

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

**SUMMONS FOR JUDGMENT NO. 78 OF 2016
IN
SUMMARY SUIT NO. 454 OF 2012**

Ganpatraj Kumbhraj Sanghvi ...Plaintiff/Applicant.
vs.
Vishal Udyog and Ors. ...Defendants

Mr.Chetan Kapadia with Shruti Vyas I/b. Prasad Gajbhiye for Plaintiffs.
Mr.Rohan Kelkar with Prasad Shenoy and Eram Quraishi I/b. Kartikeya &
Associates for Defendants.

CORAM : S.C. GUPTE, J.

3 JULY 2017

P.C. :

Heard learned Counsel for the parties.

2 This summons for judgment is taken out in a summary suit, which seeks a decree against the Defendants in the sum of Rs.2,75,36,034/-. The decretal sum comprises of principal amount of Rs.1,50,66,404/-. The suit claim arises out of a written contract of sale of goods between 31 May 2008 and 7 July 2009. The Plaintiff sold and delivered to Defendant No.1 firm, of which Defendant Nos.2 and 3 were partners, goods being steel sheets of the description mentioned in the purchase orders, which are on record. The sale of goods was under a written contract envisaged by about 7 purchase orders and 19 tax invoices and 20 delivery challans in respect of goods sold and delivered, all of which are produced with the plaint. There is no grievance as to the receipt of the goods or price claimed for the same or the quality of the goods contemporaneously with the sale of the goods. There have been part payments made in respect of these supplies.

Considering these part payments, as on 7 July 2009, there is a sum of Rs.1,50,66,404/- owed by the Defendants to the Plaintiff. This sum is sought to be recovered along with interest in the present suit.

3 There are only two defences urged at the hearing of the summons for judgment. Firstly, it is submitted that this court has no territorial jurisdiction to entertain the present suit. Learned Counsel for the Defendants submits that the purchase order is in response to an offer made by the Plaintiff by a communication dated 3 April 2008. Learned Counsel submits that this purchase order places order for the goods and accordingly signifies the acceptance of the promisee, namely, Defendant No.1 purchaser, to the offer of the Plaintiff vendor. Learned Counsel submits that as far as acceptance of an offer in a contract is concerned, such acceptance is complete, under Section 4 of the Contract Act, at the place at which it is initiated. Learned Counsel, in the premises, submits that the acceptance having been communicated in Navi Mumbai, the contract between the parties is concluded at Navi Mumbai, beyond the territorial jurisdiction of this court. Learned Counsel submits that this court has, accordingly, no jurisdiction to entertain and try the present suit. There is clearly no substance whatsoever in the contention. This defence cannot even be said to be statable. The initial communication, which is referred to as offer under communication No.GSI/4356/08 dated 3 April 2008, can at best, going by the documents on record, be described as an invitation to offer. It is the purchase order placed by Defendant No.1, which is in fact an actual offer, whilst the acceptance of delivery of goods accompanied by tax invoices and delivery challans conveys the acceptance so as to conclude the contract. Besides, the purchase order itself makes it clear that disputes arising between the parties would be subject to Mumbai jurisdiction. Thus, even if

one were to treat the purchase order as communication of acceptance, the acceptance has come with a condition, namely, the Mumbai courts would have jurisdiction over the disputes arising under the contract. This condition was accepted even by the Plaintiff vendor inasmuch as the tax invoices issued by the Plaintiff also make it clear that the disputes between the parties will be subject to jurisdiction of Mumbai courts. Learned Counsel for the Defendants, in response, submits that the parties cannot by their mutual agreement confer jurisdiction on the court which does not possess the same. In this particular case, the goods were delivered from Mumbai; written orders were placed at Mumbai; the Plaintiff has its office in Mumbai; and the payment was to be received at Mumbai. A material part of the cause of action thus anyway arises within the jurisdiction of this court. There is nothing in law, therefore, to forbid the parties from conferring exclusive jurisdiction on this court. Besides, the Plaintiff was granted leave under Clause 12 of the Letters Patent for filing of the present suit in this court. This leave still subsists. There is not even an application to revoke the leave.

4 It is next contended by learned Counsel for the Defendants that there is a serious dispute as to the quality of the goods sold and delivered inasmuch as there are no test certificates issued by the Plaintiff along with the dispatch of the goods. Learned Counsel submits that issuance of such test certificates was part of the conditions of the purchase order. The record of the case, which is not in dispute, clearly shows that copies of test certificates were issued by the Plaintiff upon demand by the Defendants. There is an admitted letter on record, namely, letter dated 8 December 2009 (Exhibit-C to the Defendants' reply to the summons for judgment) that photocopies of test certificates were received by the Defendants. It is surprising that for supply of goods spanning over about fourteen months

between 31 May 2008 and 7 July 2009, a complaint for non-receipt of test certificate/s should have come for the first time in December 2009. The complaint was that the test certificate had no specific reference to the goods sold by the Plaintiff to Defendant No.1. By this time, the payment of goods sold and delivered had long been overdue and demanded by the Plaintiff from Defendant No.1.

5 Besides, want of original test certificates with specific reference to the batch number etc. of the goods by itself does not suggest that there is any deficiency in the goods themselves. There is only a vague statement on the part of the Defendants, that too for the first time in the letter of 10 April 2010, i.e. much after the event, concerning the actual quality of goods. The statement is to the following effect :

“It now seems that you by providing sub-standard steel to the buyers including my company, and you are trying to extract large sum of money to which you are not legally entitled”.

There is nothing on record to show that any third party to whom the goods were resold by Defendant No.1 had made any complaint in respect of the quality of the goods or that as a result, the Defendants could not recover full price of goods sold and delivered by them to third parties. Learned Counsel for the Defendants, in fact, accepts that there are no such letters in possession of the Defendants. All this clearly shows that there is hardly any credible or arguable defence. There is a clear doubt here as to the Defendants' good faith or the genuineness of the triable issues urged before the court.

6 On these facts, this court is inclined to grant a conditional leave to defend to the Defendants, against deposit of the entire principal amount of suit claim.

7 In the premises, the following order is passed :

(I) The Defendants have been granted leave to defend the suit, on and subject to deposit of a sum of Rs.1,50,66,404/- with this court within eight weeks from today;

(II) Upon such deposit being made, the Prothonotary shall invest the amount deposited by the Defendants in fixed deposit/s of a nationalised bank initially for a period of thirteen months and thereafter renewable from time to time and to abide by orders that may be passed in the present suit;

(III) Written statement to be filed within four weeks after making such deposit;

(IV) The suit to come up for directions after twelve weeks.

8 The summons for judgment is disposed of in the above terms.

(S.C. Gupte, J.)