IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 51 OF 2016
IN
SUMMARY SUIT NO. 809 OF 2015

Patel Engineering Ltd. ... Plaintiff

Versus

Jain Granites & Projects India Ltd. ... Defendant

Mr. Onkar Chandurkar, along with Mr. Dharmesh Shah, instructed by Mr. Akshay M. Gosavi, for the Plaintiff.

Mr. Zubin Behramkamdin along with Mr. Rohan Deshpande and Ms. Vidya Nair, instructed by Mr. Shivam Singh, for the Defendant.

CORAM : S. J. KATHAWALLA, J.
DATE : 4th January, 2017

P.C.:

1. The above Suit is filed as a Summary Suit by the Plaintiff against the Defendant for judgment and decree in favour of the Plaintiff and against the Defendant in the sum of Rs. 26,89,33,576/- as per particulars of claim annexed and marked Exhibit-L to the Plaint with further interest @ 18% per annum or such other rate on the principal amount of Rs. 24,67,83,878/- as this Court may deem fit and proper, from the date of filing of the Suit till payment and/or realisation thereof.

2. Upon the Writ of Summons being served on the Defendant, the Defendant filed their appearance. In view thereof, the Plaintiff took out the above Summons for Judgment seeking the aforestated relief. The Defendant filed their Affidavit-in-Reply to the Summons for Judgment dated 12th August, 2016, to which the Plaintiff filed their Rejoinder dated 14th September, 2016. Today the Summons for Judgment is taken up for final hearing.

3. The Plaintiff -- Patel Engineering Limited is a Limited Company, inter alia, carrying on business of integrated infrastructure and construction services conglomerates in India. The Defendant -- Jain Granites and Projects India Ltd. is also a Limited Company, inter alia, engaged in the business of supply of building material for construction of housed as well as commercial buildings.

4. The Advocate for the Plaintiff has made the following submissions:

4.1 The Plaintiff placed an order with the Defendant for supply of Fe.500 TMT Bars Re Inforced - ISI Standard ('the said material') for which the Defendant raised the following three proforma invoices:

(i) Proforma Invoice No. JG/MAH/00262/2014, Dt. 20.11.2014;

(ii) Proforma Invoice No. JG/MAH/00270/2014, Dt. 21.11.2014; and

(iii) Proforma Invoice No. JG/MAH/00276/2014, Dt. 21.11.2014.

4.2 The said Proforma Invoices contain the following terms of supply:

(i) Payment by : Letter of Credit in favour of "M/s. Jain Granites & Projects India Limited" negotiable at 180 days:

(ii) Charges: All opening, banking, discounting, interests etc. are to the account of the customer.

4.3 As per the terms of the said Proforma Invoices, the Plaintiff issued three letters of credit in the Defendant's favour, particulars of which are as under:

(i)	LC No. 01191LCDA 140842	: Rs. 15,18,35,250/-
(ii)	LC No. 01191LCDA 140843	: Rs. 14,42,38,500/-
(iii)	LC No. 01191LCDA 140844	: Rs. 6,19,26,250/-
	Total	: Rs. 35,80,00,000/-

4.4 Thereafter the Defendant raised eleven tax invoices, totalling to an amount of Rs. 36,01,70,336/-.

4.5 Thereafter the Defendant handed over to the Plaintiff 11 tax invoices, all dated 1st December,2014 along with 53 delivery notes (listed at pages 4 and 6 of the Plaint), of which 17 delivery notes are dated 29th November, 2014, 14 delivery notes are dated 30th November, 2014. As the Defendant wanted the letter of credits/documents to be discounted on an urgent basis, the Plaintiff signed the documents including the delivery notes in good faith before receiving delivery of the said goods.

4.6 The Defendant discounted all the three Letters of Credit amounting to Rs. 35,80,00,000/- on 1st December, 2014 i.e. even before delivering the goods to the Plaintiff.

4.7 On enquiry the Plaintiff reliably learnt that the goods manufactured by the Defendant were of poor quality and moreover there were discrepancies in pricing, due to which the Plaintiff, in order to safeguard its interest, cancelled its purchase order vide its letter dated 2nd December, 2014.

