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

SUIT NO.48 OF 2014

Huntsman International (India) Pvt. Ltd.,
a Company established under the Companies
Act, 1956 and having its registered office at
Lighthall B Wing, Saki Vihar Road, Andheri
(E), Mumbai - 400 072 … Plaintiff

versus

Ranjit Paints Ltd.
A Company established under the Companies
Act, 1956 and having its registered Office
at Gill Road, Ludhaina, Punjab - 141 003
and carrying on its business at 102,
Vikas Nagar, Pakhowak Road, Pakhowal
Road, Ludhiana - 141 001 and also from
B-23, Phase-II, Focal Point, Ludhiana - 141 010. … Defendant

Mr. Zubin Behrakamdin i/by Mr. G.U.Raikar and Charles DeSouza, for Plaintiff.
None for Defendant.

CORAM: S.J. KATHAWALLA, J.

DATE: 10th APRIL, 2017

ORAL JUDGMENT :

1. The Plaintiff has filed the present Suit under Order XXXVII of the Code of Civil Procedure, 1908 for recovery of a liquidated sum of money under the written contract as specifically set out in the Plaint. The Plaintiff has in the Suit prayed for an order and decree against the Defendant in the sum of Rs.1,47,96,664/-

along with interest @ 18% p.a. from the due date of payment of each of the invoice till the date of filing of the present Suit, as per the particulars of claim set out in Exhibit Y to the Plaint.

2. Upon the appearance being filed by the Defendant, the Plaintiff took out/filed Summons for Judgment No.14 of 2014 which was disposed of by a detailed order passed of this Court (Coram : K.R.Shriram, J.) reserved on 28th July, 2015 and pronounced on 10th August, 2015. Paragraph Nos.9 and 10 of the said order are relevant and reproduced hereunder :

> *"9. Having considered the pleadings and the submissions of the counsel for the Plaintiff, it is quite obvious that the Plaintiff had pursuant to written agreement in the form of order acknowledgment had supplied materials to the Defendant. The Defendant has received the same. The Plaintiff has also received the invoice and further has acknowledged liability as can be seen from the email quoted above. Therefore, it is rather obvious that the defence raised by the defendant is nothign but a sham and moonshine purely with an intention to prolong the matter and avoid payment to the Plaintiff. The defendant has no defence whatsoever and the Plaintiff in my view, is entitled to a summary decree.*
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> *10. As per the terms and conditions mentioned in the invoice, interest was payable at 25% p.a., whereas in the particulars of claim, the Plaintiff is claiming interest only at 18% p.a. The Plaintiff certainly is entitled to interest as claim. At the same time, in the interest of justice and as an expression of grace, the defendant can be permitted to raise a defence at the trial of the suit by filing a written statement but subject to complying*

with the conditions as mentioned below :

(i) The Defendant to deposit with the Prothonotary and Senior Master a sum of Rs.1 Crore within six weeks from today;

(ii) ....."

3. The Defendant has not filed an appeal impugning the said order dated 28th July, 2015/10th August, 2015 and has also failed to deposit the amount of Rs.1 Crore as directed by this Court. The non deposit certificate issued by the Prothonotary and Senior Master dated 2nd February, 2017 is taken on record. The original documents relied upon by the Plaintiff are tendered in Court and taken on record. In view of clause (b) of sub-Rule 6 of Rule 3 of Order XXXVII of the Code of Civil Procedure, the Plaintiff is entitled to a Judgment forthwith. In view thereof, the above Suit is decreed in terms of prayer clauses (a) and (b), which are reproduced hereunder :

> "(a) that the Defendant be ordered and decreed to pay to the Plaintiff a sum of Rs.1,47,96,664/- (Rupees One Crore Forty Seven Lakhs Ninety Six Thousand Six Hundred and Sixty Four only) as per the particulars of claim set out in Exhibit Y hereto, which is calculated along with interest @ 18% p.a. from the due date of payment of each of the invoice till the date of filing of the present Suit;
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> (b) that the Defendant be directed to pay further interest @ 18% p.a. from the date of institution of the present suit till the actual date of payment and/or realization thereof;

4. The Defendant shall pay costs of the Suit to the Plaintiff.

5. The Suit is accordingly disposed off. The Office shall return the original documents to the Advocate for the Plaintiff upon the Advocate for the Plaintiff handing over photostat copies of the said documents duly certified by him as true copies.

(S.J.KATHAWALLA, J.)