

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

**SUMMONS FOR JUDGMENT NO.4 OF 2016
IN
SUMMARY SUIT NO.1068 OF 2015**

M/s. Anil AgenciesPlaintiffs

V/s.

M/s. Aditya Agro Tech & Ors.Defendants

Mr.Kayval P.Shah for plaintiffs.

Dr.Suneet Gupta for defendant nos.1 to 3.

CORAM : K.R.SHRIRAM,J

DATE : 22.8.2016

P.C.:-

1 This suit is filed by the plaintiffs as an unpaid seller claiming a sum of Rs.1,24,99,798/- plus interest @ 36% p.a. amounting to total sum of Rs.2,38,71,565/-.

2 The suit is based on the unpaid invoices and also balance confirmation issued by the defendants.

3 At the outset, it should be mentioned that the defendants tendered an affidavit in sur-rejoinder of defendant no.3 affirmed on 17.8.2016, copy whereof, admittedly has not been given to the plaintiffs. I have considered the sur-rejoinder as well before dictating this order.

4 The plaintiffs upon oral order/instructions and/or written purchase order from the defendants used to supply iron and steel to the defendants. The plaintiffs have annexed copies of the invoices and the lorry receipts to the plaint. After the supplies were made, the defendants used to issue 'C' forms i.e. form of declaration as required under the Central Sales Tax (Registration and Turnover) Rules 1957 to the plaintiffs. In these 'C' forms the defendants confirmed the material received and the value of the invoices raised. Copies of 'C' forms are also annexed to the plaint and to these 'C' forms copies of the invoices are also annexed. The plaintiffs have also annexed the statement of balance confirmation for the period 1.4.2006 to 31.3.2012 signed by the defendants in which it is stated that sum of Rs.1,14,50,953/- is payable by the defendants to the plaintiffs. There is no date mentioned in the balance confirmation. As payments were not received by the plaintiffs, they issued two letters calling upon the defendants to make the payments to which there was no reply. It is also alleged that in view thereof the plaintiffs issued a notice dated 20.1.2015 through their Advocate claiming sum of Rs.1,24,99,438/- together with interest thereon @ 24% p.a. to which also there has been no response. It is necessary to note that the invoices raised by the plaintiffs mentions "this bill should be paid on due date otherwise interest @ 36% p.a. will be charged". The invoice also mentions subject to Mumbai jurisdiction. The invoice has also

endorsement when was the payment due. The defendants have filed an affidavit in reply in which the defences raised are (a) that most of the invoices attached in the suit are barred by limitation ; (b) invoices are for material that was supplied without any purchase orders being placed on by the defendants ; (c) materials covered under invoices were rejected for being defective, sub-standard or less than quantity claimed in the invoices or below specification ; and (d) defendants have paid for all materials which were supplied as per the order and which was of proper quality.

5 In the sur-rejoinder the defendants have stated that some payments were made against certain invoices. It is necessary to note that not a shred of evidence has been attached to the sur-rejoinder. In the affidavit in reply also there is not a shred of evidence attached.

6 On issue of jurisdiction, the plaintiffs though the invoices mentioned "subject to Mumbai jurisdiction" have obtained leave under clause-12 from this court to file the present suit. Therefore, jurisdiction cannot be an issue since the defendants also have not taken out any application for recall of the leave granted.

7 As regards limitation, even if we take that the balance confirmation was made on 31.3.2012 where the defendants have

admitted that an amount of Rs.1,14,509,53/- was due and payable, that would take into account all the invoices upto serial no.19 mentioned in paragraph-3 of the plaint. The invoices at serial nos.21 & 22 are dated 29.12.2012 and 7.1.2014 and the plaint has been lodged on 31.7.2015. Therefore, these two invoices are also within time.

8 Now what remains is only invoice at serial no.20 i.e., dated 12.5.2012. The defendants have issued a 'C' form as against this invoice on 31.12.2012 acknowledging that the plaintiffs had supplied this material. There is nothing on record to show that this amount has been paid or that this amount is not payable. There is also nothing on record to show that the materials supplied by the plaintiffs was sub-standard or defective or of poor quality or off specification. Not even a shred of correspondence is annexed to the reply or to the rejoinder. Therefore, in my view, plaint also is within limitation.

9 In the circumstances, I find that the defence raised by the defendants are moonshine, misconceived and baseless and after thought.

10 The Apex Court in *M/s. Mechelec Engineers & Manufactures vs. M/s. Basic Equipment Corporation*¹ in paragraph 8

1. (1976) 4 SCC 687

has stated as under :-

“8. In Smt. Kiranmoyee Dassi v. Dr. J. Chatterjee, Das J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by Order 17 CPC in the form of the following propositions :

(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

11 In view of the above, in my view, the defences raised are nothing but after thought to defeat the genuine claim of the plaintiffs. Notwithstanding the above, I would still grant the defendants a chance to defend the suit on the condition that the defendants deposit within six weeks from today, a sum of Rs.1,24,99,798/- with the

Prothonotary and Senior Master.

12 If this amount is deposited then the defendants will be permitted to defend the suit by filing written statement within two weeks after deposit of this amount. The prothonotary and Senior Master to invest the same amount in a fixed deposit in a nationalized bank for a minimum period of one year and renew year after year till final disposal of the suit. Two weeks after deposit, the defendants to file a written statement. Two weeks thereafter parties to file their respective affidavit of documents and also complete discovery and inspection. Within one week after completion of inspection, parties to file their respective statement of admission and denial with reasons for denial.

Suit be listed for issues after 12 weeks.

13 If the defendants do not deposit the amount within six weeks period granted above, suit be placed for directions immediately after six weeks period is over.

Summons for Judgment disposed accordingly.

(K.R.SHRIRAM,J)

