

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 11 OF 2013
IN
SUMMARY SUIT NO. 2572 OF 2012

Vipul Drugs Pvt. Ltd.

.....Plaintiff

: V/S :

Rajat Pharmachem Ltd.

.....Defendant

* * * * *

Ms. Priyanka Vegad, Advocate for the plaintiff.

Mr. S.A. Bhagwat, for Official Liquidator.

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Coram :- Smt. R.P. SondurBaldota, J.**21st October, 2015.****P.C. :-**

1). This Summary Suit is filed by the plaintiff for recovery of the price of the goods sold and delivered by it to the defendant Company. During the pendency of the suit by the order dated 6th February, 2015 the defendant company came to be wound up and Official Liquidator was appointed Liquidator of the Company to take charge of the assets and the business of the Company. The Official Liquidator has filed Affidavit-in-reply to oppose the Summons for Judgment taken out by the plaintiff. In the reply, the Official Liquidator states that since the facts of the case pertain to pre-liquidation period, he has no personal knowledge of the same. He points out that Dena Bank which has the first charge over the movable and immovable properties of the Company has taken action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 ("SARFAESI Act" for short)

and that it was to take possession of the premises of the Company.

2). The case of the plaintiff is that, the plaintiff Company is a distributor, importer and exporter of pharmaceuticals, bulk drugs and intermediates etc. It had sold and delivered pharmaceutical goods during the period 28th July, 2010 and 16th March, 2011 to the defendant under various purchase orders and invoices, the details of which are stated in the plaint. The plaintiff had been maintaining accounts of the dues payable by the defendants. The defendants were also liable to pay interest to the plaintiff for the unpaid amount of the invoice beyond the credit period stated in each bill. It is alleged that the defendants have failed and neglected to pay the price of the goods sold and delivered to it.

3). The defendant has admitted it's liability to pay the amount vide confirmation of the accounts dated 18th January, 2012. The claim in the suit is for the amount admitted and acknowledged in the writing dated 18th January, 2012. The writing has been signed on behalf of the defendant by confirming that the balance stated therein is correct. In that circumstance, there is admission of the debt by the defendant. Therefore, the plaintiff is entitled to have the Summons for Judgment made absolute.

4). Mr. Bhagwat, submits that the plaintiff herein being an unsecured creditor will have to lodge its claim with the Official Liquidator and will be entitled to receive the amount only after the debts of the secured creditors are paid and thereafter in proportion to various other creditors of the defendant. The submission pertains to execution of the decree in favour of the plaintiff and will have to be considered at the appropriate time. Hence, the Summons for Judgment is made absolute.

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Wed,21Oct,2015

(SMT. R.P. SONDURBALDOTA, J)