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

**SUMMONS FOR JUDGMENT NO. 31 OF 2014
IN
SUMMARY SUIT NO. 374 OF 2013**

Creative Peripherals & Distribution P. Ltd.	...Plaintiff
VS	
Ravindra Dhekane	...Defendant

Mr Prem S. Gidwani for the Plaintiff
Mr R.N.Sukhija for the Defendant.

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CORAM : S.C. GUPTE, J.

FEBRUARY 22, 2016

P.C. :

The summary suit is based on written contracts of sale evidenced by invoices for goods sold and delivered and also on dishonoured cheques. The Plaintiff has given particulars of, and also produced, the invoices along with the plaint. There is no dispute as to receipt of goods by the Defendant. The Plaintiff has produced an account which shows a sum of Rs.75,46,055/- as due and payable on account of these invoices. The Defendant has issued eight cheques of various amounts aggregating to a sum of Rs.77,39,000/- in payment of the dues. The cheques have been dishonoured upon presentation for payment. A criminal prosecution launched by the Plaintiff herein against the Defendant under Section 138 of the Negotiable Instruments Act has led to a conviction of the Defendant. It appears that the conviction has been challenged by the Defendant before the Court of Sessions where the appeal is said to be pending.

2 Be that as it may, the only defence which is raised by the Defendant in his

advocate's reply seems to be the following generalized statements, namely, "now no amount is due and payable by my client to you" ; " my client has kept following eight signed blank cheques.....as a security with you. Since you have not supplied good quality material, and the goods were of defective quality, were not packed properly and hence received in damaged condition."; "you have also overcharged my client for the goods spent by him than the price of goods agreed between my client with you". The goods were sold and delivered during the period 30 September 2010 and 4 November 2010. There is no contemporaneous grievance as to either the quality of the goods or the price charged for the same. In fact, after the last invoice, there have been as many as eight cheques issued for diverse sums aggregating to Rs.77,39,000/-, all of which have been dishonoured upon presentation for payment. The advocate's reply, which has come months after the last cheque was dishonoured, and which takes up generalized defences, as noted above, is no defence. It may be clearly described as nominal and illusory or moonshine. At the hearing of the Summons for Judgment, learned Counsel for the Defendant sought to pick holes in the documents, particularly invoices and statement of accounts, produced by the Plaintiff. The central fact, however, is that receipt of the goods has never been contested by the Defendant. Neither in his reply to the Summons for Judgment notice, nor in the general statements to be found in his advocate's reply the receipt of goods is disputed. All that the reply generally indicates, as noticed above, is that the goods were allegedly defective or that there was an alleged overcharging of price. These defences have come, as I have noted above, much after the supply of goods and the dishonour of cheques issued for payment towards the same.

3 Learned counsel for the Defendant also relies on some receipts of cash payment made by the Defendant to the Plaintiff. As explained by the Plaintiff in the statement of account annexed in the affidavit in sur-rejoinder. All these payments have been duly accounted for and the claim amount of Rs.75,46,055/- has been worked out

after taking into account these payments. What is important to note is that the opening balance shown in the statement of account in Exh A to the sur-rejoinder, namely, Rs.2,69,567/- is the same as the opening balance shown in the particulars of claim annexed as Exh S to the plaint. In either case this balance is worked out after taking into account all earlier payments including the cash payments referred to by the Defendant's counsel at the hearing of the Summons for Judgment. There is no merit in the contentions, therefore, that any payment made by the Defendants was either not accounted for or not reflected in the particulars of claim. The defence that the cheques of specific amounts were given as blank cheques as security is merely required to be stated to be rejected. It is merely a bald plea without any explanation, and is raised by the Advocate of the Defendant for the first time much after dishonour of all these cheques. It is also claimed by learned counsel for the Defendant that the suit is filed in the name of the Defendant whereas the invoices were all raised in the name of Balaji Electricals. It is an admitted position that Balaji Electricals is a proprietorship of the Defendant. Thus there is no merit even in this contention. It is lastly submitted by learned counsel for the Defendant that the invoices do not provide for any interest and that interest @ 18 % per annum claimed in the suit cannot be said to be based on any written contract. Whilst interest from the date of each of the invoices may be contested as not supported by any written contract, upon dishonour of cheques, interest at the rate of 18 percent per annum is payable under Section 80 of the Negotiable Instruments Act. Much of the interest can accordingly be justified. Even otherwise, merely because a part of the interest claimed is capable being contested there is no question of granting leave to defend the claim of principal amount unconditionally.

4 In sum, there is not even a statable defence at least as far as the principal amount claimed in the suit is concerned. The defence, such as the one which is placed before the court, is illusory or moonshine. However, with a view to grant one opportunity

to the Defendant to somehow establish his defence in the trial, only by way of mercy, I am inclined to grant leave to defend on the condition of the Defendant depositing in the court the entire principal amount claimed in the suit.

5 In the premises, the following order is passed:

- (1) Leave to defend the suit is granted to the Defendant subject to and on condition of his depositing in court a sum of Rs.75,46,055/- within a period of eight weeks from today. On deposit of this amount, the suit shall be transferred to the list of commercial causes;
- (2) The Defendant shall in that case file written statement within a period of six weeks after depositing this amount;
- (3) The amount, if any, deposited by the Defendant shall be invested by the Prothonotary and Senior Master in Fixed Deposit of a Nationalized Bank initially for a period of two years and thereafter renewable from time to time until, and to abide by, further orders of this Court;
- (4) The suit to come up on board after 14 weeks for directions.

(S.C.GUPTE J.)