

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

**SUMMONS FOR JUDGMENT NO.49 OF 2015
IN
SUMMARY SUIT NO.412 OF 2014**

Ameet EnterprisesPlaintiff

V/s.

Masscorp LimitedDefendant

Mr.Chirag Mody a/w Mr.Rishikesh Soni i/by DSK Legal for plaintiff.

Mr.Nilesh Tribhuvann for defendant.

Mr.Sushil Arun Shinde-Representative of defendant present.

Mr.Rajendra Namdev Jagtap-Representative of Dhawaleshwar Roadlines present.

**CORAM : K.R.SHRIRAM,J
DATE : 20.6.2016**

P.C.:-

1 This suit has been filed by the plaintiff seeking a summary decree in the sum of Rs.5,12,50,055/- towards payment of outstanding invoices raised by the plaintiff on the defendant for the goods supplied to the defendant plus interest.

2 It is alleged by the plaintiff that sometime in the year 2012, the defendant approached the plaintiff and expressed interest in buying pig iron. The defendant also proposed that the payment would be made by defendant either by opening a letter of credit in favour of the plaintiffs or through a bank immediately latest by next working day after receiving the order.

3 The defendant did not establish any letter of credit but the plaintiff claims to have supplied various quantities of pig iron during the period 10.3.2012 to 18.3.2012 and raised 48 invoices for Rs.5,12,50,055/-. Copies of the tax invoices and challans are annexed at Exhibit A to the plaint. As the defendant did not make the payment, the plaintiff by its letter dated 26.2.2013 called upon the defendant to make payment of the outstanding amount of Rs.6,25,72,807/- along with further interest @ 24% p.a. None of the tax invoices mentioned about any interest to be paid, let alone 24% interest. p.a. As the defendant did not pay the amount of Rs.5,12,50,055/- or any other sum, the plaintiff has filed the present suit. The suit is based on the invoices raised which according to the plaintiff is a contract.

4 The defendants have filed a reply of one Girish Chandrashekhar authorised representative of the defendant, affirmed on 10.12.2015. It is the case of the defendant that during the period when the supply was allegedly made, the defendant was being controlled by another company by name Kothari Products Ltd. It is submitted that the company was managed and administered in all aspects by Kothari products Ltd. who held about 10,521,000 shares of the company. In 2013, the buyback of shares from Kothari Products Ltd. started and the procedure concluded on 31.3.2013.

The company is presently under the control of one Allen Bansodev who was the director controlling before Kothari Products Limited, purchased the shares. It is also stated that the invoices raised are all fabricated. No material was supplied and even the purchase account and ledgers of the company does not show any entry of the material allegedly supplied by the plaintiff. It is also submitted that after Mr.Allen Bansodev took over the company back from Kothari, the sales tax records were verified and though it shows the company was paying applicable taxes on goods but no goods were received and hence company has filed a complaint with the Sales Tax Department informing them that the invoices upon which taxes were paid were bogus and false. It is also stated that the fact that plaintiff took almost one year to even send the reminder calling for payment shows the entire claim in the suit is sham and bogus. In its sur-rejoinder the defendant has also relied upon a letter dated 18.6.2015 which is described as an affidavit in paragraph-8 of the sur-rejoinder. This affidavit (letter) is from one Rajendra Namdev Jagtap of Dhavaleshwar Road Lines who according to the plaintiff moved the entire goods supplied to the defendant. This affidavit (letter) is signed and also has got thumb impression. It is stated therein that the goods consignments note relied upon by the plaintiff have been forged and Dhavaleshwar Road Lines has not delivered any goods to the defendant as alleged in the plaint. It is also stated that they have not

received any payments.

5 After the sur-rejoinder was filed, the counsel for the plaintiff requested the matter be stood over so that they could take instructions. The plaintiff has now filed an affidavit dated 3.5.2016 of Rajendra Namdev Jagtap, sole proprietor of Dhavaleshwar Road Lines. Since the signature in the affidavit and the signature on the document relied upon by the defendant were not the same, I directed the plaintiff to give notice to Rajendra Namdev Jagtap to remain present in court. Mr.Rajendra Namdev Jagtap is present in court and is identified by the Advocate instructing Mr.Mody. Advocate for the defendant also states that his client's representative Mr.Sushil Arun Shinde who is present in court identifies the said Rajendra Namdev Jagtap. Mr.Rajendra Namdev Jagtap confirms having affirmed his affidavit dated 3.5.2016 and also identifies his signature. He was also shown the original of the documents relied upon by the defendant and he denied having signed the said letter dated 18.6.2015 or even put his thumb impression on the same. Therefore, prima facie it is evident that the document relied upon by the defendant is a fabricated document. I had also directed the defendant- Chairman and Managing director to remain present in court. The counsel for the defendant tenders a Doctor's certificate to state that the chairman and managing director Allen Bansode is

undergoing medical treatment outside the country.

6 Moreover, the defendant has filed and relied upon a fabricated document. Therefore, it is very difficult to accept the defences raised by the defendant. The defendant has not even replied to the legal notice. No document to substantiate their case has been filed by the defendant.

At the same time, I am inclined to grant conditional leave to defend the claim. The defendant is directed to deposit a sum of Rs.5 crores with the Prothonotary & Senior Master, High Court, Bombay within six weeks from today. Prothonotary & Senior Master to invest the amount in fixed deposit with a nationalized bank initially for a period of one year and thereafter shall be renewed year to year until disposal of the suit.

7 Within 2 weeks of depositing the amount, defendant to file their written statement and serve a copy thereof upon the plaintiff. Within one week thereafter parties to file their respective affidavit of documents and also give inspection of documents. Within one week of taking inspection parties to file their statement of admission and denial with reasons for denial.

Suit be listed on 29.8.2016 for issues.

8 If the defendant does not deposit the amount as directed above, suit be listed for directions on 8.8.2016.

Summons for Judgment accordingly stands disposed.

(K.R.SHRIRAM,J)