

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.178 OF 2014
IN
SUMMARY SUIT NO.2590 OF 2012
(H.C. NO.168 OF 2012)**

DIA DEB International Inc. Appellant
vs.
M/s D. Chaganlal & Co. Respondents

Ms. Ankita Singhania i/by Koell Sharan, Advocate for the Appellant.

Ms. Shilpa Kapil, Advocate for the Respondents.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 11th April, 2016

P.C.

1 This appeal is preferred against the order dtd. 2nd September, 2013, by which the Bombay City Civil Court decreed Summary Suit filed by the respondent for recovery of the amount of Rs.59,39,751/-. The brief case of the respondent in the suit is that in the month of January, 2011, the appellant placed an order for export and shipment of cut and polished diamonds worth Rs.58,29,000/- to the appellant at its consignee office in Thailand. The shipment was duly received by the appellant but no payment was made. Hence, the respondent filed suit for recovery of the amount under the invoices with

interest @18% per annum. The summons of the suit was served upon the appellant but it failed to appear within 10 days of service. Therefore, the allegations in the plaint were deemed to have been admitted and the suit was decreed.

2 Ms. Singhania, the learned advocate for the appellant submits that the appellant had in fact appeared before the court and taken out Chamber Summons for condonation of delay in filing appearance in the summary suit. The Chamber Summons purported to have been taken out by the Director of appellant was supported not by any authorised signatory of the appellant but by the advocate appearing for the appellant, describing himself as the authorised signatory of the appellant. Therefore, the Chamber Summons came to be dismissed by the order dtd. 9th July, 2012. The appellant then had approached the Division Bench of this court by preferring Appeal No.61 of 2012. The appellate bench confirmed the order in the Chamber Summons, but granted liberty to the appellant to file a fresh proper Chamber Summons. By the time of the second Chamber Summons was taken out, the suit was transferred to the Bombay City Civil Court. The second Chamber Summons came to be dismissed by the order dtd. 22nd July, 2013, as there was unexplained delay in filing the same. The appellant carried the order to this court by preferring Appeal from Order (St.) No.26215 of 2013. In the interregnum as there was no stay of the suit, the court proceeded to hear it and pass the exparte

decree. Thereafter, the Appeal from Order was disposed off by the order dtd. 12th December, 2013 on the ground that the appeal had become infructuous.

3 Ms. Singhania, the learned advocate for the appellant submits that the appellant ought to have been given an opportunity to defend the suit on merit. According to her, on both the occasions, the suit got disposed off only on technical grounds. On the first occasion, it was the defect in the Chamber Summons and on the second occasion, it was unexplained delay in filing the second Chamber Summons. Thus the appellant was not even permitted to appear before the court.

4 The argument that technicality ought not to be allowed to defeat the merit of a proceeding, may be made and considered in a regular civil suit. However, a suit filed under Order 37 Code of Civil Procedure is a special suit wherein the defendant does not have a right to defend the suit unless leave is granted to him for that purpose. There is special procedure prescribed therein for conduct of the suit including passing of the decree therein and even an application for setting aside the exparte decree. The procedure thereunder is to be strictly followed. Therefore, the argument that the merits of the matter must override the technicality cannot be accepted. The application in the form of chamber summons filed with supporting affidavit of the advocate appearing for the appellant

was in fact no application at all. It is in fact surprising that such a Chamber Summons came to be filed by the appellant. The second Chamber Summons did not explain the delay. These defects in the applications made by the appellant can hardly be said to be technicalities that are to be ignored. In the circumstances, there is no substance whatsoever in the challenge to the impugned decree. Hence, the First Appeal is dismissed.

(Smt. R.P. SondurBaldota, J)