

mm

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

SUMMARY SUIT NO. 3812 OF 1999

Siyaram Silk Mills Limited

...Plaintiff

Vs.

Tessival S.P.A.

...Defendants

Mr. Raj Patel

i/b. Prakash Panjabi & Co., Advocate for the Plaintiff

CORAM : MRS. ROSHAN DALVI, J.

DATED : 20TH MARCH, 2015

P.C. :

1. This suit is filed for recovery of price of goods sold and delivered. The plaintiff shipped certain cloth material to the defendant under 3 invoices **Exhibit-A, B & C** to the plaintiff. The goods were shipped under certain bills of lading. The defendant undertook to make payment against the documents on the dates of maturity. The defendant failed to do so and the plaintiff sued.
2. The defendant filed its written statement upon service of the writ of summons. Its defence is that the goods were of defective quality and identical goods were sold directly to various agents / customers at considerably lower price resulting in loss to the defendant which the defendant sought to set off in its written statement.

3. The parties proceeded to trial. The invoice of the plaintiff, the guarantee of the defendant and the correspondence between the parties came to be marked as Exhibits being admissible on record. The copies of the bills of lading were not marked. The plaintiff as the shipper had one copy of the bill of lading in each of the 3 consignments under the 3 invoices. The plaintiff has filed an additional affidavit to prove those bills of lading by secondary evidence. They are accordingly admissible and are required to be marked Exhibits. The 3 bills of lading are marked **Exhibit-P-16(colly)**.
4. The defendant had appeared in the suit when the documents Exhibits-P-1 to P15 came to be admitted on record, an additional issue of jurisdiction came to be filed and the Commissioner came to be appointed to record the evidence of the parties. On 8th October, 2014 the defendant was directed to file its affidavit of documents and produce its documents. That direction has not been carried out. Thereafter the Advocate on record of the defendant failed to obtain instructions. He came to be discharged on 23rd December, 2014. The suit, therefore, could not proceed upon the defence of the defendant and has been adjourned for ex-parte decree.

5. The plaintiff has relied upon and produced the 3 invoices. The fact that the goods have been shipped can be seen from the 3 bills of lading. The defendant's guarantee is not traversed. The defendant has, therefore, admitted the delivery, but claimed that the goods were defective and that the goods have been sold to other agents and customers at lower price resulting in a loss. In fact the defendant would have the right to begin the trial. The defendant has neither appeared to contest the plaintiff's claim by cross examining plaintiff's witness, nor produced its own evidence, oral or documentary. It has failed to produce the documents as directed. The un-controverted case of the sale of goods by the plaintiff has remained without any defence of defective quality or any other challenge.
6. Consequently the plaintiff is entitled to the decree as prayed for.
7. The suit is decreed as prayed. However there shall be no orders as to costs.

(ROSHAN DALVI, J.)