

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.42 OF 2017

IN

COMMERCIAL SUMMARY SUIT NO.273 OF 2016

Mr Rajesh Chougule	... Applicant
and	
Mr Rajesh Chougule	... Plaintiff
v/s	
M/s Delta Compression S.R.L.	... Defendant

Mr Prasad Shenoy with Mr S.A. Rajeshirke i/b Mr Prabhakar M. Jadhav for Plaintiff.
Mr Rushil Mehta for Defendant.

CORAM : B.P. COLABAWALLA, J.

DATE : OCTOBER 6, 2017

P.C.:

1. The present Summary Suit has been filed by the Plaintiff seeking an order and decree against the Defendant in the sum of Rs.1,26,33,805/- together with interest at the rate of 9 % p.a. The brief facts of the case are that the Defendant undertakes various work orders in respect of manufacture, supply, installation, commissioning and maintenance of CNG compressors and dispensers. The Defendant had received various purchase orders from Mahanagar Gas Ltd.,

Indraprast Gas Ltd., Bhagyanagar Gas Ltd., Sabarmati Gas Ltd. and Hindustan Petroleum Corporation Ltd. etc. The Defendant therefore required an Indian service provider in order to provide services at various locations and the Defendant would discharge its obligations under the same.

2. For this purposes, a service agreement dated 1st March 2006 was entered into between the Plaintiff and the Defendant.

3. In subsequent years, the Defendant also received further purchase orders from various companies. As there was an on-going business relationship between the Plaintiff and Defendant, the Defendant would similarly instruct the Plaintiff with respect to the work of the aforesaid companies as well and the Plaintiff would provide the necessary services. It is the case of the Plaintiff that in or about October 2011, the Defendant started defaulting on some of the invoices raised for services provided at the request of the Defendant. The plaintiff reminded the Defendant about these outstandings to which the Defendant assured the Plaintiff that these would be cleared.

4. Since the substantial number of invoices were now outstanding, the Plaintiff addressed an email dated 8th May 2013 requesting the Defendant for immediate release of payments due. This was followed by several other emails that were exchanged between the Plaintiff and the Defendant. What is to be noted is that in none of these emails, the dues of the Plaintiff is disputed. Finally, on 30th August 2013 the Defendant addressed an email to the Plaintiff agreeing to release US\$ 200,000 and setting out a schedule for payment in four equal monthly installments starting from 18th September 2013. In performance of this admission, the Defendant paid the first installment of US\$ 50,000 on 18th September 2013. The balance installments that were due on 18th October 2013, 18th November 2013 and 18th December 2013 were not paid by the Defendant as agreed in its email dated 30th August 2013. It is in these circumstances, the Plaintiff was constrained to file the present Suit and claim the balance principal amount of US\$ 150,000.

5 After this Suit was filed, the Defendant entered appearance through an Advocate. Thereafter, the present Summons

for Judgment was lodged and the same was served upon the Advocates for the Defendant on 24th April 2017.

6. Despite service of the Summons for Judgment, no affidavit in reply has been filed opposing the Summons for Judgment and no application for leave to defend has been made by the Defendant. The learned counsel appearing for the Defendant has stated before me that he is getting no instructions from the Defendant and has therefore been unable to make an application for leave to defend the above Summary Suit.

7. On going through the email dated 30th August 2013, it is clear that at least to the extent of US\$ 200,000, the Defendant had clearly admitted the liability to the Plaintiff and even given a schedule of payment. In part compliance of this email, the Defendant has made payment of US\$ 50,000 and thereafter defaulted in making the payment of the balance US\$ 150,000

6. Considering these facts and the provisions of Order XXXVII Rule 3 sub-rule (6) of the CPC which entitles the Plaintiff to a

judgment forthwith when non application for leave to defend is applied for, Summons for Judgment is made absolute in terms of prayer made in the Summons for Judgment. In view thereof, Summary Suit also stands disposed off. Refund of court fees, if any, as per rules. Certified copy of this order is expedited.

(B.P. COLABAWALLA, J.)