4.8 Upon accepting the cancellation of the aforesaid purchase order, the Defendant refunded an amount of Rs. 11,12,16,122/- in three instalments which were paid on 3rd December, 2014 and 6th December, 2014.

4.9 Even though the balance amount payable by the Defendant was Rs. 24,67,83,878/-, it was agreed that the Defendant would be given a discharge upon payment of a sum of Rs. 22,82,35,736/-, on the condition that the Defendant paid the said amount before 31st December,2014.

4.10 The Plaintiff thereafter vide its letter dated 9th December, 2014, requested the Defendant to refund the balance sum of Rs. 22,82,35,736/- without delay, for which the Defendant vide its reply letter dated 11th December, 2014, requested the Plaintiff to provide the Defendant with a debit note, upon which the Defendant agreed to refund the amount of Rs. 22,82,35,736/- before 31st December,2014.

4.11 The Plaintiff, in compliance with the Defendant's request, issued three debit notes all dated 2nd December, 2014, aggregating to Rs. 36,01,70,336/- and requested the Defendant to issue the corresponding credit notes for the same.

4.12 The Defendant issued five cheques in favour of the Plaintiff towards part discharge of the admitted liability of Rs. 22,82,35,736/- owed to the Plaintiff, which cheques are dated 15th December, 2014, 20th December, 2014, 25th December, 2014, 31st December, 2014 and 6th January, 2015.

4.13 That apart from the above, one Mr. Sunil Kumar Bafna, Managing Director of the Defendant, in his official capacity as well as in his personal capacity, executed an Undertaking-cum-Indemnity dated 13th January,2015 thereby providing the following three securities until the balance payment of Rs. 22,82,35,736/- was paid by the Defendant:

(i) Land measuring 26.324 hectares situated at Chitor District, Shree Balaji Registration District, Srikalahasti Sub-Registrar District, Srikalahasti Mandal, Ramanujpalli Survey Group, Ramanujpalli Village Lands, Andhra Pradesh;

(ii) Provide second charge and create a simple mortgage on the office-cum-residential building situated at No. 48, Harrington Road, Chettput, Chennai-600 030, Tamil Nadu;

(iii) Charge on the Defendant's Export Order of Rs. 6,00,00,000/- against issue of letter of credit by one of the Defendant's customers.

4.14 The Plaintiff presented the cheques mentioned in Clause No. 4.12 above with its Bankers on 5th March, 2015, 13th March,2015, 18th March, 2015, 20th March, 2015 and 24th March, 2015, respectively. However, four cheques were dishonoured with an endorsement "FUNDS INSUFFICIENT' and the cheque dated 20th December, 2014 was dishonoured with an endorsement "ACCOUNT BLOCKED".

4.15 The Plaintiff thereafter came to know that the Defendant had initiated frivolous and vexatious litigation before the Vth Assistant City Civil Judge, Chennai to pre-empt the Plaintiff from taking any action for recovering the said admitted debt, and to confuse and mislead the Court. The said proceeding is completely devoid of merit, which deserves to be dismissed in limine and the same is being suitably defended.

4.16 The Defendant's liability to the tune of Rs. 22,82,35,736/- on account of cancellation of the said purchase order is admitted not only in the Defendant's Undertaking-cum-Indemnity dated 13th January,2015 but also vide the Defendant's letter dated 11th December, 2014.

4.17 Since it was agreed that an amount of Rs. 22,82,35,736/- would be payable by the Defendant to the Plaintiff, instead of Rs. 24,67,83,878/- before 31st December, 2014, and since the Defendant failed to make the payment as agreed, the Plaintiff is now entitled to refund of the entire amount of Rs. 24,67,83,878/- along with interest. The Plaintiff served a statutory legal notice dated 22nd April, 2015 under Section 433 (e) of the Companies Act, 1956, on the Defendant which notice was responded to by the Defendant vide its letter dated 10th May, 2015, disputing the claim of the Plaintiff on false and mala fide grounds. The Plaintiff has therefore filed the present Suit claiming Rs.

26,89,33,576/- from the Defendant and has now taken out the above Summons for Judgment and decree against the Defendant as prayed.

