

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

SUIT NO. 2334 OF 2005

M/s. Bajaj International Pvt. Ltd. .. Plaintiff
Vs.
The State Co. for Shopping Centre & Ors. .. Defendants

Mr.Ashwin Shete a/w. Ms.Surabhi Agarwal i/b M/s. Jayakar and Partners
for plaintiff.
None for defendants.

**CORAM : K.R.SHRIRAM, J.
DATE : 1ST SEPTEMBER, 2016**

P.C.

1 The suit is filed by the plaintiff, *inter-alia*, for a decree against defendant no.2 and/or defendant no.6 in the sum of Euros 510,000.00 together with interest thereon at the rate of 15% per annum from the date of presentation of the documents till payment and/or realization.

2 The plaintiff had supplied to defendant no.1 with 40,000 pieces of Ceiling Fans as per the terms and conditions of an Agreement dated 14th November 2001 entered into between defendant no.2 and M/s. Bajaj Electrical Limited (for short referred as 'BEL'). Though the Seller was BEL, the supplier was the plaintiff. The plaintiff is the sister concern of BEL. As per the Agreement entered into between BEL and the plaintiff, the plaintiff was assigned the task of handing the exports on behalf of BEL. Defendant no.2 had entered into a contract with defendant no.1 for supply of 40,000

pieces of Ceiling Fans by defendant no.2 to defendant no.1. Defendant no.1 had opened a Letter of Credit for Euros 6,54,862.00 in favour of defendant no.2. Defendant no.2 approached the BEL for supplying 40,000 pieces of Ceiling Fans and the plaintiff on behalf of BEL entered into an agreement dated 14th November 2001 with defendant no.2 for sale of 40,000 pieces of Ceiling Fans of defendant no.1 for a sum of Euros 510,000.00. As per the Agreement between defendant no.2 and the plaintiff, the payment to the plaintiff was to be made by an irrevocable Assignment of Proceeds by defendant no.2 in favour of the plaintiff under the Letter of Credit as opened from the account of defendant no.4 for the benefit of defendant no.2 on instructions from defendant no.1. As per the Agreement between the plaintiff and defendant no.2, defendant no.2 was to pay to the plaintiff the total value of Euros 510,000.00 per the irrevocable Assignment of Proceeds.

3 Defendant no.6 informed the plaintiff that they were the sister company of defendant no.2 and all correspondences should be addressed through defendant no.6. As per the Agreement, the plaintiff supplied 40,000 pieces of Ceiling Fans to defendant no.1 in eight equal consignments of 5000 pieces of ceiling fans each, between 30th May 2002 and 24th June 2002. The plaintiff also forwarded the documents as required by the irrevocable Assignment of Proceeds.

4 It is the case of the plaintiff that the documents were received by defendant no.2 and defendant no.1 also has taken delivery of the eight consignments. It is stated in the plaint that there was a mix up in the office of defendant no.4, which was the Bank that had issued the Letter of Credit. By the time the mix up could be sorted out, the Letter of Credit had expired and it is the case of the plaintiff that defendant no.1 having received the fans and defendant no.2 having received payment from defendant no.1 did not extend the Letter of Credit and therefore the plaintiff/BEL has remained an up-paid vendor.

5 The writ of summons has been served upon defendant nos.2 to 5 and the plaintiff has filed an affidavit of service of one Mr.S.C.Ghatage, affirmed on 10th October 2013 confirming the same. The suit as against defendant nos.1 and 6 has been dismissed since the writ of summons was not served. Defendant nos.2 to 5 have not filed any written statement though served. Therefore, the allegations, as contained in the plaint, have remained uncontroverted.

6 The cause of action, as alleged in the plaint, arose on 30th May 2002 when the first delivery was made to defendant no.1. The suit was lodged on 27th May 2005 and, therefore, is within limitation.

7 The plaintiff has also obtained leave under Clause 12 of the Letters Patent from this Court on 28th June 2005.

8 Every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated not to be admitted in the pleadings by the defendants shall be taken to be admitted and where the defendants have not filed the pleadings, the Court can proceed, in any event, on the basis of the facts contained in the plaint under Order VIII, Rule 5 of the Code of Civil Procedure, 1908.

The plaintiff has also filed an affidavit of one Mr.Shekhar Bajaj, affirmed on 10th September 2014 together with additional affidavit of evidence dated 21st April 2006. The plaintiff has also filed an affidavit of Mr.Shekhar Bajaj, affirmed on 28th August 2014 in compliance of Section 65B of the Evidence Act and also a compilation of 85 documents.

The statement made in the affidavits are accepted.

9 In the circumstances, as the allegations of fact in the plaint have not been controverted, the plaintiff should be entitled to a decree. The counsel for the plaintiff, in fairness, submitted that the decree can be only against defendant no.2 since defendant no.6 was only sister concern of defendant no.2.

10 I am not inclined to grant interest at 15% per annum as prayed for. I am granting interest only at 9% per annum. The suit, therefore, stands decreed against defendant no.2 in the sum of Euros 510000.00 together with interest thereon at 9% per annum from the date of presentation of documents till payment and/or realization.

11 The plaintiff is also entitled to costs in the sum of Rs.1 lakh.

12 Decree be drawn up accordingly.

13 The suit stands disposed accordingly.

(K.R. SHRIRAM, J.)