

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.84 OF 2016
IN
SUMMARY SUIT NO.768 OF 2015

M/s Vimal Intertrade Pvt.Ltd. ... Plaintiffs
v/s
M/s Multiflex Lami Print Ltd. and others ... Defendants

Mr Paras N. Vira for Plaintiffs.
Ms Sneha V. Agrawal i/b Mr Rakesh G. Jain for Defendant Nos.1 to 5
and 7.

CORAM : B.P. COLABAWALLA, J.

DATE : OCTOBER 3, 2017

P.C.:

1. The affidavit in reply of the Defendants as well as the affidavit in rejoinder filed on behalf of the Plaintiffs are taken on record.
2. This Summary Suit has been filed seeking a decree against the Defendant Nos.1 to 5 and 7 to pay to the Plaintiffs a sum of Rs.6,25,14,221.80, as per the particulars of claim annexed and marked at Exh.'G' to the plaint, together with further interest at the

rate of 18% p.a. The claim in the Suit is based on the amounts due under the invoices for goods sold and delivered by the Plaintiffs, the details of which have been set out in paragraph 6 of the plaint. These invoices have also been annexed at Exhs.B-1 to B-24 of the plaint.

3. After the Suit was filed, the Defendants entered their appearance and filed their Vakalatnama. Thereupon, the present Summons for Judgment was filed seeking a judgment against the Defendants for the sum of Rs.6,25,14,221.80 together with further interest on the principal sum of Rs.4,03,52,190.00 at the rate of 18 % p.a. To contest the Summons for Judgment, Defendant Nos.1 to 5 and 7 have filed their affidavit in reply dated 2nd December 2016.

4. As far as Defendant Nos.2 to 7 are concerned, they are either Directors or authorized signatories of 1st Defendant Company. Admittedly, they are not guarantors to this transaction. As far as Defendant Nos.2 to 7 are concerned, triable issues arise whether they are liable at all and hence unconditional leave to defend is granted to Defendant Nos.2 to 7. The Suit, as far as Defendant Nos.2 to 7 are concerned, is transferred to the list of Commercial Causes and Defendant Nos.2 to 7 shall file their written statement within a period of four weeks from today.

5. As far as Defendant No.1 is concerned, it is not in dispute that the goods mentioned in the invoices at Exh.B-1 to B-24 have been supplied by the Plaintiffs to Defendant No.1. The only two defences raised in the affidavit in reply is that the goods supplied by the Plaintiffs to the Defendants were defective and that since Bank of Baroda had attached the Office premises of Defendant No.1 by an order dated 25th August 2015, the correspondence in that regard could not be brought on record of this Court. After going through the affidavit in reply, I find these defences are wholly illusory and moonshine. It has clearly been raised as an after-thought. The only excuse for not bringing the alleged correspondence was that Defendant No.1 was unable to access the said correspondence since its office premises were attached by the Bank of Baroda as far back as on 25th August 2015. The present affidavit in reply has been filed on 2nd December 2016. The learned counsel appearing on behalf of Defendant No.1 fairly conceded before me that not a single letter has been written to Bank of Baroda asking them to allow Defendant No.1 to have access of the alleged records in the office premises. This being the position, the defence taken by the Defendant No.1 does not inspire any confidence.

6. Other than these two defences, nothing was brought on record to grant unconditional leave to defend the present Suit. Even though I find that the defence raised is illusory and moonshine, purely out of mercy, leave to defend the present Suit is granted to Defendant No.1 subject to Defendant No.1 depositing in this Court the principal amount of Rs.4,03,52,190.00 within a period of 12 weeks from today. If the said amount is deposited, then the Defendant No.1 shall file its written statement within a period of four weeks thereafter and the Suit shall be transferred with the list of Commercial Causes even as far as Defendant No.1 is concerned. If the said amount is not deposited within a period of 12 weeks from today, then the Plaintiffs shall be entitled to approach this Court and apply for an ex-parte decree.

7. Summons for Judgment is disposed of in the aforesaid terms.

(B.P. COLABAWALLA, J.)