4.18 That the Summons for Judgment deserves to be and be made absolute as prayed for.

5. The Learned Advocate appearing for the Defendant has made the following submissions:

5.1 On October 30, 2014, one Mr. Tulsi Ram Kayal from the Plaintiff's Office at Mumbai sent an email to the Defendant stating that the Plaintiff had a requirement of TMT bars, and requested the Defendant to provide certain details in relation to the supply thereof. In terms of this email, the Defendant furnished its registration details along with other requisite enclosures relating to the proposed supply of TMT bars by the Defendant to the Plaintiff.

5.2 Thereafter, Mr. Rupen Patel (Managing Director) and Mr. C. K. Singh (Vice President) of the Plaintiff Company, approached the Defendant, and after negotiations between the parties, the Defendant forwarded three Proforma Invoices/Sale Contracts to the Plaintiff, particulars of which are set out in paragraph 4.1 above. The said Invoices/Sale Contracts were accepted by Mr. Rupen Patel on behalf of the Plaintiff who agreed to all the terms and conditions as stipulated therein, including the quoted price per ton of the TMT bars and signed the same on behalf of the Plaintiff.

5.3 Thereafter, Mr. Rupen Patel, the Managing Director of the Plaintiff, in accordance with the terms of the aforesaid contracts issued three Letters of Credit in favour of the Defendant, collectively amounting to Rs. 35,80,00,000/-, particulars of which are set out in paragraph 4.3 above.

5.4 Pursuant thereto, as stipulated in the Sale Contracts, the Defendant duly delivered the TMT bars (forming the subject matter of the contract) to the Plaintiff, and the said deliveries were made during the period from 29th November, 2014 to 1st December, 2014, as set out in clause (d) of paragraph 6 of the Affidavit-in-Reply.

5.5 The Plaintiff had requested the Defendant that the Plaintiff shall directly pick up the material, i.e., TMT bars from the godown of the Defendant located at E-24, Swidhinath Complex, Dapode (Vil.),Bhiwandi(Tal.), Thane (Dist.), Maharashtra, and the Defendant agreed to the same. Thus the delivery of the goods was taken by the Plaintiff from Bhiwandi, and prior to accepting delivery of the same, the Plaintiff duly satisfied itself with regard to the quality and quantity thereof. At this point in time, the Plaintiff did not raise any issues / grievances about the quality and/or quantity of the goods and accepted the same without any demur. The said delivery notes were signed by the Plaintiff which showed that the Plaintiff had in fact received the material from the godown of the Defendant during the period 29th November, 2014 to December 01, 2014.

5.6 It was only upon the completion of the delivery on the last date i.e. 1st December, 2014 that the Tax Invoices in respect of the goods delivered were duly presented to the Plaintiff. All the Invoices save and except one, were acknowledged by Mr. Rupen Patel on behalf of the Plaintiff.

5.7 The allegation that the Defendant handed over to the Plaintiff the Tax Invoices along with the delivery notes and obtained signature on the same from the Plaintiff before the delivery of the said material is false. The same is also belied by paragraph 24 of the Plaint, where the Plaintiff has admitted that the *"cause of action in the above Suit is based on goods sold, supplied and delivered by the Defendant....."*

5.8 Thereafter, the Defendant presented the various documents for discounting the three aforementioned Letters of Credit. Though as per the terms of the Proforma Invoices / Sale Contracts the Plaintiff (being the customer) was required to bear all the charges relating to opening, banking, discounting, interest etc. towards the Letters of Credit, the Plaintiff in contravention of the stipulated terms of the contract failed to pay the said charges, as a result of which the Plaintiff's banker deducted a sum of Rs. 1,85,48,142/- towards discounting charges and credited an aggregate amount of Rs. 33,94,51,858/- instead of Rs. 35,80,00,000/- under the said three Letters of Credit.

5.9 Thereafter the Defendant was surprised to be informed by the Plaintiff that the Plaintiff was desirous of repudiating the contract. The Plaintiff did not provide any cogent reason for the same except for the fact that it wished to repudiate the contract, "*due to non matching price*", and wanted the various payments made by it to the Defendant under the contract to be refunded.

