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

SUMMONS FOR JUDGMENT NO. 19 OF 2017
IN
COMMERCIAL SUIT NO. 476 OF 2016

Anchor Electricals Pvt. Ltd. ...Applicant/Plaintiff
vs
Shivshakti Enterprises ...Defendant

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Mr Kunal Mehta a/w Ms Yasmin Godrej i/b Crawford Bayley & Co. for the Applicant/Plaintiff
Mr Rajagopal i/b A.K.Saxena for the Defendant.

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CORAM : **B.P.COLABAWALLA, J.**
NOVEMBER 23, 2017.

P.C. :

This Summons for Judgment has been filed seeking a judgment against the Defendant in the sum of Rs.1,26,98,891.87 being the aggregate of Rs.1,05,05,467.87 being the outstanding amount under the suit invoices and debit memos together with interest accrued on the principal amount under the suit invoices aggregating to Rs.21.23 lacs. The particulars of the claim in the suit are annexed at Exh "**Q**" (Page No.231). The particulars of claim indicate that the amount due under the suit invoices is Rs.1,01,70,222.72 and the amount due under the debit memos is Rs.4,75,550.15. Over and above this, the particulars of claim also indicate credit being given for the Credit Memos issued by the Plaintiff in the sum of Rs.1,40,305/-. In other words, the amounts due under the suit invoices comes to approximately Rs.1.01 Crores.

2 The brief facts of this case are that the Plaintiff had appointed the Defendant to be a dealer of its products / goods for Ahmedabad. Pursuant to this appointment, the Defendant purchased various quantities of goods/ products from the Plaintiff from time to time. As far as the present suit is concerned, the same pertains to the goods/ products purchased by the Defendant from the Plaintiff between the period November 2014 to January 2015.

3 During the aforesaid period the Plaintiff from time to time supplied the goods and raised invoices upon the Defendant, out of which the payment under 39 invoices remained outstanding and payable. Out of these 39 invoices, 22 invoices

were raised between 29th November, 2014 to 29th December, 2014 (aggregating to Rs.69.75 lacs), whilst 17 outstanding invoices were raised between 30th December, 2014 to 8th January, 2015 (aggregating to Rs.31.94 Lacs). The list of these outstanding invoices has been annexed at Exh "**A**" to the plaint and these invoices have also been independently annexed at Exhs "**B-1 to B-39**" collectively.

4 It is the case of the Plaintiff that the delivery of the said goods were effected through a third party transporter by the name of IP Integrated Services Pvt. Ltd. who delivered the said goods to the Defendant for and on behalf of the Plaintiff. According to the Plaintiff, the Defendant's acceptance of the delivery of the said goods is also demonstrated by 38 acknowledged and signed lorry receipts, corresponding to the suit invoices, which contain the Defendant's rubber stamp and signature. Exhs **D-1 to D-38** are these lorry receipts.

5 Despite receipt of these goods, it is the case of the Plaintiff, that no payment was made by the Defendant. In fact it is averred that as on 29th December, 2014, in respect 22

invoices an aggregate amount of Rs.69.75 lacs was due and payable by the Defendant to the Plaintiff, and therefore, the Defendant issued in favour of the Plaintiff a cheque dated 26th December, 2014, in the sum of Rs.4 Lacs which stood honoured. The Defendant also executed a letter dated 29th December, 2014, which promised to pay the Plaintiff a sum of Rs.50 Lacs between 1st January, 2015 and 20th January, 2015 constituting a part of the dues payable to the Plaintiff. The Plaintiff also promised to pay remaining of the outstanding between 21st January, 2015 and 30th January, 2015 respectively.

6 Thereafter, since no payment was coming forth from the Defendant, on 1st January, 2015, the Plaintiff deposited a cheque issued by the Defendant dated 31st December, 2014 in the sum of Rs.5 Lacs which was dishonoured for the reasons "**Funds Insufficient**". Thereafter, the Defendant issued in favour of the Plaintiff another cheque bearing No.880806 dated 23rd January, 2015 drawn by the Defendant on Indian Overseas Bank in the sum of Rs.50 Lacs in respect of part payment of the monies payable and due to the Plaintiff under the outstanding invoices. When this cheque was deposited on 17th April, 2015,

the same was dishonoured for the reasons "**Account closed**".

7 In the meanwhile, the Plaintiff was shocked and surprised to receive a notice dated 6th February, 2015 issued by the advocates for the Defendant *inter alia* contending that the accounts between the Plaintiff and the Defendant has been finalized in the last week of December 2014 and that pursuant thereto it was agreed that the Defendant's dues towards the Plaintiff were settled by accepting a sum of Rs.4 Lacs. This notice of the advocates for the Defendant was duly replied by the advocates for the Plaintiff vide its letter dated 28th February, 2015, wherein the allegations made by the Defendant were wholly denied. Since, no payment was coming forth from the Defendant, the present suit came to be filed and was lodged in this Court on 22nd March, 2016.

8 After filing of the suit and writ of summons being served on the Defendant, the Defendant filed its appearance. Thereafter, the Plaintiff has filed the present Summons for Judgment seeking judgment against the Defendant in the sum of Rs.1,26,98,891.87.

