

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

**SUMMONS FOR JUDGMENT NO. 47 OF 2016
IN
SUMMARY SUIT NO. 728 OF 2015**

Narendra Chandmalji Jain	...Plaintiff
vs.	
M/s.Sainath Industries & Ors.	...Defendants

Mr.P.M. Shah with Dishang Shah for Plaintiff.
Mr.Farooq A. Chowdhary I/b. Devesh Tripathi for Defendants.

CORAM : S.C. GUPTE, J.

3 JULY 2017

P.C. :

Heard learned Counsel for the parties.

2 This summary suit is filed by the Plaintiff on the basis of a written contract for sale of goods as between the Plaintiff and Defendant No.1 and a dishonoured cheque, which was issued by Defendant No.3, a partner of Defendant No.1, towards payment of dues of Defendant No.1.

3 It is submitted in reply to the summons for judgment that certain cheque leaves from the cheque book of Defendant No.3 were stolen and that the alleged dishonoured cheque relied upon by the Plaintiff is from those cheque leaves. Learned Counsel submits that he has made a complaint in this behalf to the police. Secondly, it is submitted that there were cross dealings between the parties. Whereas the Plaintiff sold goods to Defendant No.1, Defendant No.1 in turn sold various scrap and other material to the Plaintiff for which invoices have been raised. It is submitted that all these debit and credit entries are duly reflected in the accounts between the

parties maintained in ordinary course by Defendant No.1. Learned Counsel relies on a compilation of documents, including the ledger account of the Plaintiff maintained by Defendant no.1 in its books and also audited balance sheet of Defendant No.1, which are submitted to statutory authorities and which are consistent with the ledger account relied on by Defendant No.1. According to the ledger account and Pthe balance sheet relied on by Defendant No.1, nearly a sum of Rs.11,06,608/- is shown as due and payable by Defendant No.1 to the Plaintiff.

4 Learned Counsel for the Defendants submits that though his client has also a dispute to raise in respect of this balance, without prejudice to his rights and contentions, he is prepared to deposit a sum of Rs.11,06,608/- in this court within twelve weeks from today. The statement is accepted.

5 In the light of these defences, which gave rise to triable issues to be decided at the trial, unconditional leave is granted to the Defendants. This is, of course, subject to the statement made by learned Counsel for the Defendants, as noted above, that a sum of Rs.11,06,608/- will be deposited in this court within twelve weeks from today.

6 The summons for judgment is disposed of accordingly. Written statement to be filed within a period of four weeks from today. The suit to appear on board for directions after twelve weeks.

(S.C. Gupte, J.)