

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

**SUMMONS FOR JUDGEMENT NO. 17 OF 2016
IN
SUMMARY SUIT NO. 1118 OF 2010**

Mahindra & Mahindra Ltd. .. Plaintiff
Vs.
Shyam Chawla & Pankaj Shyam Chawla .. Defendants

Mr.Rohaam Cama a/w. Mr.Naresh Ratnani i/b Ashwin Ankhad & Associates
for plaintiff.

Mr.Atul Damle, senior advocate a/w. Mr.Sanesh Shukla and Mr.Rajesh H.
Mirchandani i/b R.H.Mirchandani for defendants.

**CORAM : K.R.SHRIRAM, J.
DATE : 26TH JULY, 2016**

P.C.

1 The suit is filed by the plaintiff claiming a sum of Rs.1,59,67,927/- of which Rs.89,20,405/- was the principal amount. It should be noted at the outset, that there is no document on record in which the parties have agreed that 18% per annum interest was payable on outstandings.

2 It is the plaintiff's case that defendant no.1 was carrying on business of dealing with Tractors spares in the name and style M/s.Tractors Spares Corporation and defendant no.2 is the son of defendant no.1. The plaintiff had entered into an Agreement, dated 1st April 2002 with defendant no.1.

This Agreement initially was for a period of one year. This agreement, though was not extended, the parties continued to act on the agreement until sometime in June 2005. Under the Agreement, defendant no.1 was the stockist of the spares for the tractors manufactured by the plaintiff and defendant no.1 was selling the spares to the Retailers. The plaintiff has not produced or relied upon any of the invoices or delivery challans in the plaint, and the entire basis of the plaintiff's claim is a Minutes of the Meeting dated 21st July 2009 (MOM), signed by defendant no.2, allegedly, admitting liability on behalf of defendant no.1. It is the case of the plaintiff that as provided in the MOM, defendants have acknowledged that as on 14th August 2004, a sum of Rs.98 lacs was payable to the plaintiff and during the Financial Year 2004-2005, they paid a further amount of Rs.9 lacs leaving an outstanding of Rs.89,05,405/-.

As this amount was not paid, the plaintiff caused a notice issued on 24th November 2009 through its Advocates to which there has been no reply. The plaintiff, therefore, has filed the present suit. After the suit was filed, the plaintiff had taken out the summons for judgement which was withdrawn and later took out chamber summons for leave to amend the plaint which was granted and the plaint has been amended. Leave to amend was granted on 19th June 2015. The plaintiff, thereafter, has taken out the present summons for judgement.

3 The defences are as under :

- (a) The suit claim is barred by limitation;
- (b) Defendant no.2 has not attended the meeting, as alleged in the plaint; and
- (c) In any event, defendant no.2 never signed the Minutes of the Meeting acknowledging any liability.

4 The reply has been filed by defendant no.2 on his behalf and on behalf of defendant no.1.

5 As regards the limitation, it is the case of the defendants that the transactions are related to the year 2005 and the suit was lodged only on 4th March 2010 and hence barred by limitation.

I have considered the documents annexed to the plaint. From the statement annexed to the plaint at Exh.'C', it appears that the last payment was made to the plaintiff on 7th March 2007 amounting to Rs.7,500/-. The defendants have stated that this amount was actually paid to Mahindra and Mahindra Financial Services Limited and not to the plaintiff and therefore, cannot be considered as acknowledgement of liability to extend limitation. If one considers a copy of the letter at Exh.'G' to the plaint, it is confirmed by State Bank of India, Bankers of the plaintiff that this amount has been paid by the defendants to the plaintiff and not to Mahindra and Mahindra

Financial Services Limited. Therefore, in my view, the suit is not barred by limitation. Of course, the plaintiff is also relying on the MOM to extend the limitation but I do not think we need to go into it at all. The suit, therefore, is within limitation.

6 As regards the MOM, the defendants have denied that any such meeting took place and defendant no.2 has not signed the MOM. The counsel for the defendants submitted that defendant no.2 has denied that any meeting took place on 21st July 2007 between defendant no.2 and the plaintiff's Meghan Kamat and Mr.Atul Tandon and it was not their case that no meeting took place on 21st July 2007.

7 The defendants have annexed a copy of a statement recorded by the Police in a First Information Report (FIR) lodged by the defendants against the plaintiff in which the defendants have admitted that such a meeting took place. The defendants, however, have denied that defendant no.2 has signed the MOM. The defendants have also denied in the affidavit in reply that there was any agreement with the plaintiff as alleged in the plaint but in the statement annexed to the FIR, the defendants have admitted that such an agreement was entered into. Therefore, it is quite obvious that the defendants have made incorrect statements in the affidavit in reply. The

issue that comes to my mind is, can I, based on this, give a summary decree to the plaintiff.

8 Going in the reverse order, as regards defendant no.2 is concerned, it is not the plaintiff's case that there was any agreement with defendant no.2 to supply spare parts. Even the MOM relied upon by the plaintiff, though signed by defendant no.2 as alleged, is only to foist the liability upon defendant no.1. The counsel for the plaintiff argued that under Section 25(2) of the Contract Act, 1972, defendant no.2 can also be held liable but he did not elaborate how. In my view, Section 25(2) is not applicable to the facts and circumstances of the present case. No case, whatsoever is made out against defendant no.2 to hold defendant no.2 was personally liable. Therefore, unconditional leave to defend has to be granted to defendant no.2.

9 Now coming to defendant no.1, the entire basis of the claim is the MOM dated 21st July 2009. The plaintiff has not produced any document to suggest that they supplied the spare parts or they raised the invoices as alleged in the plaint. Defendant no.1, admittedly, has not signed the MOM. Admittedly, the original of the MOM also is not available with the plaintiff. It is the case of the plaintiff that they only have a photocopy of the MOM

and the original is with defendant no.2. The plaintiff has filed an additional affidavit of one Bharatendu Kapoor, affirmed on 1st June 2016 annexing a print-out of an email dated 12th October 2009 from defendant no.2, allegedly, confirming signing of Minutes of Meeting, dated 21st July 2009. None of these are from defendant no.1. There are no invoices, no delivery challans and the MOM has not been signed by defendant no.1 but only defendant no.2 who has also denied signing. Therefore, there is nothing on record that defendant no.1 has acknowledged any liability or there is any debts against defendant no.1.

10 In my view, I cannot, therefore, brush aside the defences raised by the defendants as moonshine or baseless or misconceived. Unconditional leave has to be granted to defendant no.1 as well.

11 The summons for judgement is dismissed with the following order :-

- (a) The suit to be transferred to the list of commercial causes.
- (b) The defendants to file their written statement and serve a copy thereof on or before 23rd August 2016;
- (c) On or before 3rd September 2016, parties to file their respective affidavits of documents and also give

inspection of the documents relied upon by them;

(d) On or before 10th September 2016, the parties to file and exchange their respective statements of admission and denial with reasons for denial.

(e) The suit to be listed for issues on 19th September 2016.

(K.R. SHRIRAM, J.)