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

COMMERCIAL APPEAL (L) NO. 37 OF 2018
IN
SUMMONS FOR JUDGMENT NO. 85 OF 2016
IN
COMMERCIAL SUIT NO. 478 OF 2016
WITH
NOTICE OF MOTION LODGING NO. 54 OF 2018

M/s. Jai International & Ors.

.. Appellants
(Org. Deft.Nos.1 to 5.)

Vs.

M/s. IMI International Inc. and ors.

.. Respondents
(No.1 – Org. Plff. and
No.2 – Org. Deft.No.6)

Mr. P. R. Arjunwadkar i/by Prabha Badadare for appellants.

Mr. Rajiv Hingu a/w Mr. Deepraj Shetye i/by Z. H. Hingu and Co. for
respondent no.1.

CORAM: NARESH H. PATIL &
NITIN W. SAMBRE, JJ.

FEBRUARY 14, 2018.

P.C.

1. This appeal is directed against the order dated 17/11/2017
passed by the learned Single Judge in Summons for Judgment No. 85 of
2016 in Commercial Suit No. 478 of 2016.

2. The learned counsel for the appellants – defendant nos.1 to 5 submits that the defendant nos.1 to 5 raised vital and substantial issue for consideration of this court at the stage of passing order on application for Summons for Judgment under Order XXXVII. The counsel has referred to some correspondence between the plaintiff, defendant no.3 and defendant no.6, e-mails, statement of accounts etc. In support of the submission that the transaction was of supply of goods (laptops) was, in fact, between the plaintiff and defendant no.6. The defendant no.3 being Vice President of the plaintiff was requested to intervene in respect of payment to be made to the defendant no.6. On agreeing, defendant no.1 received cheques from the plaintiff against three orders. Against the first order, the goods were supplied and payment was made. The issues arose in respect of the Order Nos.2 and 3. The counsel submits that the payment of more than Rs.1 crore was made to defendant no.6 but the goods were not supplied to the plaintiff. On protest, the defendant no.6 handed over two cheques to the defendant no.3 and based on the same, the defendant no.3 handed over cheques to the plaintiff against which goods were not supplied. It is the case of the appellants that the cheques issued by defendant no.6 were not encashed. Therefore, he could not repay the said amount. On instructions of stop-payment, the cheques issued by defendant no.3 were not encashed.

3. The learned counsel appearing for the respondent no.1 – plaintiff supports the order passed by the learned Single Judge. It is submitted that the learned Single Judge exercised discretion which does not call for any interference in the facts of the case and the material produced on record.

4. It is further submitted that the defendant nos.1 and 3 have been supplying such goods to other reputed companies. The statement of accounts placed on record supports the contention of the counsel appearing for the plaintiff. It is submitted that though defendant no.6 filed his appearance in the suit, he has not filed any reply to the Summons for Judgment. Therefore, as per the provisions of Order XXXVII Rule 3 Sub Rule 6, the plaintiff would be entitled to judgment forthwith. There is a subsisting claim established by the plaintiff against the defendant nos.1 to 5.

5. We have perused the record placed before us. We have also perused the impugned order passed by the learned Single Judge. On the available material placed before the court, the learned Single Judge has adopted a view and directed defendant nos.1 to 5 to deposit Rs.50 lakhs

and granted leave to defend the suit. The learned Single Judge found that the the defence of the defendants though plausible but was highly improbable.

6. The nature of transaction entered into between the parties, the correspondence exchanged, payment schedules, receipts of money, non payment of cheques and stop payment endorsement are matters of evidence which need not be considered at this stage. The case at this stage is to be considered and appreciated on the basis of the affidavits submitted by the parties.

7. Having considered the submissions advanced and perusal of the record to a limited extent for consideration of the issue, we are of the view that no interference is called for in the view adopted by the learned Single Judge. The learned counsel appearing for the appellants submitted that it is difficult for them to secure substantial amount of Rs.50 lakhs to be deposited as directed by the learned Single Judge. The learned counsel, on instructions, submitted that the appellants would be in a position to furnish security against the said amount. According to the appellants, security would be in the form of deposit of title deed of the office premises of the

appellants which is worth more than Rs.1 crore. We find this request to be reasonable and convincing one, particularly in the light of there being a decree against defendant no.6 passed under Order XXXVII Rule 3 Sub Rule 6 of CPC. We are, therefore, inclined to modify the order passed by the learned Single Judge to the said extent.

8. We therefore direct that defendant nos.1 to 5 shall furnish solvent security to the satisfaction of the Prothonotary and Senior Master of this Court to the extent of Rs.50 lakhs by depositing original title deed/ documents of the office premises of the appellants within two weeks along with a written undertaking. In case the appellants fail to furnish solvent security as directed above to the satisfaction of the Prothonotary and Senior Master, the order passed by the learned Single Judge shall stand revived without reference to this court.

9. The appeal is partly allowed to the above extent.

10. Notice of Motion (L) No. 54 of 2018 does not survive and disposed as such.

(NITIN W. SAMBRE J.)

(NARESH H. PATIL,J.)