

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

APPEAL NO.558 OF 2015
IN
MEMORANDUMS FOR JUDGMENT NO.13 OF 2015
IN
SUMMARY SUIT NO.14 OF 2015

...Appellant
(Orig.Defendant)

Indian Steel and Infrastructure Private Limited

...Respondent
(Orig. Plaintiff)

Mr.Diwakar R. Singh, for the Appellant

Mr. Anil Agarwal, for the Respondent.

**CORAM : V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE : 27th JANUARY, 2016

P.C. :

1. Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of respondent.
2. The appellant is aggrieved by an order passed by the learned

Single Judge dated 29th September, 2015. By the said order, the Summons for Judgment taken out by the respondent – plaintiff for recovery of a sum of Rs.3,31,47,238/- along with interest was allowed and the suit was disposed of.

3. Learned Counsel appearing on behalf of the appellant submitted that the suit is barred by limitation. He invited our attention to the affidavit in reply filed by the appellant to the Summons for Judgment. He submitted that there is a specific pleading in paragraph 2 of the reply that the Summons for Judgment is barred by limitation. He invited our attention to the invoices. He submitted that the date of invoice is 20th July, 2011 and the terms of payment is that the payment was to be made within 15 days. He submitted that the suit was filed on 8th December, 2014 and therefore it is clearly barred by limitation.

4. On the other hand, learned counsel appearing on behalf of the respondent submitted that this submission is without any substance. He submitted that the appellant has acknowledged the amount which was due and payable on him and the letter of confirmation dated 9th May, 2014. He

submitted that the appellant had also made part payment of the amount which was due and payable and had issued cheques towards repayment of the said amount, which cheques were dishonored by the bank. He submitted that the first cheque was dated 30th May, 2014 and it was dishonored after it was presented in the bank. He submitted that the other cheques which were also deposited were thereafter dishonored. He submitted that the suit has been filed after the cheques were dishonored. Therefore, the suit was not barred by the law of limitation.

5. In our view, there is no substance in the submission made by the learned counsel appearing on behalf of the appellant. The letter of acknowledgment dated 9th May, 2014 and dishonor of the cheques which were issued towards payment of the said outstanding amount clearly reveal that cause of action commenced from the date of dishonor of the cheques and within six months the present suit has been filed.

6. Learned Counsel appearing on behalf of the appellant then submitted that there are two flats owned by the appellant and the value of these two flats is more than the amount which is due and payable. He

submitted that upon disposal of the said flats the amount which is payable by the appellant can be paid from the sale proceeds of the said two flats.

7. Learned Counsel appearing on behalf of the respondent however submitted that after an enquiry was made by the respondent, the respondent were informed by the Society that the Income Tax Authorities have charged on the said two flats and the amount which is outstanding is more than Rs.7 crores.

8. The above submission of the appellant therefore cannot be accepted. Apart from the question of limitation no other submission was made by the learned counsel appearing on behalf of the appellant.

9. We have perused the impugned order. The impugned order clearly reveal that the learned Single Judge has taken into consideration all the contentions raised by the appellant in the reply filed by him to oppose the Summons for Judgment. Even otherwise, no case is made out for interfering in the said order.

10. Appeal therefore is dismissed and disposed of. Interim order passed by this Court on 7th January, 2016 to continue, during the pendency of the Execution Application.

REVATI MOHITE DERE, J.

V.M. KANADE, J.