

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

**SUMMARY SUIT NO.14 OF 2012
WITH
LEAVE PETITION NO. 707 OF 2011
IN
SUMMARY SUIT (LODG.) NO. 1689 OF 2011**

Abhinav Texchem Pvt. Ltd.	.. Plaintiff
Vs.	
Dinha Exports & Ors.	.. Defendants

Mr.Pravin D. Patil for plaintiff.

None for defendants.

**CORAM : K.R.SHRIRAM, J.
DATE : 25TH JUNE, 2015**

P.C.

1 The plaintiff had entered into an agreement with the defendants to purchase from the defendants 1,000 Metric Tonnes of heavy melting scrap which was to be shipped from Madagascar to the port of Kandla. The value agreed was US\$ 3,21,000 C & F. The plaintiff, it is averred in paragraph 6 of the plaint, had paid an advance of Rs.31 lakhs to the defendants. As the defendants were unable to organise the shipment, the parties decided to cancel the contract and entered into an agreement on 28.05.2008 whereby the defendants agreed to pay to the plaintiff a sum of Rs.43 lakhs which included Rs.12 lakhs towards compensation/loss of profit. Simultaneously, the defendants also issued four cheques of Rs.10 lakhs, Rs.6 lakhs, Rs.15

lakhs and Rs.12 lakhs. It was also agreed that in case the cheques did not get cleared on the schedule dates, a penalty at the rate 10% per month with effect from 25.06.2008 on due amount will be charged. All the four cheques were dishonoured after which the parties again came to an understanding whereby the defendants issued another cheque of Rs.15 lakhs towards adjustment of penalty/delayed payment. Even this cheque got dishonoured and therefore it is the plaintiff's case that a sum of Rs.58 lakhs is due and payable with further interest on the principal sum.

2 The counsel for the plaintiff states that the defendants have been served and has filed an affidavit of one Rajdutt Kakde affirmed on 22.08.2014. The writ of summons has been served by substituted service in view of the order dated 4.12.2003 passed by the Additional Prothonotary and Senior Master. As directed, the summons was published on 1.08.2014 in Free Press Journal in English and in Janmabhoomi in Gujarati. The defendants have not entered appearance till date though served. The counsel of the plaintiff states proceedings under Section 138 of Negotiable Instruments Act, 1881 in relation to the same transaction is pending and original documents have been filed in the Metropolitan Magistrate's 28th Court. The plaintiff has, therefore, filed compilation of 18 documents, all certified as "true copy" by the Metropolitan Magistrate, 28th

Esplanade Court, Mumbai. The compilation of documents is taken on record. In view thereof, the defendants are deemed to have admitted the claim and therefore the plaintiff is entitled to a decree. I am, however, not inclined to grant *pendente lite* and post this decree interest at 21% p.a. The defendants to pay 12% interest from the date of the suit until payment/realization.

“ The defendants are decreed and ordered to pay jointly and severally to the plaintiff an amount of Rs.1,01,68,567/- together with further interest at the rate of 12% p.a. on the principal amount of Rs.58 lakhs from the date of filing of the suit until payment/realization together with costs in the sum of Rs.25,000/-.”

3 A copy of this order shall be served by the advocate for the plaintiff upon the defendants by registered post A/D at the addresses of the defendants as shown in the plaint.

4 The summary suit stand disposed accordingly.

(K.R. SHRIRAM, J.)