

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 64 OF 2015
IN
SUMMARY SUIT NO. 446 OF 2014

FDC International NV/SA ...Plaintiff

Versus

M/s. Baader Schulz Laboratories ...Defendant

Dr. Abhinav Chandrachud, a/w Ms. Jasmine Upadhye, i/b M.V. Kini & Co., for the Plaintiff.

Mr. Bharat Gandhi, i/b K.C. Pandey, for the Defendant.

CORAM : S.C. GUPTE, J.
DATE : 26th February 2016

P.C. :

1. The Summary Suit is based on a contract for sale of goods, which is evidenced by purchase orders and corresponding invoices as well as on two Bills of Exchange accepted by the Defendant.

2. The first purchase order is dated 20th October 2011 bearing purchase order No. 2011-12/82. It is for a quantity of 20,000

kgs of DL-Methionine Min 99 per cent Feed Grade. The shipment was required to be made in December 2011 and the payment terms included a condition of payment within 90 days from the date of the Bill of Lading. The goods covered in its purchase order were shipped on 8th December 2011. The Bill of Lading bears that date. Invoice dated 6th December 2011 drawn in respect of the goods describes the goods and quantity along with price, all of which are in accordance with the purchase order placed by the Defendant. The invoice also reiterates the payment term of 90 days from the date of Bill of Lading. There is no dispute as to the receipt of the goods or as to quality thereof. The Bill of Exchange drawn by the Plaintiff in respect of this shipment for the invoice value of the goods payable at 90 days after the shipment date was duly accepted by the Defendant with waiver of presentment of the Bill of Exchange for payment. The second purchase order is dated 12th December 2011 bearing No. 2011-12/87. This purchase order is also in respect of the quantity of 20,000 kgs of DL-Methionine Min 99 per cent Feed Grade with similar payment terms as the first purchase order. The shipment was mentioned as "PROMPT". The goods covered by this purchase order were duly shipped on 10th January 2012, i.e., within a month of the purchase order. The corresponding invoice in respect of this purchase

order is dated 9th January 2012 and reiterates the payment terms of the purchase order. Even these goods were duly received by the Defendant and there is no complaint of quality. The Bill of Exchange drawn in respect of invoice value of these goods has been duly accepted by the Defendant with similar endorsement as to waiver of presentation for payment. The Defendant failed to pay the amounts in accordance with the respective Bills of Exchange. The notice issued by the Advocates for the Plaintiff for recovery of the sums was neither responded to nor complied with by the Defendant. In the premises, the Plaintiff has filed the present Summary Suit.

3. In Reply to the Summons for Judgment, for the first time, the Defendant has taken up a defence that the goods covered by the purchase order dated 12th December 2011 were shipped by the Plaintiff with a delay. It is submitted that the shipment was to be prompt. It is submitted that as a result of this delay, the Defendant has incurred heavy damages in terms of loss of business as well as loss of reputation and accordingly, the Defendant is entitled to claim damages from the Plaintiff. It is submitted that the claim of the Defendant far exceeds the alleged dues of the Plaintiff. It is submitted that shortly the Defendant would be filing a counterclaim in respect

of these damages. The Reply does not indicate in what manner or to what extent damages have been suffered by the Defendant.

4 . At the hearing of the Summons for Judgment, learned Counsel for the Defendant relied upon the dictionary meaning of the word “**PROMPT**” and submitted that prompt shipment in this case would signify delivery at once or simultaneously with the placing of the purchase order. At the outset, it must be noticed that the word '**PROMPT**' is used here in connection with a shipment in an international contract of sale of goods. In that case, it could never mean delivery or shipment at once or simultaneous with the purchase order. It could only mean within as short a period as may be possible, in the circumstances, from the moment when the act could reasonably be performed. The word “**PROMPT**” is, accordingly, defined even in England in the Uniform Laws on International Sales Act, 1967, as Schedule I. Be that as it may, correspondence which is placed on record by the parties and which does not admit of any dispute, presents a totally different picture. In the first place, it is apparent and not disputed by the Defendant that there were in all three purchase orders and three separate shipments in connection therewith. The two purchase orders, which form part of the subject

matter of the present Suit, are already noted above. Apart from these two purchase orders, there was a third purchase order, which was referred to as S2011510. The Mails exchanged between the parties clearly establish that the delay was urged only in relation to this third purchase order, which was said to be placed for November shipment, though the shipment was actually being made almost in the end of December 2011. The Defendant has specifically taken up a stand that by reason of these circumstances, it would be difficult for the Defendant to convince the customer for whom the consignment was eventually meant to take delivery. Accordingly, the Defendant requested the Plaintiff to stop the shipment. As for the two purchase orders, with which we are concerned in the present Suit, there is no contemporaneous complaint at all about any alleged delay in shipment. In fact, the correspondence establishes that the Defendant has expressed satisfaction about the shipment and only raised concerns regarding receipt of documents, informing the Plaintiff to either confirm receipt of documents or to see that the documents were received in time. As late as on 24th May 2012, the Defendant has not only refrained from raising any dispute as to the two consignments, with which we are concerned, in the present Suit, but offered to make the payment by certain stipulated period and

expressing its regret for the delay in payment. It is for the first time when the Summons for Judgment was served on the Defendant that the Defendant has taken up a bald plea of delay in shipment of one of the two consignments. The Defendant alleges that the shipment was made with a gap of 22 days between the date of the purchase order and the shipment. The defence, in the premises, can merely be termed as illusory or moonshine.

5. Learned Counsel for the Defendant relied on several Judgments of High Courts including one of our High Court to contend that delay in delivery of goods is a matter of triable issue. The present Suit is not just based on a written contract for sale of goods, but also on Bills of Exchange duly accepted by the Defendant. The Bills of Exchange provide for payment within 90 days of the date of shipment. The shipment dates themselves are not contested. These documents were duly accepted against shipments made. There never was a grievance made about the dues themselves raising any defence of late delivery. In the premises, a bald allegation of delay in delivery, for the first time in reply to the Summons for Judgment, certainly cannot be termed as bona fide defence raising triable issues. It is nothing but frivolous or vexatious.

6. Though this Court would be justified in granting a decree by making Summons for Judgment absolute on these facts, only by way of mercy and with a view to give a chance to the Defendant somehow to make out its defence at the trial, I am inclined to grant leave to defend the Suit on and subject to the condition of deposit of the entire principal amount of claim in Court.

7. Accordingly, the following order is passed :-

- (i) The Defendant is granted leave to defend the Suit on and subject to a condition to deposit a sum of USD 1,41,95231.44, USD 99,000 and EUR 72,309.50, within a period of eight weeks from today;
- (ii) If these amounts are deposited by the Defendant, the Suit shall be transferred to the list of commercial causes;
- (iii) In that case, the Defendant shall file a Written Statement within a period of six weeks from the date of payment;
- (iv) The Prothonotary & Senior Master of this Court

to invest the amount paid, if any, by the Defendant, in fixed deposit/s of any nationalised bank initially for the period of two years and thereafter, to be renewed from time to time and to abide by further orders that may be passed in the Suit;

- (v) Summons for Judgment is disposed of accordingly.

[S.C. GUPTE, J.]