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

SUMMONS FOR JUDGMENT NO. 104 OF 2014
IN
SUMMARY SUIT NO. 686 OF 2014

M/s. HTP Global Technologies Pvt. Ltd. .. Plaintiff
Vs.
M/s. Omnitech Infosolutions Ltd. .. Defendant

Mr.Subodh Joshi i/b G.M. Jain for plaintiff.
Mr.J.S.Kini a/w. Mr.Suresh Dubey for defendant.

CORAM : K.R.SHRIRAM, J.
DATE : 30TH JUNE, 2015

P.C.

1 It is the case of the plaintiff that they had supplied to the defendant 693 DVD writers, 693 desktop RAM, 693 Computer Monitors and 929 cords. The plaintiff raised an invoice dated 7.11.2013 for Rs.2,46,89,344/- and the same has been received by the defendant. In the invoice, it is also mentioned that the defendant will be liable to pay interest at 24% p.a. if the invoice is not paid before the due date. In the invoice, it is also mentioned that the payment terms is 30 days PDC.

2 The defendant had issued a cheque for the invoice value, i.e., for Rs.2,46,89,344/- and cheque came to be dishonoured with an endorsement 'Exceed Arrangement'. Thereafter, certain discussions took place between the plaintiff's representative and the Directors of the defendant whereby the

plaintiff took back 58 nos. of desktop computers with accessories worth Rs.20,21,509/-. The plaintiff gave credit for the said amount and therefore the defendant issued two fresh cheques, one cheque, dated 22.02.2014 was for Rs.1,68,51,457/- and the second cheque, dated 25.02.2014 was for Rs.57,71,535/- totalling to Rs.2,26,22,992/-. The plaintiff deposited the two cheques. On or about 21.04.2014, both the cheques were returned dishonoured, the cheque of Rs.1,68,51,457/- was returned dishonoured with the remark *'Payment stopped by Drawer'* and the second cheque of Rs.57,71,535/- was returned dishonoured with the remark *'Insufficient funds'*.

3 The plaintiff, therefore, through their advocate sent a notice dated 7.07.2014 read with notice dated 9.07.2014 demanding Rs.2,26,67,815/- together with interest thereon at 24% p.a. Both notices have been received by the defendant. The defendant neither replied nor made any payment. The plaintiff, therefore, filed the present suit.

4 The plaintiff has filed an affidavit under Order 37 Rule 3(5) of the Code of Civil Procedure for leave to defend on behalf of the defendant, which the counsel for the defendant stated can be considered as reply to the summons for judgment.

The 1st ground of defence is that the plaintiff in the notice dated 7.07.2014, has stated that the cheque for Rs.2,46,89,344/- was tendered only upon receipt of the goods and after issuance of the invoice whereas in the plaint, it is stated the defendant had issued post dated cheques at the time of the issuance of the purchase order. Therefore, in view of the inconsistent stand taken, leave to defend should be granted.

The second ground is that the two cheques that were freshly issued after certain computers/accessories were returned, were totalling a sum of Rs.2,26,22,992/- whereas the plaintiff is claiming a sum of Rs.2,26,67,815/- without explaining as to how they arrived at that figure.

The third ground is that there was delay in delivery of the goods and when they received delivery, they received the same with the endorsement on the invoice *“Not checked”*. It is also stated that the goods supplied were defective and the plaintiff was to take back the entire consignment but took back certain goods only worth Rs.20,21,659/-.

Hence, there are triable issues and leave to defend has to be granted.

5 Having heard the counsel for the opposing parties and having considered the plaint, the summons for judgment and the affidavit in reply to the summons for judgment, as regards the first stand of defence, so what if the plaintiff has in the notice stated the cheque was tendered upon receipt

of goods and after issuance of invoice whereas in the plaint it is stated post dated cheques were issued at the time of issuance of purchase order. The fact is the defendant had to pay for the goods supplied and payment terms was 30 days PDC. Whether the cheque was issued before the goods were supplied or after would make no difference. Admittedly, payment was due or else a cheque would not have been issued and the cheque when deposited was dishonoured.

6 As regards the second defence, i.e., the total of the two cheques was Rs.2,26,22,992/- and not Rs.2,26,67,815/- is again a non-issue because even after the two cheques were issued, the defendant called upon the plaintiff, as stated below, to confirm that only Rs.2,46,89,344/- was due and payable to the plaintiff. In any case, the defendant is deemed to have admitted that Rs.2,26,22,992/- was due and payable to the plaintiff.

7 As regards the third defence raised by the defendant, there is not even a shred of evidence filed. There is no correspondence to show that the defendant objected to the quality of the goods supplied. When somebody purchases goods costing Rs.2,46,89,344/- and has issued postdated cheque for that, certainly he would have objected immediately and that too strongly if the goods were defective. Even assuming that the defendant could not

have checked each and every item when the goods were supplied, it is to be noted that the goods were supplied on or before 7.11.2013 whereas, the defendant had issued fresh two cheques dated 22.02.2014 and 25.02.2014 for a huge sum of Rs.1,68,51,457/- and Rs.57,71,535/-, respectively. Certainly, the defendant had more than three months to verify and raise their objections on the quality. It is true that the plaintiff has taken back certain goods worth Rs.20,21,529/- but that does not mean the goods were taken back because there were defects or the rest of the goods supplied were also defective. The onus is on the defendant to prima-facie show that the goods were defective. Moreover, the defendant had by its letter dated 9.05.2015, which was after the cheques were dishonoured as payment stopped by the drawer and funds insufficient, called upon the plaintiff to confirm that the amount payable to the plaintiff as on 31.03.2014 was only Rs.2,46,89,344/-. The counsel for the plaintiff states that he has not received a copy of the letter dated 9.05.2015 and therefore is unable to even comment thereabout. Even if the document is not considered, in my view, it will not matter.

8 It is also to be noted that even after the defendant issued stop payment instruction, they have not even written to the plaintiff that the plaintiff should not have deposited the cheques because the goods supplied were defective. There is no explanation as to why the defendant issued fresh

cheques for Rs.2,26,22,992/- if the goods were defective. Therefore, it is clear that the defendant, having admitted that amount of Rs.2,26,22,992/- was payable to the plaintiff, is now raising all defences as an afterthought.

9 In the circumstances, in my view, the defences raised by the defendant are nothing but bogus, illusionary, moonshine and an afterthought. At the same time, the defendant may be given a chance to prove their defence at the time of the trial.

10 Therefore, it is a fit case where conditions have to be imposed on the defendant in order to permit the defendant to defend the suit. Hence, the following order is passed :

(a) The defendant is directed to deposit in this Court the value of the two re-issued cheques, i.e., Rs.1,68,51,457/- plus Rs.57,71,535/- totaling to Rs.2,26,22,992/- within six weeks from today.

(b) Upon the defendant depositing the amount, the Prothonotary and Senior Master to invest the same in fixed deposit with a nationalized Bank initially for a period of six months.

(c) The defendant after depositing the amount to file their written statement within two weeks thereafter.

(d) If the defendant does not comply with the directions mentioned in (a) above, the suit to be placed for ex-parte decree.

12 The summons for judgment stands disposed accordingly.

(K.R. SHRIRAM, J.)