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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.8 OF 2015
IN
SUMMARY SUIT NO.767 OF 2014

Multi Commodity Exchange of India Ltd. ...Plaintiff/Applicant
vs
Rajesh Exports Limited ...Defendant

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Mr. Chetan Kapadia, a/w. Mr. Pankaj Uttaradhi, i/b. Sabeena Mahadik, for the Plaintiff.

Mr. S.K. Jain, i/b. S.K. Jain & Associates, for the Defendant.

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CORAM : S.C. GUPTE, J.

DATED : JANUARY 12, 2016

P.C. :

. The Summary Suit is in respect of dues allegedly owed by the Defendant to the Plaintiff in the sum of Rs.16,36,70,838/- together with pendente lite interest. The Plaintiff is a commodity exchange set up for facilitating on-line trading, clearing and settlement operations for commodity futures contracts across the country. The Defendant was a trading member of the Plaintiff. The Defendant had signed an application for the purpose *inter alia* agreeing to be bound by the bye-laws and rules of the Plaintiff, including business rules framed for working of the exchange. It is the Plaintiff's case that the Plaintiff provides a trading platform or trading facility to its members for buying or selling of futures contracts on the platform of the exchange. Whereas the Plaintiff does not itself sell and/or purchase any futures contracts, it merely oversees the orderly settlement of transactions executed between members through the clearing house of the exchange. On and from 28 November 2005, the Defendant started operating as a corporate trade clearing member of the Plaintiff. The suit is based on the current Marked to Market loss in the Defendant's position as of 27 August 2013, 28 August 2013 and 29 August 2013. It is the Plaintiff's case that the Defendant did not respond to its calls and failed to honour its pay-in liability at the close of banking hours on these dates and also to maintain an adequate trading margin in accordance with the business rules and bylaws of the exchange. The Plaintiff, accordingly, claims to have squared up the outstanding positions of the Defendant in more than one tranches to protect the integrity of, and smooth settlements on, the trading exchange. The Plaintiff, accordingly, purchased 1991 kilos of gold hedged by the Defendant against the stock held by it. The Plaintiff also invoked the bank guarantee kept by the Defendant with the Plaintiff towards the margin, as also appropriated the cash deposit kept by the Defendant with the Plaintiff. After adjusting these against the outstandings of the Defendant, the Plaintiff prays for recovery of the suit dues of Rs.16,36,70,838/- as set out in the particulars of claim.

2. In reply, it is claimed by the Defendant that the Plaintiff was not authorised by the Defendant or given permission to buy 1991 kgs. of gold. It is the case of the Defendant that, on 27 August 2013, when the Plaintiff intimated the Defendant about the closing price of the gold at 12 hours in the midnight and claiming payment in the sum of Rs.36.61 crores due to an increase in the price of gold, the Defendant

was prepared to pay the said sum on the morning of 28 August 2013 and contacted the Plaintiff for the same. On that date, it is the case of the Defendant, the officials of the Plaintiff demanded a total sum of Rs.45.77 crores, without giving any explanation and at 10.06 hours on 28 August 2013, proceeded to unauthorisedly enter in the account of the Defendant and illegally purchase gold in the account of the Defendant. It is the Defendant's case that the Defendant has neither given any authorisation nor had it permitted to the Plaintiff to utilise his account for purchase of gold. It is claimed by the Defendant that such illegal and unauthorised trading in the account of the Defendant was accomplished by the Plaintiff with unauthorised use of the password of the Defendant's account, which actually amounts to hacking into the Defendant's account. The Defendant claims this entire deal as a fraud on the part of the Plaintiff. The Defendant has filed a criminal complaint against the Plaintiff with the Bangalore Police in respect of the fraud alleged in the reply.

3. All these facts give rise to serious questions of defence, which call for a trial inter alia by leading of evidence.

4. The main controversy between the parties is the authority of the Plaintiff to effect the purchases in the account of the Defendant towards squaring up of the dues. It is claimed by the Plaintiff that the operational procedure provided for in the Business Rules of the exchange permit the Plaintiff to do so. The Business Rules regarding the operational procedure make several provisions for paying of additional amounts towards margin to be maintained by a member. The rules

provide for the manner in which the member is to be permitted to take steps for settling his account. The rules provide that only in case the member fails to meet his pay-in obligation by a particular time, then the exchange has the option to commence the process of squaring off his position, depending upon the magnitude of the problem. It is the Defendant's case that this procedure was not followed in the present case. It is the Defendant's case that even before the appointed time in accordance with this operational procedure, the Plaintiff proceeded to square off the Defendant's position without his authority. This is the central controversy in the present suit, which gives rise to several triable issues in the suit. There is material placed on record by the Defendant that immediately after the Plaintiff proceeded to square off the position, the Defendant raised these very grievances.

5. In the premises, the Defendant is granted leave to defend the suit unconditionally. Written statement to be filed within a period of six weeks from today. Suit transferred to the list of commercial causes. Suit to be placed on board for directions after six weeks.

(S.C. GUPTE, J.)