5.10 That the allegation of the Plaintiff that the purchase contract was being cancelled due to a mismatch in the prices itself is without basis, and is contrary to the facts of the present case. In fact, the Defendant had offered a discounted and a more favourable price to the Plaintiff than the price quoted in the proforma contract, since the Plaintiff itself had duly taken delivery of the material by picking the same up from the godown of the Defendant. Thus, there was no cause for the Plaintiff to be aggrieved, especially on this ground of alleged difference in pricing.

5.11 That the Plaintiff's allegation that the Plaintiff never received the material under the contract is couched in extremely vague terms, as is evident from paragraph 9 of the Plaint, wherein it is stated that, "*on enquiry it reliably learnt that the goods manufactured by the Defendant were of poor quality and moreover there were discrepancies in pricing, due to which the Plaintiff in order to safeguard its interest cancelled its purchase order vide its letter dated 02.12.2014…*".

5.12 That the documentary evidence shows that the Plaintiff had first received the material, and was then desirous of returning the same to the Defendant, thereby, repudiating the contract. This is clear from the purported Debit Memos issued by the Plaintiff and stated by the Plaintiff to be duly signed by Mr. Prakash Patel, Senior Manager (Accounts) of the Plaintiff.

5.13 The Plaintiff has conveniently, and with a view to mislead this Court, not made any reference to its obligation to return the material to the Defendant, but has merely set out incomplete facts, which best suit its case.

5.14 The allegation of the Plaintiff that the goods were of inferior quality is belied from the fact that the payment under the Letters of Credit was duly made and no instructions to the contrary in respect of cancellation of purchases were issued by the Plaintiff to its bankers, which *prima facie* shows that the material and documentation thereof were in accordance with the needs and requirements of the Plaintiff.

5.15 The purpose of payment under a Letter of Credit is for the buyer to be assured of the quality and documentation of the goods before payment is made to the seller. In the present case, the Plaintiff allowed the payment to be made under the three Letters of Credit, and therefore it is incredulous to believe that such payment was allowed to be made without authentication of the documentation and ascertainment of the quality of the goods being supplied.

5.16 Mr. Rupen Patel and Mr. C. K. Singh on behalf of the Plaintiff represented to the Defendant that the Plaintiff would promptly be returning to the Defendant all the material delivered to the Plaintiff under the contract. The Plaintiff further persistently requested the Defendant to refund the various amounts discounted under the three Letters of Credits in light of the impending return of material back to the Defendant. On the basis of these representations made by Mr. Patel and Mr. Singh regarding the prompt return of goods and the Plaintiff's insistence for refund of the amounts received under the Letters of Credit, the Defendant agreed to the terms that the Defendant would initially refund 1/3rd of the total amount, pursuant to which the Plaintiff would initiate the return of the TMT bars already supplied and delivered to it.

5.17 That going on a *bona fide* belief that the Plaintiff would honour its commitments and deliver the material in question back to the Defendant, the Defendant duly refunded a sum of Rs. 11,12,16,122/- equivalent to approximately 1/3rd of the total contractual value on 3rd December, 2014 and 6th December, 2014 which payments are admitted by the Plaintiff.

5.18 The Plaintiff failed and neglected to return the material even after receiving 1/3rd part payment as stated above. The Defendant sent a letter dated 11th December, 2014, recording as under:

> *"We refer to the above orders cancellations delivery issued to you and subject to necessary debit notes for return of goods duly acknowledged we agree to pay back a value of Rs.*

22,82,35,736/- (Twenty Two crores Eighty Two Lakhs Thirty Five Thousands Seven Hundred Thirty Six only)."

Subject to above, we agree to pay this value prior 31.12.2014"

5.19 The Defendant received various verbal assurances from Mr. Rupen Patel and Mr. C.K. Singh on behalf of the Plaintiff, that the Plaintiff would shortly return the TMT bars to the Defendant and in relation thereto, persistently requested the Defendant to issue post-dated cheques towards repayment of the balance amounts due to the Plaintiff once the return of material was duly completed. There was no rationale/justification for such prolonged retention of the material by the Plaintiff post its repudiation of the purchase contracts. The Defendant with a view to conclude the transaction amicably, agreed to issue post-dated cheques for the balance amounts on the explicit understanding that the cheques would not be presented for realization / payment unless and until the delivered materials were returned to the Defendant. In accordance with the said understanding, the Defendant issued the post-dated cheques aggregating to Rs. 22,75,00,000/- dated 15th December, 2014, 20th December, 2014, 25th December, 2014, 31st December, 2014 and 6th January, 2015.

