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

SUMMONS FOR JUDGMENT NO.48/2015
IN
SUMMARY SUIT NO.781/2013

Ravindra Poonamchand Angara … Plaintiff

V/s.

Ind – Swift Laboratires Ltd. … Respondent

Mr. Chadan Gadekar for the Plaintiff
Mr. Amit Shroff for the Defendant

CORAM: K.K. TATED, J.
DATED : DECEMBER 9, 2015

P.C. :

1. Heard the learned counsel for the parties. The summary suit is instituted by the Plaintiff for recovery of sum of Rs.1,10,87,097.59 with further interest @ 24% p.a. on principal amount till payment and/or realisation of the entire amount and cost of the suit.

2. In the present proceedings, as per the purchase orders issued by the Defendant from time to time to the Plaintiff, they supplied S.S. industrial raw material to the Defendants. After supplying the goods the Plaintiff raised tax invoices which were accepted by the Defendants. As the Defendants failed and neglected to pay the cost of the goods sold and delivered to the Defendant, the Plaintiff called upon the Defendant to pay the outstanding amount. At that time, the Defendant forwarded reconciliation of the account statement to the Plaintiff, which shows

that the Defendant accepted their liability to the extent of Rs.54,90,493/-, which was disputed by the Plaintiff. As the Defendant failed and neglected to pay the outstanding amount, the Plaintiff issued legal notice dated 01/08/2012 calling upon the Defendant to pay the outstanding principal sum of Rs.74,69,974.97 along with interest @ 24% p.a. for respective invoices. The said notice was duly served on the Defendants. In spite of that the Defendants failed to pay the said amount. Hence, on 01/08/2013, the Plaintiff filed the present suit for recovery of Rs.1,10,87,097.59 and interest @ 24% p.a. on principal amount. Hence, the present Summons for Judgment.

3. In the Summons for Judgment, the Plaintiff claimed balance amount of Rs.74,10,019.93 with further interest of Rs.36,77,077.56 @ 24% p.a.

4. The learned counsel for the Plaintiff submits that in the present proceedings, as per the various purchaser orders issued by the Defendant, they supplied S.S. industrial raw material to the Defendant as per their satisfaction. Those goods were duly delivered to the Defendant. The Plaintiff also issued tax invoices for the goods sold and delivered to the Defendant from time to time. He submits that when the Plaintiff called upon the Defendant to make payment of outstanding amount along with interest, the Defendant disputed the said amount and forwarded statement of reconciliation stating that they are liable to pay only Rs.54,90,493/-. That was disputed by the Plaintiff. As the Defendant failed and neglected to make the payment of the goods sold and delivered, they issued legal notice dated

01/08/2012 calling upon the Defendant to make payment of Rs.74,69,974.97 along with interest @ 24% p.a. as per the respective invoices. He submits that though the Defendant accepted delivery of goods and used the same for their benefit, they failed and neglected to make the payment.

5. The learned counsel for the Plaintiff submits that the Defendant, by their Affidavit-in-Reply in Summons for Judgment, raised frivolous grounds to deny their liability. He submits that the Defendant, in their Affidavit-in-Reply raised objection about the limitation as well as jurisdiction of this court. He submits that the Defendant raised objection that the suit as it is filed by the Plaintiff on 01/08/2013 was barred by law of limitation. He submits that in the present proceedings, the Defendant by cheque dated 18/02/2012 bearing No.429665 drawn on HDFC Bank made part payment. This itself shows that the suit as it is filed by the Plaintiff on 01/08/2012 was well within time.

6. The learned counsel for the Plaintiff submits that the objection raised by the Defendant about the jurisdiction of this court is also not maintainable. He submits that the Plaintiff has their office at Bombay, which is specifically stated on tax invoices also. Apart from that, the Plaintiff filed petition No.229/2013 for leave under clause XII of the Letters Patent Act and same was granted by this court on 01/08/2013. Hence, the objection raised by the Defendant about jurisdiction is not maintainable at all. As there is admitted liability of the Defendant, this Hon'ble Court be pleased to make Summons for Judgment absolute.

7. On the other hand, the learned counsel for the Defendant vehemently opposed the Summons for Judgment. He submits that the suit as it is filed by the Plaintiff itself is not maintainable as summary suit under Order XXXVII of the Code of Civil Procedure, 1908. He submits that the Plaintiff has filed the summary suit on the basis of several tax invoices issued by them from time to time. This itself shows that the suit filed by the Plaintiff is at the foot of account. Hence, the summary suit is not maintainable.

8. The learned counsel for the Defendant submits that in the present proceedings, the Plaintiff is claiming the amount in respect of the tax invoices dated 09/04/2010, 24/06/2010, 25/02/2011, 13/03/2011 and for subsequent bills. He submits that considering the date on bill No.CE-18 of Rs.2,83,287.78 dated 09/04/2010, the suit as it is filed by the Plaintiff on 01/08/2013, was barred by law of limitation. Hence, the Plaintiff is not entitled to any relief in the present proceedings.

9. The learned counsel for the Defendant submits that even the Plaintiff failed to issue "C" Form for the material sold and delivered to the Defendant. This itself shows that the Plaintiff, without supplying the goods, raised the tax invoice. Hence, the Plaintiff is not entitled to any relief in the Summons for Judgment. Hence, the Summons for Judgment be dismissed with costs granting unconditional leave to the Defendant to defend the summary suit on its own merits.

10. Heard the learned counsel for the parties. In the present proceedings, the Plaintiff supplied S.S. industrial raw material to the Defendant as per the purchase orders issued from time to time. The Defendant received those goods and made part payment thereafter as stated in paragraph 13 of the plaint. The objection raised by the Defendant about the limitation is not tenable because the Defendant on their own made part payment by cheque dated 18/02/2012 drawn on HDFC Bank. If the limitation is calculated from the date of issuance of tax invoice and last part payment made on 18/02/2012, the suit as it is filed by the Plaintiff on 01/08/2013 seems to be well within time.

11. The objection about the jurisdiction is also not maintainable. It is specifically stated in the tax invoice that the Plaintiff has their office at 17/A, Kanti Bhuvan, Ist Parsiwada Lane, Mumbai – 400 004. Apart from that, the Plaintiff obtained leave under clause XII of the Letters Patent Act in petition No.229/2013 on 01/08/2013.

12. As the Plaintiff made out a case that the Defendant failed and neglected to make payment of the goods sold and delivered to them, the Defendant is required to be directed to deposit amount due and payable in this court. The issue of limitation and jurisdiction is required to be decided after leading evidence by both the parties at the time of final hearing.

13. Considering the submission made by the learned counsel for the parties and the facts as stated herein above, I am of the opinion that the Defendant failed and neglected to make out a case for grant of unconditional leave.

14. Hence, following order is passed:

a. Conditional leave granted to the Defendants to defend the suit.

b. The Defendant is directed to deposit sum of Rs.75,00,000/- in the Registry of this court within 8 weeks from today.

c. If amount is deposited within stipulated time as stated herein above, the Defendant is permitted to file their written statement thereafter within 12 weeks.

d. If Defendant fails to deposit the amount within stipulated time as stated herein above, the Registry is directed to place the matter on board for further directions, thereafter.

e. If amount is deposited within stipulated time as stated herein above, the Registry is directed to invest the said amount in a fixed deposit account of any Nationalized bank, initially for a period of one year which will be renewed from time to time till hearing and final disposal of the suit.

f. Summons for Judgment stands disposed of accordingly.

(K.K. TATED, J.)