IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
(COMMERCIAL DIVISION)

SUMMONS FOR JUDGMENT NO. 41 OF 2017
IN
COMMERCIAL SUMMARY SUIT NO. 131 OF 2017

Smita Rajen Desai … Applicant/Plaintiff No.3.

In the matter between :

1. Gopaldas & Co. Mazgaon & Others. … Plaintiffs.

V/s.

Gopaldas Corporation & Ors. … Defendants.

Miss Rajni Iyer, Senior Advocate a/w. Mr. Farhan Dubash, Advocate & Dolly M. Kotwani i/by Vigil Juris for the Plaintiffs.

Mr. Dinyar D. Madon, Senior Advocate a/w. Advocate S/Shri Cyrus Ardeshir, Rahul Dwarkadas, Neveille Mukerji, Samudra Sarangi & Ashim Tirmizi i/by Veritas Legal for the Defendant Nos. 2 & 3.

CORAM : S. C. GUPTE, J.

DATE : APRIL 24, 2018

<u>P.C.</u>

1 The present Commercial Summary Suit seeks to recover a sum of Rs. 1,38,36,479/- together with interest payable on dis-honoured cheques of the same amount.

2 It is the plaintiffs case that the original firm by the name of M/s. Gopaldas & Co Mazgaon had the father of Defendant No.2 as a partner. Defendant No. 1, which is a partnership firm of Defendant Nos. 2 and 3, was carrying on business of wholesale distribution in Cadbury products. It is submitted that in May, 2011, an offer was brought by the father of Defendant No.2, late Ashok Gopaldas Sampat, for retail distribution business of Cadbury products through Plaintiff No.1-Firm. It is submitted that late Ashok G. Sampat communicated to Plaintiff Nos. 2 and 3 and their predecessor, one Rajen Desai, that Cadbury India Limited had proposed with Plaintiff No. 1 and Defendant No. 1 together to conduct both wholesale and retail distribution business for its products in one name, i.e. of Defendant No.1. It is submitted that accordingly the business of wholesale and retail distribution of products manufactured by Cadbury India Limited was commenced by the partners. This business required Defendant No.1 to place orders with Cadbury in its own name, while stocks would be unloaded and stored at the leased godown of Plaintiff No.1- Firm and deliveries thereof to wholesalers and retailers would be done through vehicles of Plaintiff No.1, but the invoices would be issued in the name of Defendant No. 1 and even payments would be collected in the name of Defendant No. 1. It is submitted that as against cheques collected in the name of Defendant No. 1 and handed over to it, Defendant No. 1 would issue a single consolidated cheque for each day in the name of Plaintiff No. 1-Firm. It is

submitted that accordingly nearly 28 cheques of an aggregate amount of Rs. 1,38,36,479/- were issued by Defendant No. 1 to Plaintiff No. 1. These cheques were deposited by Plaintiff No. 1 in its bank account. The cheques, when presented for payment to the drawee bank, were dis-honoured. After dishonour of these cheques, which is stated to be between September, 2013 to January, 2014, a legal notice was sent by the Plaintiff-firm to Defendant No.1-firm and its partners on 20th May, 2014. There was some correspondence between the parties in response to this notice, through which the Defendants appear to have consistently contested their liability to pay any amount towards the cheques. Finally, the present suit appears to have been filed on 29.09.2016. That was after obtaining leave under Order 2, Rule 2 for filing of an another suit for recovery of certain loans advanced by Plaintiff No. 1 to Defendant No.1 and the repayment to be made by Defendant No. 1-firm to Plaintiff No. 1-firm.

2 In reply, it is submitted by the Defendants that it is the Plaintiffs, who in fact owed monies to the Defendants. It is submitted that contrary to the agreement between the parties, the plaintiffs failed to deposit the cheques and cash for the business in the account of Defendant No.1 – Firm. It is submitted that as a result, there was a mis-match between the collection from the retail business and payment for supplies and as a result there was a cash crunch, resulting in dishonour of cheques issued

by Defendant No.1 to Cadbury India Limited. It is submitted that there were, in the process, several complications and mis-understandings with Cadbury India Limited. It is submitted that as a result, the business was transferred / taken over by Plaintiff No. 1 and Defendant No. 1- Firm was forced to close down its business. It is submitted that thereafter, the Plaintiff undertook to take over the entire liability of Cadbury India Ltd.. It is submitted that on account of cash crunch created by these acts of the plaintiffs, on several occasions, goods were purchased by one firm, whereas payments were credited / effected by the other firm. It is submitted that the net effect of these transactions is that a sum of Rs. 2.16 crores (inclusive of interest of over Rs.9.50 lakhs) is payable by the plaintiffs to the defendants. It is also submitted that on provisional conciliation of accounts of Defendant No. 1 firm, what was apparent was that this sum of Rs.2.16 crores was wrongly retained by the plaintiffs and which they are bound to return to the defendants.

3 These pleadings do indicate that there are various triable issues in the present commercial summary suit. These disputes were raised as far back as in 2014, i.e. immediately after the first legal notice, in pursuance of dishonour of cheques (the cheques being dishonoured between September, 2013 to January, 2014), was issued by the plaintiff to the defendant. Though there is no apparent explanation from the defendant as to why and in what circumstances, about 28 cheques, which are

referred to in the plaint, were issued by defendant no.1. It is submitted that these cheques were issued during lifetime of late Ashok G. Sampat, father of defendant No 2, and the defendants are not exactly privy to the circumstances in which these cheques were issued. In any case, it also appears that around the same time, several payments were made by the plaintiffs to defendant no. 1. These payments are said to be loan advanced by the plaintiffs to the defendants. It is hard to digest that during the period when the defendant's cheques for an amount, aggregating to over Rs. 1.38 crorers, were dishonoured, the plaintiffs would advance loan to the defendant in a sum of over Rs.2 crores.

4 The defendants also contest the partnership deed referred to by the plaintiffs, on the basis of which the present suit is filed. It is submitted that the partnership deed relied upon, in the first instance, did not bear the signature of late Ashok G. Sampat and the second document referred to shows fabricated signature of Ashok G. Sampat. It is submitted that the original firm was a partnership firm of two partners including late Ashok G. Sampat and after the death of late Ashok G. Sampat, the firm came to be dissolved. It is submitted that the plaintiffs, by a fabricated document, brought a new firm into effect and after registering the same, brought the present suit against the defendants. These are all matters, which call for a full-fledged trial on oral and documentary evidence.

5 For all these reasons, there are substantial triable issues, which bona-fide arise out of probable and adequate defences raised in the application for leave to defend.

6 In the premises, the following order is passed :

a) The Defendants are granted unconditional leave to defend the suit.

b) Written statement be filed within six weeks from today.

c) Place the suit for directions after six weeks.

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

(S. C. GUPTE, J.)

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