5.20 Even after receipt of partial repayment as well as 5 post-dated cheques, the Plaintiff willfully refrained from honoring its commitment to return the delivered material at the earliest to the Defendant, and continued to retain the same.

5.21 Pursuant thereto, upon the request of senior officials of the Plaintiff, the Managing Director of the Defendant Mr. Sunil Bafna accompanied by his friend Mr. Shivkumar Lalwani visited the Plaintiff's Office in Mumbai for amicably settling the issues between the parties and for obtaining the No-Objection Certificates from the banks for return of goods. However, taking undue advantage of the visit, the Plaintiff's Officers illegally confined the aforesaid Mr. Bafna and Mr. Lalwani at the Plaintiff's Office in Mumbai, and coerced and threatened them to execute an Indemnity-cum-Undertaking in their personal as well as professional capacity, in favour of the Plaintiff for making the balance payment before February 2015. The Plaintiff also by exerting undue influence and criminal intimidation, forced Mr. Lalwani, who had no relation to the transaction or the dispute thereof, to execute a separate Undertaking-cum-Guarantee. As the Defendant was throughout desirous of making the balance payment, post-the receipt of goods, and with a view to conclude the transaction and close its dealings with the Plaintiff, chose not to prefer any complaints regarding the intimidation faced by the Managing Director of the Defendant at the hands of the Plaintiff.

5.22 On 23rd January, 2015, one Mr. Akhil from the Plaintiff's Office, visited the Head Office of the Defendant at Chennai. He apologized about the conduct of the Plaintiff's Officers towards Mr. Bafna and Mr. Lalwani at Mumbai and informed the Defendant that the Plaintiff with a view to amicably settle the dispute was desirous of immediately returning the goods to the

Defendant, provided that the Defendant gave a copy of the documents pertaining to the property owned by the Defendant in Chennai to the Plaintiff. The Defendant with a view to conclude the already prolonged transaction of return of goods and repayment, gave a copy of the documents, which was duly acknowledged by the Plaintiff.

5.23 Again on 23rd February. 2015, Mr. C. K. Singh on behalf of the Plaintiff, again visited the Office of the Defendant at Chennai and expressed regrets for the Plaintiff's earlier conduct. He further stated that the Plaintiff with a view to amicably settle the dispute was ready to immediately return the goods to the Defendant, provided that the Defendant handed over the original Deed of Power of Attorney existing in favour of Mr. Jayprakash Lalwani relating to a property of the Defendant situated at Sri Kalahasti. The Defendant again with a view to conclude the transaction of return of goods and repayment, gave a copy of the documents to the Plaintiff.

5.24 Though the Defendant complied with all the requirements of the Plaintiff, the Plaintiff failed to return the goods to the Defendant after having received approximately 1/3rd part payment. The Defendant was constrained to lodge a Police Complaint on March, 15, 2015 against the Plaintiff at G-7, Chetpet Police Station for criminal intimidation.

5.25 The Defendant also instituted a Suit bearing O. S. No. 1809 of 2015 before the Hon'ble Assistant City Civil Court at Chennai for cancelling the

Deed of Undertaking dated 13th January, 2015 obtained by the Plaintiff by use of criminal force and coercion from the Director of the Defendant and Mr. Jayprakash Lalwani; for a mandatory injunction directing the Plaintiffs to return the five post dated cheques handed over to them by the Defendant and for a mandatory injunction directing the Plaintiffs to return the original Power of Attorney document obtained from the Defendant on 23rd February, 2015.

5.26 That the City Civil Court vide Order dated March 30, 2015, granted an ex-parte order whereunder the parties were directed to maintain status quo. The Plaintiff also served a legal notice dated 22nd April, 2015, to the Defendant. The Defendant also served a statutory notice under the Companies Act, 1956 dated 14th May, 2015 to the Plaintiff demanding the refund of Rs. 11, 12, 16, 122/- paid by the Defendant to the Plaintiff on the assurance that the goods supplied by the Defendant would be returned along with interest thereon. Since the Plaintiff failed to make the payment as called upon by the Defendant, on 1st September, 2015, the Defendant filed Company Petition No. 134 of 2016 seeking winding up of the Plaintiff which Petition is pending.