9 To oppose this Summons for Judgment, the Defendant filed an affidavit-in-reply dated 4th March, 2017. In this reply, what is interesting to note is that the receipt of these invoices or the signatures thereon as well as receipt of the lorry receipts and the signatures thereon were not denied by the Defendant. The affidavit-in-reply is completely silent on this aspect. The defences raised in this reply was that (i) present suit is not maintainable as Summary Suit because the Plaintiff has claimed the reliefs on the basis of balance at the foot of the accounts and not on an admitted liability and (ii) that the cause of action has arisen outside the jurisdiction of this Court at Ahmedabad where the goods have been delivered, and therefore, this Court had no jurisdiction to entertain and try the present suit. It was further stated in paragraph 6 that the Defendant has been working as a dealer of the Plaintiff since last many years and making regular payments. It has been stated that there was no outstanding amount as stated by the Plaintiff and the present suit was filed only to harass the Defendant.

10 When this matter was first argued on 4th October,

2017, the matter was kept thereafter on 6th October, 2017, to enable the advocates for the Defendant to take instructions in the matter. It was specifically informed to the advocates for the Defendant that he ought to take the instructions as to what amount the Defendant was willing to deposit, as the defence raised in the reply, in my opinion, were wholly inadequate to grant unconditional leave to defend the present suit. Instead of taking these instructions, when the matter was called out on 6th October, 2017, the Defendant remained present in Court and thereafter orally sought to deny the entire transaction. In my order dated 6th October, 2017, I have recorded that it was quite shocking that such a stand was being taken considering that an affidavit-in-reply had already been filed wherein there were no denials with reference to receipt of invoices or receipt of goods which are the subject matter of these invoices. Despite this I gave time to the Defendant to file an additional affidavit-in-reply to take up any further stand if he so chose.

11 This additional affidavit has been filed by the Defendant and is dated 13th October, 2017. In paragraph 2 of this affidavit, the Defendant for the first time has come up with a

completely new story that the invoices that were issued by the Plaintiff were a part of a strategy of the Plaintiff to dump the materials in the name of dealers like the Defendant to realize their sales targets. According to the Defendant, the Plaintiff has generated invoices in the name of the Defendant and delivered the goods to the Ahmedabad godown of the Plaintiff and thereafter these goods were delivered to some other party which was not within the knowledge of the Defendant. The Defendant in this affidavit denied the signatures and endorsement by the Defendant in relation to all invoices except three, the details of which have been set out in paragraph 2. What is interesting to note is that the Defendant in this affidavit himself states that the Plaintiff had convinced the Defendant to co-operate in diverting the Plaintiff's goods to other parties as a business diversification process and got the signatures of the Defendant on few of the invoices as well as the lorry receipts. According to the Defendant, the Plaintiff used to take seals and letter heads of the dealers at the time of appointment as a part of their business procedures and used to use them to suit their purposes. All this is raised for the first time by the Defendant in the additional affidavit dated 13th October, 2017 despite all this being to the knowledge of the Defendant when the first Affidavit-in-reply was filed.

11 After hearing the learned advocates for parties at some length, I find that the defences raised in the additional affidavit by the Defendant are clearly an afterthought. After the suit was filed and the Summons for Judgment was taken out, the Defendant filed an affidavit-in-reply. Any prudent business person such as the Defendant would at the very first instance dispute the very invoices that are mentioned in the plaint if they were not signed by the Defendant. Surprisingly, in the first affidavit filed by the Defendant no such defence was ever taken. Neither the invoices nor the lorry receipts or receipt of goods was ever denied by the Defendant. This affidavit has been filed only after this Court had indicated to the advocates for the Defendant that in the first reply filed there was no real defence to the claim of the Plaintiff. It is only then that the second affidavit has been filed wherein the Defendant has raised all these contentions. To my mind, these defences are clearly an afterthought only to somehow wriggle out of their liability to pay dues of the Plaintiff.

12 Looking at the conduct of the Defendant, even if one were to hold that the defences raised are plausible, in my view the same are highly improbable. However, not to shut out the Defendant from raising all their contentions in the Written Statement that they may choose to raise as a defence to this suit, I am inclined to grant conditional leave to defend the suit to the Defendant subject to the Defendant depositing in this Court a sum of Rs.1.01 Crores within a period of 12 weeks from today. Hence, the order.

ORDER

Conditional leave is granted to the Defendant to contest the suit subject to-

(i) The Defendant depositing in this Court a sum of Rs.1.01 Crores within a period of 12 weeks from today;

(ii) If the aforesaid deposit is made within the stipulated period, this suit shall be transferred to the list of Commercial Causes and the Defendant shall file its Written Statement within a period of eight weeks from the date of deposit;

(iii) If this conditional order of deposit is not complied with within the stipulated period as mentioned earlier, the Plaintiff shall be entitled to apply for an ex-parte decree against the Defendant after obtaining a non-deposit certificate from the Prothonotary and Senior Master of this Court.

13 The Summons for Judgment is disposed of in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

14 In the event, an amount of Rs.1.01 Crores is deposited in this Court, the Plaintiff shall be at liberty to file an application for withdrawal of the same which shall be decided on its own merits and in accordance with law. I make it clear that I have not opined on, whether the Plaintiff shall be entitled to withdrawal or otherwise.

(B. P. COLABAWALLA, J.)