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

SUMMONS FOR JUDGMETN NO. 41 OF 2015
IN
SUMMARY SUIT NO. 491 OF 2015

Dan-Bunkering (Middle East) DMCC ...**Applicant/ Plaintiff**

Versus

Leighton India Contractors Pvt. Ltd. ...**Defendant**

Mr. P.K. Dhakephalkar, Senior Advocate, a/w Mr. Prasad Shenoy & Ms. Bulbulsingh, i/b Crawford Bayley & Co., for the Plaintiff.

Mr. D.D. Madon, Senior Advocate, i/b Mulla & Mulla Craigie Blunt Caroe, for the Defendant.

CORAM : S.C. GUPTE, J.
DATE : 9th February 2016

P.C. :

1. This Summons for Judgment is taken out in a Summary Suit claiming a decree for 54,11,506 US $ as per particulars of claim set out in **Exh.R** and **Exh.R1**. The Suit claim comprises of principal amount due as per the invoices referred to in particulars of claim **Exh.R** and **Exh.R1** and interest. The principal amount comes to

47,60,824 US $ and the balance amount is towards interest.

2. The Invoices are all on account of fuel supplied by the Plaintiff to the Defendant under a contract of "fuel supply services to Marine Spread". Learned Counsel for the Defendant submits to a decree to the extent of the principal amount due as per particulars of claim in **Exh.R** and **Exh.R1,** that is to say, in the sum of 47,60,824 US $. He, however, opposes the Suit insofar as the claim for interest is concerned.

3. General terms and conditions for sale and delivery of bunker oil, which are said to be part of the contract between the parties, provide for payment of interest, if the buyer fails to pay any invoice, at the time of maturity. Such interest is said to be payable at the rate stated in the invoice. The Plaintiff has produced invoices which it has raised on the Defendant. These invoices claim interest after maturity at the rate of 18 percent per annum. That is the basis of the claim for interest in the Suit.

4. Learned Counsel for the Defendant, however, submits that the invoices raised by the Plaintiff on the Defendant are not in accordance with the contract between the parties and in the premises, no interest is payable on the outstanding amounts due

under the invoices. Secondly, it is submitted that the Reserve Bank of India has issued a 'Master Circular for External Commercial Borrowings and Trade Credits' under the provisions of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, under which no interest can be claimed on trade credits under foreign contracts beyond 350 basis points over libor rate of interest. As per the ceiling laid down in the Master Circular, according to the Defendant, the maximum rate of interest that can be levied on an external trade credit is 4.1185 per cent (six months libor US $ rate plus 350 basis points). Thirdly, it is submitted that according to the understanding between the parties reflected in the correspondence between them, no interest is payable by the Defendant on the outstanding amounts. It is submitted that in none of the demands made by the Plaintiff for outstanding payments interest is claimed by the Plaintiff. The defences raised by the Defendant, do have a *prima facie* support in the documents produced by the Defendant. These are all triable issues, which need to be decided at the trial. The defence cannot be described as nominal or illusory so as to call for a decree or a conditional leave to defend upon deposit of any amount.

5. In the premises, the following order is passed :-

a) There will be a decree on admission in terms of prayer clause (a) restricted to a sum of 47,60,824 US $.

b) Insofar as the balance amount claimed by the Plaintiff is concerned, particularly the interest and the sheriff's poundage of one per cent, the Defendant is granted to leave to defend the Suit unconditionally.

c) The Suit as regards such balance claim is transferred to the list of commercial causes.

d) Written Statement within a period of six weeks from today.

e) Suit to come up for directions after six weeks.

f) Summons for Judgment is disposed of accordingly.

[S.C. GUPTE, J.]