5.27 That the above facts illustrate that various triable issues exist which cannot be tried summarily, which *inter alia* include the issue of acceptance of delivery of the TMT bars by the Plaintiff and subsequent repudiation of the purchase contract by the Plaintiff, the various representations made by the Plaintiff regarding the return of material already supplied, subject to which part payment was made by the Defendant, the validity of the indemnities issued in favour of the Plaintiff considering the circumstances surrounding their execution, and the subsequent criminal proceedings initiated by the Defendant against the Plaintiff, and the proceedings initiated before the Hon'ble City Civil Court, Chennai, in which a *status quo* order favouring the present Defendant was passed. Moreover, most of the issues have not even been disclosed and brought on record of this Court by the Plaintiff.

5.28 That the Defendant is entitled to unconditional leave to defend the Suit and the above Summons for Judgment be dismissed.

6. I have heard the Learned Advocates for the parties. I have also perused the pleadings along with the documents relied upon by the parties.

7. What is narrated hereinabove gives me an impression that what both the parties term as 'facts' are not the correct facts, and the real arrangement /transaction between the parties is not disclosed by either party before the Court. However, I am conscious of the fact that a Court cannot decide matters on an impression, and am therefore proceeding to decide the Summons for Judgment on the basis of the narration/submissions placed before the Court by the parties.

8. The Plaintiff placed an order with the Defendant for supply of the material and admittedly after negotiations the Defendant issued three Proforma Invoices/Sales Contracts dated 20th November, 2014, 21st

November,2014 and 21st November, 2014 to the Plaintiff, setting out detailed particulars of the material, the rate that would be charged and the terms of payment namely, *"Payment by : Letter of credit in favour of M/s. Jain Granites & Projects India Limited negotiable at 180 days".* The Plaintiff admittedly accepted all the terms and conditions set out in the Sales Contract, and pursuant thereto issued three Letters of Credit aggregating to Rs.35,80,00,000/- in favour of the Defendant. However, according to the Plaintiff, the Plaintiff signed the delivery notes "in good faith'' even before receiving delivery of the said goods and allowed the Defendant to discount all the three Letters of Credit amounting to Rs. 35,80,00,000/- (Rupees Thirty Five Crores Eighty Lacs only) on 1st December, 2014 i.e. even before the Plaintiff had taken delivery of the goods. It is not the case of the Plaintiff that they have had long-standing business or personal relations with the Directors of the Defendant Company. It is also not the case of the Plaintiff that prior to the present transaction, they have had a series of business/sales transactions with the Defendant. In fact, since both the sides have maintained silence on this issue, it appears from the pleadings that the said transaction was the first between the Plaintiff and the Defendant. It is even otherwise difficult to accept the contention of the Plaintiffs that though the payment was agreed to be made by the Plaintiff to the Defendant by letter of credit negotiable at 180 days, the Plaintiff after issuing three Letters of Credit in the Defendant's favour for a substantial sum of Rs. 35,80,00,000/- (Thirty Five Crores Eighty Lacs only), allowed the Defendant to receive the entire amount under all the three Letters of Credit by signing delivery notes/challans without receiving goods worth a single rupee, all in the name of 'good faith'. As pointed out by the Defendant, the Plaintiff itself has stated in paragraph 24 of the Plaint that *"the cause of action in the above Suit is based on goods sold, supplied and delivered by the Defendant...."*

9. The contention of the Plaintiff that all the tax invoices dated 1st December, 2014, were handed over by the Defendant to the Plaintiff along with the delivery notes which were signed on 1st December, 2014 by the Plaintiff without receiving delivery of the goods also cannot be accepted. Instead, the explanation given by the Defendant that the Plaintiff collected delivery of the material from their Godown at Bhiwandi between 29th November, 2014, and 1st December, 2014, and upon receipt of the goods signed the delivery notes, thereby acknowledging acceptance of the delivery of the material from time to time, and it is only on 1st December, 2014 when the Plaintiff collected the last lot of the said material that the Defendant handed over all the tax invoices to the Plaintiff, all bearing the date 1st December, 2014 and thereafter the Defendant on the same day discounted all the three Letters of Credit amounting to Rs. 35,80,00,000/-, appeals to reason.

