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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 33 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 96 OF 2016

MPHASIS Ltd. ... Plaintiff

vs.

Petal Infosystems Pvt. Ltd. ... Defendants

Mr. Gauraj Shah i/b. M/s. Vimadalal & Co. for the Plaintiff.

None for the Defendant.

CORAM : A.K. MENON, J.

DATE : 10th JULY, 2018

P. C.

1. This suit is called for an ex-parte decree. None appears for the defendant. The suit is based on purchase order dated 3rd April, 2012 and invoices in respect of a Live Scanner sold supplied by the plaintiff to the defendant. The particulars of the claims set out outstanding amount of Rs. 5,77,50,000/-.

2. The record indicates that after service of Writ of Summons the defendant failed to enter appearance within time and therefore took out a Notice of Motion No. 411 of 2017 seeking condonation of delay in entering appearance. By order dated 7th March, 2018 the Notice of Motion was allowed. Delay was condoned subject to payment of costs of Rs. 25,000/-. Despite Notice of Motion being allowed the defendant has failed to enter appearance.

3. On 21st June, 2018 when this matter was listed at the request of the parties, the matter was adjourned to date for ex-parte decree. Even today the defendant is absent on call. No appearance is entered. In the circumstances, the plaintiff is entitled to a decree.

4. However, it is noticed that the plaintiff has also taken out Summons for Judgment No. 33 of 2018. The Summons for Judgment is dated 20th March, 2018 and registered on 23rd March, 2018. It is not understood on what basis summons for judgment has been taken out, since no appearance has been entered. This is not the only instance where plaintiffs have taken out Summons of Judgment in a Summary Suit wherein appearance has not been entered for example Summons for Judgment No. 54 of 2018 in Commercial Summary Suit No. 384 of 2018 was taken out and registered although no appearance was entered. In yet another Summary Suit No. 180 of 2017 not only was Summons for Judgment no. 7 of 2018 taken out, but it was also served upon the defendant who had not entered appearance.

5. It appears that the Advocates have taken out Summons for Judgment and got them registered even without verifying whether appearance has been entered. In view of the multiple cases that are coming to light it is appropriate that the Registry is directed to first verify whether appearance has been entered on behalf of the defendants before accepting the Summons of Judgment for registration. The registration of Summons for Judgment in Summary Suits where appearance is not filed is causing unnecessary burden on the registry as well as time devoted to dealing with such cases. The practice of registering Summons for Judgment

without such verification is to be discontinued forthwith. In the circumstances the Centralized filing section shall hereafter permit lodging of Summons for Judgment only after first verifying that appearance is entered on behalf of the concerned defendant(s).

6. That having been said, counsel for the plaintiff tenders the compilation along with list of documents containing copy of the purchase order dated 3rd April, 2012 which is certified under Section 65B of the Indian Evidence Act as having received by email. He has also tendered in the compilation the original invoice and subsequent correspondence and returned postal packets said to contain demand notices. The defendant being absent on call plaintiff is therefore entitled to a decree. Accordingly, I pass the following order :

- (i) Suit is decreed in terms of prayer clause (a).
- (ii) Defendant shall also pay costs of the suit.
- (iii) Refund, if any, as per rules.
- (iv) In view of the disposal of the Suit, Summons for Judgment is also disposed of.
- (v) A copy of this order shall be sent to the Prothonotary & Senior Master and Registrar(OS) for prompt compliance with directions in paragraph 5 above.

(A.K. MENON, J.)

Rajeshwari
Ramesh
Pillai

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Rajeshwari
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