

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

SUMMONS FOR JUDGMENT NO. 23 OF 2015

IN

SUMMARY SUIT NO. 240 OF 2015

WITH

CHAMBER SUMMONS NO. 68 OF 2016

IN

SUMMARY SUIT NO. 240 OF 2015

M/s. Mukesh B. Jhaveri

...Plaintiff

Versus

Ratin Mehta

...Defendant

Mr. Chirag Kamdar, a/w Ms. Pooja Karadia, i/b Nahush Shah, for the Plaintiff.

Mr. A.K. Maheshwari, for the Defendant.

CORAM : S.C. GUPTE, J.

DATE : 23rd February 2016

P.C. :

1. The Summons for Judgment is taken out in a Summary Suit praying for a decree of about Rs. 3.81 Crores together with *pendente lite* interest.

2. The basis of the Plaintiff's claim is that under an approval

memo dated 17th September 2011 goods, namely, jewelery of an aggregate value of about Rs. 2.62 Crores, were handed over to the Defendant on an approval basis for prospective sale/inspection on conditions mentioned overleaf in the approval memo. It is the Plaintiff's case that though the Defendant was not entitled to sell these goods, the Defendant proceeded to misappropriate and sell these goods. It is the Plaintiff's grievance that the Defendant has neither returned the goods to the Plaintiff nor paid the price thereof.

3. Several defences are raised by the Defendant to this case. In the first place, it is submitted that the claim does not arise on a written contract. The Suit claim for recovery of money does not arise on a contract evidenced by this approval memo. Secondly, the Defendant disputes having received goods under the approval memo. The Plaintiff, in the premises, would have to establish by leading evidence at the trial that the goods were indeed entrusted by the Plaintiff to the Defendant on an approval basis and that he misappropriated the goods and failed to pay the price thereof to the Plaintiff.

4. Learned Counsel for the Plaintiff relies on various statements made by the Defendant before the Economic Offences

Wing on 16th October 2012 and 9th April 2013. The defendant disputes these statements as also their relevance for use as evidence in this Suit.

5. Anyway, these are all triable issues and for which the Defendant is entitled to an unconditional leave to defend.

6. Accordingly, the following order is passed :-

- (i) The Defendant is granted leave to defend the suit unconditionally;
- (ii) Written Statement to be filed within six weeks from today;
- (iii) The Suit to be transferred to the list of Commercial Causes;
- (iv) The Suit to come up on board for directions after six weeks;
- (v) The Summons for Judgment is disposed of accordingly.

[S.C. GUPTE, J.]