10. Again the Plaintiff states in the Plaint that, ''*On enquiry it reliably learnt that the goods manufactured by the Defendant were of poor quality and moreover there were discrepancies in pricing, due to which the Plaintiff in* *order to safeguard its interest cancelled its purchase order vide its letter dated 2nd December, 2014".* Interestingly the Plaintiff who admittedly received the invoices on 1st December, 2014, and who signed the delivery notes/challans allegedly on that day and also allowed the Defendant to collect the entire amount aggregating to Rs. 35,80,00,000/- on the same day pursuant to the letters of credit issued by the Plaintiff in favour of the Defendant on 1st December, 2014, has not explained as to how, and through whom immediately on the next day it reliably learnt that the goods manufactured by the Defendant were of poor quality. The Plaintiff has nowhere stated that between 1st December, 2014 and 2nd December, 2014, it had taken inspection of the goods. The only answer to this contention therefore could be that the Plaintiff after taking delivery of the goods between 29th November, 2014 and 1st December, 2014, was not satisfied with the quality of the goods and was therefore wanting to cancel the purchase order and seek a refund. The excuse given, that there were discrepancies in pricing does not at all appear to be convincing, since the price of the material was already mentioned in the Proforma Invoices/Sales Contract and it is not the case of the Plaintiff that the Defendant had charged them in excess of what was agreed upon/provided in the Proforma Invoices/Sales Contract. In fact, the Defendant has submitted that since the Plaintiff agreed to take delivery of the material directly from the godown of the Defendant at Bhiwandi, the Plaintiff was given a discount and a more favourable price.

11. Admittedly, upon the Plaintiff seeking refund on 2nd December, 2014, the Defendant agreed to refund the agreed amount to the Plaintiff. However, the Defendant insists that though they paid an amount of Rs. 11,12,16, 122/- to the Plaintiff being 1/3rd of the amount received by them towards sale consideration of the material already supplied to the Plaintiff on an assurance that the Plaintiff would start the process of returning the material to the Defendant, the Plaintiff failed to return the material to the Defendant. Instead, on 9th December, 2014, the Plaintiff wrote to the Defendant that since the purchase deal is cancelled, they should refund the balance amount of Rs. 22,82,35,736/- . The Defendant in response thereto by its letter dated 11th December, 2014, inter alia wrote as under:

> *"We refer to the above orders cancellations delivery issued to you and subject to necessary debit notes for return of goods duly acknowledged we agree to pay back a value of Rs. 22,82,35,736/- (Twenty Two crores Eighty Two Lakhs Thirty Five Thousands Seven Hundred Thirty Six only).*
>
> *Subject to above, we agree to pay this value prior 31.12.2014"*

12. The Plaintiff themselves have relied on the debit memos issued by it, wherein they have stated that they have debited the account of the Defendant in the sum mentioned in the said debit memos "*towards return of material supplied by you as per the following invoices….".* The said debit memos relied upon by the Plaintiff again belies the allegation of the Plaintiff that they had not received the goods and therefore there was no question of returning the same to the Defendant. It is further contended on behalf of the Plaintiff that after the debit memos were issued, the Defendant issued five cheques in favour of the Plaintiff aggregating to Rs. 22,75,00,000/-. Apart from that, one Mr. Sunil Kumar Bafna, Managing Director of the Defendant in his official capacity as well as in his personal capacity executed an Undertaking-cum-Indemnity dated 13th January, 2015 providing three securities until the balance payment of Rs. 22,82,35,736/- was made by the Defendant to the Plaintiff. The Plaintiff has also contended that the said five cheques when presented, were dishonoured on the grounds "funds insufficient" and "account blocked". The Plaintiff has not even made an attempt to explain as to why the cheques dated 15th December, 2014, 20th December, 2014, 25th December, 2014, 31st December, 2014 and 6th January, 2015 were not presented on its due dates, more so when it is not their case in the complaint that the Defendant had requested them not to deposit the same, and why the same were deposited on 5th March, 2015, 13th March, 2015, 12th March, 2015, 20th March, 2015 and 24th March, 2015. Again, if the cheques were issued by the Defendant in favour of the Plaintiff dated 15th December, 2014, 20th December, 2014, 25th December, 2014, 31st December, 2014 and 6th January, 2015, why were the said cheques not deposited on their respective due dates and instead undertakings obtained from Mr. Sunil Kumar Bafna and Mr. Jayprakash Lalwani on 13th January, 2015.

