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

SUMMONS FOR JUDGMENT NO. 123 OF 2014
IN
SUMMARY SUIT NO. 836 OF 2014

RKB Global Pvt. Ltd. ... Applicant / (Ori. Plaintiff)

In the matter between

RKB Global Pvt. Ltd. ... Plaintiff

vs

Mr. Vinod Kishan Gupta ... Defendant

Mr. Sunny Shah i/by Ashwin Ankhad & Associates, Advocate for the plaintiff.
Mr. Harnam Singh Khals, Advocate for the defendant.

Coram : Smt. R. P. SondurBaldota, J.
Date : 28th October, 2015.

P.C. :

1. This Summons for Judgment is taken out in the Summary Suit for recovery of a sum of Rs.1,04,39,057/- comprising of Rs.72,97,384/- towards the principal amount and Rs.31,41,673 towards interest at the rate of 18% p.a. due under the High Sea Sales Agreement dated 19th July, 2011 between the parties.

2. The brief case of the plaintiff is that it is the successor in title to the partnership firm by name M/s. Rajankumar and Brothers (Impex). The defendant is the sole proprietor of M/s. Shree Krishna Steels. In the usual course of business the plaintiff on 12th April, 2011 contracted to import 1214.350 metric tones of

hot rolled sheets and plates at the unit price of US dollars 706 PMT for the total amount of USD 8,57,331.10 from M/s. Metinvest International S.A. In the month of May-2011 the defendant requested the plaintiff to jointly import the said consignment which offer was accepted by the plaintiff on the market terms. The defendant also requested the plaintiff to open the Letter of Credit in plaintiff's own name and promised to reimburse the Letter of Credit margin money and commission to the plaintiff. Accordingly, the plaintiff opened the Letter of Credit in favour of the supplier and the defendant provided the plaintiff with an aggregate amount of Rs.75,00,000/- by way of cheques towards the margin money. On 19th July, 2011 the High Sea Sales Agreement was entered into between the parties and the proforma invoice for the tentative value of Rs.3,96,80,254/- was issued on the same date in the name of the defendant. On 5th August, 2011 the defendant paid customs duty of Rs.62,30,624/- for clearing the consignment. Thereafter, on 27th December, 2011, the plaintiff raised the High Sea Sale's final invoice for Rs.4,61,97,384/-on the defendant and debited the same to the defendant's account. During the period 29th November, 2011 to 15th May, 2012 the defendant made various part payments totaling to Rs.3,14,00,000/-. After giving credit to the payments made earlier, the total amount received from the defendant was Rs.3,89,00,000/- leaving the balance of

Rs.72,97,384/-. The defendant at that time raised a contention that the proforma invoice was the final invoice and he was liable to pay only Rs.3,96,80,254/- and not the amount as per the final invoice. Thereafter, the present suit for recovery of the balance due and the interest thereon came to be filed.

3. The defendant contests the Summons for Judgment contending firstly that the suit is not maintainable as a Summary Suit and secondly, that the claim made in the suit is false. The defendant also alleges that the documents of High Sea Sales Agreement, and the invoices annexed to the plaint are forged and fabricated documents.

4. There can be no substance in the objection raised to the form of the suit since it is for recovery of a specific debt due under a written contract.

5. It is patent from the pleadings that the defendant does not dispute i) the High Sales Agreement dated 19th July, 2011, ii) import of the metal, iii) the quality and iv) the quantity of the metal as described by the plaintiff. Thus, the existence of the written contract between the parties is an admitted position. There is also no dispute that the defendant had paid an amount of Rs.75,00,000/- to the plaintiff by Cheque No.423435 dated 18th May, 2011 for Rs.50,00,000/- and Chque No.423485 dated 8th June, 2011 for Rs.25,00,000/-. The dispute raised is only as

regards the purpose of the payment. It is alleged that the payment was not towards the margin money, but was against the running account of the defendant with the plaintiff. The details of any such running account are not disclosed by the defendant.

6. The plaintiff relies upon High Sea Sales Agreement dated 19th July, 2011 running into five pages, made on the stamp-paper dated 15th July, 2011 signed by both sides and bearing the rubber stamp of the plaintiff on each page. The defendant on the other hand relies upon the agreement made on the stamp-paper dated 18th July, 2011 which runs into only two pages showing signatures of both the sides and bearing rubber stamp of the plaintiff. The description of the goods in both the agreements, the name of the supplier, the price are same. The details of the bill of lading are also same. The difference, however, is in some of the vital clauses relating to delivery and payments. The agreement relied upon by the defendant contains a clause for sales tax. Mr. Shah, the learned advocate for the plaintiff points out that in the agreement executed in the year 2011 there could not have been a clause relating to sales tax as stated in the agreement because the Act mentioned therein was repealed in the year 2005. He also points out the difference in the rubber stamp of the plaintiff on the two documents. Perusal of the copies of the agreement annexed to the plaint and the affidavit-in-reply confirms the submission as

regards the rubber stamp. Therefore, the agreement relied upon by the defendant is apparently a doubtful document.

7. The defendant has also raised dispute as regards proforma invoice. Though both the copies bear the same date i.e. 19th July, 2011, the reference number, quantity of the metal and the consideration amount, there is a distinct difference in the two proforma invoices. The proforma invoice relied upon by the plaintiff, gives all the details of the total consideration amount of Rs. 3,96,80,254/- which are missing from the other proforma. It states the correct date of bill of lading of 27th June, 2011, whereas, the proforma invoice produced by the defendant gives date of bill of lading as 14th May, 2011. The number and the date of Letter of Credit mentioned therein are also different. Next the proforma invoice relied upon by the defendant does not bear the rubber stamp of the plaintiff, whereas, that relied upon by the plaintiff carries the rubber stamp against the authorised signatory. The invoice produced by the defendant is different even in the general appearance. The details of the plaintiff company mentioned at the top of the document are completely different.

8. The plaintiff has next produced the details of excise/sales/tax invoice/delivery challans which are not disputed by the defendant. The other document produced by the plaintiff is a letter to the insurance company sent on the same date, as the

High Sea Sales Agreement stating the same details as in the agreement annexed to the plaint.

9. Thus careful scrutiny of the documents produced by the parties establishes that the documents produced by the plaintiff are the genuine documents and the defence raised by the defendant is not genuine. However, since there is another set of document produced on record by the defendant, in my opinion this is not the case where the Summons for Judgment can be made absolute by completely denying an opportunity of leading evidence to the defendant. In the circumstances, the defendant is granted leave to defend the suit on condition that he deposits the amount of Rs.1,04,39,057/- in this Court within a period of six weeks from today. With the direction the Summons for Judgment is disposed off. The suit is adjourned for directions to 9th December, 2015.

[Smt. R. P. SondurBaldota, J.]