

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.10 OF 2016
IN
SUMMARY SUIT NO.18 OF 2016**

Rajendra Govindji Khona Plaintiff
V/s.
Indospin Filati Limited Defendant

Mr. Rishabh Shah a/w. Mr. Abbas Mandviwala i/b. Raval-Shah and
Co. for the plaintiff.
Mr. V.R. Tripathi for the defendant.

**CORAM : K.R.SHRIRAM,J
DATE : 23rd AUGUST, 2016**

P.C.:-

1 This suit is filed by the plaintiff to recover a sum of Rs.6,63,99,840.83/- towards non payment for supply of cotton. The plaintiff carries on the business of purchase, sale, brokerage, buying and supplying of cotton from various States across India and supplies to many Textile Mills in India. Some time in or around 2010, the defendant had approached the plaintiff with a proposal to act as a broker on their behalf and supply to them cotton bales for their consumption as the defendant is engaged in the business of manufacturing cotton yarn. The plaintiff introduced the defendant to various cotton ginners across the country with an understanding that the plaintiff would purchase the cotton bales on behalf of the defendant from the said cotton ginners and on delivery of the said

cotton bales to the defendant, the plaintiff would handover authority letter received by the plaintiff from the said ginners authorising the plaintiff to receive payments from the defendant and accordingly the defendant would make payments to the plaintiff. The defendant made part payment of Rs.1,14,15,000/-. It is also stated that the plaintiff also lent a sum of Rs.30 lacs to the defendant. The defendant has denied liability on the ground that the materials supplied were defective and there were complaints from the various parties to whom the defendant supplied that the cotton was of inferior quality.

2 Order 37 Rule 1 (ii) of Code of Civil Procedure reads as under :

1. Courts and classes of suits to which the Order is to apply :-

(1)

(2) Subject to the provisions of sub-rule (1), the order applies to the following classes of Suits, namely:

(a) suit upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising-

(i) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt (other than a penalty); or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.

3 Admittedly there is no written contract between the parties. The counsel for the plaintiff submitted that the defendant has acknowledged debt and relied on a letter dated 7th February, 2012, copy whereof is annexed to the plaint at Exhibit “C” and also an affidavit in reply filed by the defendant in a criminal application taken out by the plaintiff in this court wherein the defendant has stated that as per the bills of various vendors, the total value came to Rs.4,74,24,498/- only and not for Rs.4,74,63,215/-. The counsel for the plaintiff stated that these two documents should be considered as contract between the parties.

4 First of all, there is no such averment to that effect in the plaint. Secondly, the letter at Exhibit “C” to the plaint has an endorsement at the bottom made by the defendant to which a reference is made to a statement of account. There is no statement of account annexed to the plaint.

5 The counsel for the plaintiff, in the passing, submitted that the case of the plaintiff would fall under Order 37, Rule 1 (2) (b) (ii) and the enactment under which the amount would be payable would be under the Contract Act. The counsel for the plaintiff however, did not elaborate.

6 In my view, the suit does not fall under Order 37, Rule 1 (ii). Therefore, the following order is passed :-

“(a) unconditional leave to defend is granted;

(b) written statement to be filed and copy served on or before 20th September, 2016;

(c) on or before 30th September, 2016 parties to file their respective affidavit of documents and on or before 8th October, 2016 parties to complete discovery and inspection;

(d) On or before 15th October, 2016 parties to file and exchange their statement of admission and denial with reasons for denial;

(e) suit be listed on 24th October, 2016 for issues.”

7 Summons for judgment accordingly stands disposed.

(K.R.SHRIRAM,J)