13. This Court enquired from the Counsel appearing for the Defendant, as to why payment of Rs. 11,12,16, 122/- was made to the Plaintiff before the material supplied to the Plaintiff was received back, and also why cheques aggregating to Rs. 22,75,00,000/- were handed over to the Plaintiff before the material was returned back to the Defendants by the Plaintiffs? The Counsel for the Plaintiff explained that on an assurance from the Plaintiff that they will immediately start the process of delivering the goods supplied to them by the Defendant, the Defendant had already made part payment of Rs. 11,12,16,122/- to the Plaintiff. When the Plaintiff failed to start returning the material and asked for post dated cheques from the Defendant for the balance payment, it became obvious that the Plaintiff had doubts that the Defendant will not return the balance amount upon return of the material by the Plaintiff, and the Defendant also did not trust the Plaintiff that they will not return the material if the entire amount is refunded by the Defendant to the Plaintiff. In order to give comfort to the Plaintiff, post dated cheques for the balance amount were issued to the Plaintiff. Thereafter on 13th January, 2015, when the Managing Director of the Defendant along with his friend Mr. Lalwani visited the office of the Plaintiff to work out an arrangement whereby they would get back their goods and the Plaintiff would get the balance refund, the Plaintiff coerced them into executing the documents. The stamp papers show that the same were already purchased by the Plaintiff on 6th January, 2015. The Defendant did not file a police complaint since they were clear in their mind that they would pay the balance amount to the Plaintiff upon receipt of the material supplied to them by the Defendant, and more so since the Defendant did not want to create a deadlock qua the matter since an amount of approx. Rs. 11,00,00,000/- was already returned to the Plaintiff by the Defendant , only on an assurance that the process of returning the material to the Defendant shall be forthwith started by the Plaintiff. The Learned Advocate appearing for the Defendant also explained that on 23rd January, 2015 and 23rd February, 2015, Mr. Akhil and Mr. C.K. Singh from the Plaintiff's Office came to Chennai and asked for copy of the documents pertaining to the property owned by the Defendant in Chennai and the original Deed of Power of Attorney, before they started returning the material. For the very same reason, as stated above, the Defendant gave the said documents to the Plaintiff. However, these facts are suppressed by the Plaintiff in the plaint. It is only after the Plaintiff collected the documents from the Defendant in the garb of providing security to the Plaintiff in lieu of the balance amount payable to them by the Defendant upon delivery of the balance goods, and the Plaintiff failed to return the goods to the Defendant and also pocketed an amount of Rs. 11 crores from the Defendant, that the Defendant was left with no alternative but to file a police complaint setting out the intimidation faced by them at the hands of the Plaintiff. They were therefore also compelled to file a suit in the City Civil Court at Chennai and obtain a direction against the parties to maintain status quo.

14. At least at this stage, I find the above explanations and contentions of the Defendant satisfactory, and do not accept any of the contentions/submissions of the Plaintiff including the submission that the liability to the tune of Rs. 22,82,35,736/- on account of cancellation of the said purchase order stands admitted not only from the Defendants Undertaking-cum-Indemnity dated 13th January,2015 but also vide the Defendant's letter dated 11th December, 2014.

15. In the circumstances I am satisfied that the Defendant has raised several triable issues indicating that it has a fair and reasonable defence and the Defendant is entitled to unconditional leave to defend the Suit. The Defendant is therefore granted unconditional leave to defend the Suit. The Defendant shall file its Written Statement on or before 27th June, 2017. The hearing of the Suit is expedited. Place the Suit for framing of issues on 3rd July, 2017. However, it is clarified that the Suit shall be decided without being influenced by any of the observations made in this Order.

The Summons for Judgment is accordingly disposed off.

(S.J. KATHAWALLA, J.)