whereby invoices are raised by the Defendants upon the Plaintiff, the Plaintiff is claiming against the Defendants where the Defendants were to supply material to the Plaintiff; it appears to be a rather convoluted structure of a loan transaction as alleged by the learned counsel for the Defendants. Further, it stands to reason as to why the Defendants would be paying interest to the Plaintiff, if it was not a loan transaction. The claim of the Plaintiff regarding the payment of interest to the Defendants in accordance with the Plaintiff's ledgers at pages 76 and 79 of the plaint being beyond the

period of three years would also raise an issue of limitation on behalf of the Defendants No.2 and 3 which would also be a triable issue. Certainly these issues cannot be decided under a summary procedure and would need to be considered at a trial.

14. I am therefore of the view that the Defendants No.2 and 3 have raised a reasonable and substantial defence and the Plaintiff is not entitled to sign judgment.

15. In the cases of *IDBI Trusteeship Services Ltd. vs. Hubtown Limited*¹ as well as of *B. L. Kashyap and Sons Ltd. vs. M/s. JMS Steels and Power Corporation and Anr.*², the Hon'ble Supreme Court has observed that if the Defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit and if the Defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the Plaintiff is again not entitled to sign judgment, and the Defendant is ordinarily entitled to unconditional leave to defend.

1 (2017) 1 SCC 568

2 (2022) 3 SCC 294

16. In view of the above discussion, the following order is passed :

- (i) Suit is adjourned *sine die* as against the Defendant No.1 until the moratorium is lifted.
- (ii) The Defendants No.2 and 3 are granted unconditional leave to defend the suit.
- (iii) Let written statement be filed on behalf of the Defendants No.2 and Defendant No.3 within a period of twelve weeks.
- (iv) The suit as against the Defendants No.2 and 3 be transferred to the list of Commercial Causes.
- (v) Summons for Judgment stands disposed as above as far as the Defendants No. 2 and 3 are concerned.

(ABHAY AHUJA, J.)