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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.21 OF 2017

IN

COMMERCIAL SUIT NO.395 OF 2016

M/s. Gemini Enterprises

...Applicant/Plaintiff

VS

Government of Maharashtra Through DGP & IG Office ...Defendant

.....

Mr. Ankit Lohia, a/w. Mr. Aniket Ransubhe, i/b. Ajay Basutkar, for the Plaintiff.

Ms. Jyoti Chavan, AGP, for the Defendant.

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CORAM : S.C. GUPTE, J.

DATED : JANUARY 23, 2018

P.C.:

. Heard learned Counsel for the Plaintiff and the learned AGP for the Defendant State. The commercial suit is filed under Order 37 of the Code of Civil Procedure.

2. The Plaintiff's claim arises under a written contract. There is no dispute between the parties as to the execution of this contract. The contract was for supply of goods. The goods were duly supplied by the Plaintiff. The goods were inspected by the Defendant. The Defendant State addressed a communication to the Plaintiff upon such inspection. The requisitions made by the Defendant in this communication were accepted without prejudice by the Plaintiff and fresh goods were supplied in substitution of the goods already supplied. The Defendant, thereupon,

confirmed that the goods were in accordance with the contract specifications. There is thus no dispute about the quantity or quality of the goods. The Defendant State was liable to make payment of 90% of the total consideration within 30 days from the receipt of the goods to the stores of the consignees and balance 10% within 30 days of Kit Committee Report along with certified bill from the consignees. There is no dispute that even these events have occurred. With the delivery of the goods the Plaintiff raised invoices, which were duly acknowledged by the Defendant. There is no dispute about the price charged.

3. Under the written contract between the parties, a sum of Rs.3,37,50,000/-, being the price of the goods supplied and delivered by the Plaintiff to the Defendant, is thus due and payable to the Plaintiff. The only defence of the Defendant State is contained in paragraphs 2, 18 and 20 of their affidavit in reply to the Summons for Judgment. It is the Defendant's case that the Plaintiff is a benami firm of one Bimal Agarwal, who is also in the management of a company known as "Technotrade Company." It is submitted that the latter Company has cheated the State of Maharashtra and owes a sum of over Rs.6.21 crores to the State. It is submitted that Technotrade Company has been blacklisted by the Government and the matter has been entrusted to the Economic Offence Wing for investigation. The Defendant State has filed their own separate suit for recovery of this amount from M/s. Technotrade Company. The Defendant also contests the interest claimed by the Plaintiff in the present suit.

4. The Plaintiff in the present suit is a sole proprietary concern

of one Kamal Sharma, having its office at the address indicated in the cause title. Nothing is placed on record to show in their reply to the Summons for Judgment by the State that Kamal Sharma is a benami of Bimal Agarwal or that Kamal Sharma is liable for the dues owed by Bimal Agarwal for the Defendant State. There is nothing to suggest that the claim of the Defendant owed by Bimal Agarwal is liable to be recovered from the Plaintiff herein.

5. On these facts and considering the rival contentions and material placed before the Court respectively by the parties, there is practically no defence to the Plaintiff's claim on account of the principal amount due under the contract between the parties. As discussed above, the execution of the contract, the receipt of goods under the contract, the quality of the goods and price payable for the same are not matters of contest. Merely on a sweeping statement that the Plaintiff is a benami of Bimal Agarwal, a triable issue cannot be said to have arisen in the present suit. The defence is clearly nominal or moonshine and deserves no credence.

6. As far as interest is concerned, learned Counsel for the Plaintiff agrees to waive the entire interest claimed in the suit. Hence, the contest on the interest also does not survive.

7. Accordingly, the Summons for Judgment is made absolute and a decree is passed in terms of prayer clause (a) of the plaint excepting the entire component of interest forming part of the prayer clause. The decree will, accordingly, be restricted to the principal

amount claimed in the prayer-clause. The decretal sum shall, however, carry a post decree interest at the rate of 12% p.a. generally. The Defendant State is granted three months time to pay the decretal sum. If the decretal amount is paid within three months no post-decree interest shall be levied. If the decretal sum is not paid within this period, the same will carry interest from the date of the decree at the rate of 12% p. a. till payment or realisation. No order as to costs.

(S.C. GUPTE, J.)