

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

**SUMMONS FOR JUDGEMENT NO. 87 OF 2015
IN
SUMMARY SUIT NO. 534 OF 2015**

M/s. Veritas (India) Ltd. .. Plaintiff
Vs.
Mewat Tire and Rubber (P.) Ltd, & Anr. .. Defendants

Mr.Vivek Kantawala i/b Vivek Kantawala & Co. for plaintiff.
M.Saboo Manoj Kumar for defendant no.1.
Mr.Shivanand A. Mishra for defendant no.2.

**CORAM : K.R.SHRIRAM, J.
DATE : 29TH AUGUST, 2016**

P.C.

1 In this suit, the plaintiff is claiming a summary decree in the sum of Rs.2,41,72,142/- and for future interest on principal amount of Rs. 1,79,10,016/-. It is stated in the plaint that the plaintiff supplied goods as per the request of defendant no.1 for which the payments had not been made. The case against defendant no.2 that defendant no.2 took over defendant no.1 and part payments have been made by defendant no.2 and therefore defendant no.2 is also liable.

2 The plaintiff is in the business of sale and supply of various chemicals and rubber components. As per the purchase orders issued by defendant no.1, the plaintiff supplied materials. The plaintiff also raised nine invoices

for a total sum of Rs.3,06,45,766/-. It is alleged that defendant no.1 delayed payment due to certain financial exigencies and made part payments. The amount of Rs.1,79,10,016, as alleged by the plaintiff, is due and payable. It is also stated that defendant no.1 handed over cheques to the plaintiff which were all dishonoured due to insufficiency of funds.

3 The plaintiff called upon the defendants through their Advocates' notice dated 28th August 2014, to pay the amounts outstanding. Defendant no.1 did not reply to the notice but defendant no.2 replied denying the liability. However, they have acknowledged that they have taken over defendant no.1 but denied having taken over liability of defendant no.1. The defendant no.2 vide letter, dated 5th June 2012 informed the plaintiff is as under :

“June 05, 2012

*Mr.Pankaj Shah
Veritas (India) Limited,
Delhi*

Dear Sir,

We have pleasure in informing that we have taken over M/s. Mewat Tire and Rubber Pvt. Ltd. with immediate effect all liabilities of Mewat Tire towards Veritas (India) Limited will be taken care by GRL Tires Pvt. Ltd.

We will be release your outstanding payment of Rs.2,62,45,644/- (Two Crore Sixty Two Lac Forty Five Thousand Six Hundred Forty Four only) in 3 months, which is subject to audit and reconciliation.

Meantime you are requested to return back the Mewat's PDC's.

Thanking you,

*Yours faithfully,
For GRL Tires Pvt. Ltd.*

*sd/-
Authorised Signatory.*

4 In the affidavit in reply filed by defendant no.1, defendant no.1 has stated that the name of defendant no.1 has been changed to '*GRL Offhighway Tires Private Limited*' with effect from 25th February 2013.

Defendant no.1 has also challenged the jurisdiction of this Court and raised other issues.

5 The counsel for the plaintiff has taken me through the rejoinder and compilation of documents to state that defendant no.1 has admitted liability. But the main issue is of jurisdiction. The plaintiff's claim in the suit is for goods supplied for which payment has not been received. Admittedly, the goods have been supplied to the defendants, as alleged by the plaintiff, outside Bombay. The counsel for the plaintiff submitted that the cheques having been issued, presented and dishonoured in Mumbai and the suit was based on cheques dishonoured, the entire cause of action arose within Mumbai and hence this Court will have jurisdiction.

6 I am afraid, I cannot agree with the counsel for the plaintiff. The cause of action is also based on goods sold and delivered; not just dishonoured cheques. Paragraph 10 of the plaint states that :

“..... the plaintiff has therefore, approaching his Hon'ble Court under Summary Jurisdiction as the instant suit is for recovery of a liquidated amount based on principles of goods sold and delivered and dishonoured cheques.

(emphasis supplied)

The fact that the cheques have been issued in Mumbai and dishonoured in Mumbai only shows part of cause of action arose within Mumbai. Admittedly, the plaintiff has not obtained leave under Clause 12 of the Letters Patent. Therefore, the plaintiff not having obtained leave under clause 12, in my view, jurisdiction will certainly be an issue. Therefore, unconditional leave to defend is granted to the defendants.

7 The summons for judgment is rejected with the following order :

- (i) Written statement to be filed and copy served within two weeks.
- (ii) Within three weeks thereafter, parties to file their respective affidavits of documents, complete discovery and inspection and also exchange their statements of admission and denial with reasons for denial.
- (iii) The suit be listed for issues after eight weeks.

(K.R. SHRIRAM, J.)

