Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 111 OF 2018
IN
COMM SUMMARY SUIT NO. 486 OF 2017

Blue Water Ship Management Pvt Ltd ...Plaintiff
Versus
Kyori Oremin Ltd ...Defendant

Mrs Bharati H Narichania, *i/b Vibha Jurisconsult Company, for the Plaintiff.*
Mr Mahesh R Joshi, *for Defendant No.1.*

CORAM: G.S. PATEL, J
DATED: 30th November 2018

PC:-

1. Heard.

2. The Summary Suit is filed under Order XXXVII 37 Rule 2 of the Code of Civil Procedure 1908 ("**CPC**") on the following facts.

3. The Plaintiff is the disponent owner of a merchant vessel MV *Sophia*. It entered into a cargo charter party dated 13th February 2014 with the Defendant for carriage of 45,000 metric tons (10% more or less at the owners' option) of Indonesian Steam Non-Coking Coal from Indonesia to Vishakhapatnam Port. A shipment of

41,200 metric tons was loaded aboard the vessel in Indonesia. It appears that once the vessel arrived at Vishakhapatnam there was correspondence between the parties in regard to load port demurrage and discharge port demurrage. Some of this correspondence is annexed to the Plaint.

4. These negotiations culminated in an Agreement dated 29th April 2014 under which the Defendant agreed to pay the load port demurrage quantified at USD 120,000/- to the Plaintiff in two instalments. The first, of USD 75,000/-, was payable within one banking day from the date of commencement of cargo discharge. The Plaintiff was to issue a delivery order for the entire quantity. The balance USD 45,000/- was to be paid within three banking days of completion of the discharge operations. The parties also agreed that the time lost at Vishakhapatnam would be shared equally from the time of tender of notice of readiness until the vessel commenced discharge again at Vishakhapatnam, estimated at USD 14,930/- per day pro rata. However, the time spent in discharging 5000 metric tons and 12 hours' turn time was to be excluded. The Defendant was to pay 50% of the total detention incurred at Vizag Port within 30 days of completion of discharge and laytime for the balance cargo was to be reckoned in accordance with the charter party. The Defendant also agreed to issue a post-dated cheque of 45 days equal to the detention amount on receipt of the delivery order. The Plaintiff computed this to be Rs.1,54,77,684.871 and communicated this to the Defendant by an e-mail of 9th May 2014.

5. On 10th May 2014 the Defendant sent to the Plaintiff a cheque no. 000013 dated 30th June 2014 for Rs.1,54,77,684.871

drawn on Bank of Baroda, SJM House, Chennai, against this computation and the claim sent to the Defendant by the Plaintiff. The Plaintiff says that this computation was on the basis that the vessel would berth on 12th May 2014 at 1400 hours. The vessel however arrived a day earlier on 11th May 2014 at 0755 hours and discharged and delivered cargo roughly a day ahead of schedule. To cover the resultant difference in calculation of detention charges, the Plaintiff wrote to the Defendant 12th May 2014 forwarding a post-dated cheque dated 30th June 2014 for Rs.12,09,404.68. On 28th June 2014, the Defendant sent an e-mail to the Plaintiff referring to a telephone conversation and requesting the Plaintiff not to deposit its cheque of 30th June 2014 but to withhold presentment for about 10 days. The Defendant also agreed that correspondingly the Plaintiff's own post-dated cheque of Rs.12,09,404.68 would be similarly withheld. According to the Plaintiff, this is a clear admission of liability.

6. On 16th July 2014, the Defendant made part payment of USD 49,950.00 and undertook to pay the remainder by 20th August 2014. It failed to do so. The Plaintiff recomputed the amount and sent the revised calculation to the Defendant on 19th July 2014 through brokers. These brokers forwarded the Plaintiff the Defendant's letter of 26th July 2014 with a scanned copy of a cheque no. 217 for Rs.1,12,68,211.31 said to have been signed by the Senior Manager Operations of the Defendant. The actual cheque was never sent on to the Plaintiff.

7. According to the Plaintiff there is no dispute about the Defendant's liability. On 31st July 2014, the Plaintiff again wrote the

Defendant through the broker demanding payment and asking that the Defendant should either transfer the remaining amount of Rs.1,12,68,211.31 failing which the Plaintiff would deposit the Defendant's previously issued cheque of Rs.1,54,77,684.871. According to the Plaintiff the Defendant failed to do so.

8. The Plaintiff then deposited the cheque of 30th June 2014 for Rs.1,54,77,684.871. This was dishonoured. The reason for dishonour was that the Defendant had stopped payment. Copies of these documents are annexed to the Plaint. It is on this basis that the Plaintiff has filed the present Suit. The claim is for Rs.1,12,68,211.31 with interest at 18% per annum.

9. The Writ of Summons having been served the Defendant entered appearance. The Plaintiff then filed the present Summons for Judgment.

10. In the Affidavit in Reply filed on 30th August 2018, there is practically no defence disclosed. *In its letter dated 26th July 2014 the Defendant stated that it would return the Plaintiff's cheque for Rs. 12,09,404.68 however the cheque was never returned. Further the Plaintiffs have only received a photocopy of the cheque for Rs. 1,12,68,211.31 and the actual cheque was never handed over to the Plaintiff.*

11. The denial in paragraph 8(a) that no amount is due is not one that can be reconciled with the correspondence annexed to the Plaint or even in the fact of dishonour. It is clear that the

Defendant's cheque of 30th June 2014 was dishonoured on the express instructions of the Defendant and for this there is no explanation whatsoever in the Affidavit in Reply.

12. Only two further points are made. The first is that proceedings initiated by the Plaintiff under Section 138 of the Negotiable Instruments Act, following an order of the Criminal Court, the Defendant has deposited an amount of Rs.15 lakhs sometime in March 2018.

13. The other defence is that the Plaintiff does not seem to have given the Defendant credit for the amount of Rs.30 lakhs paid by the Defendant. This is demonstrably incorrect. The claim of Rs.1,12,68,211.31 is computed after giving the Defendant credit for payment of Rs.30 lakhs paid earlier. There is a letter at page 34 of 26th July 2014 from the Defendant itself, and of which there is no explanation whatsoever. In this communication, the Defendant accepts that the principal amount of Rs.1,54,77,684.871 is due, and after adjusting a cheque of Rs.12,09,404.680 that an amount of Rs.1,42,68,280.19 is due to the Plaintiff. From this an amount of Rs.30,000,68.88 is said to have been paid on 16th July 2014. This is the rupee equivalent of the remittance of USD 49950. This leaves, even according to the Defendant itself, an amount of Rs.1,12,68,211.31 and that is the exact claim that is made in the suit.

14. The Summons for Judgment will have to be made absolute; and it is. The compilation of documents tendered by the Plaintiff is taken on record and marked 'P1' for identification with today's date.

The Suit is decreed in favour of the Plaintiff and against the Defendant in the amount of Rs.1,12,68,211.31 with interest from the date of the Suit not at 18% per annum as claimed but at 9% per annum till payment or realisation.

15. The Plaintiff is at liberty to make an application to the Sessions Court for withdrawal of the amount of Rs.15 lakhs. If the Plaintiff is successful in making that withdrawal, the decree will stand marked partly satisfied to the extent of Rs.15 lakhs.

16. The Suit and the Summons for Judgment are disposed of in these terms. There will be no order as to costs.

17. *Drawn up decree expedited.*

18. *Refund of court fee, if any, in accordance with the Rules.*

(G. S. PATEL, J)

Note: This order is modified as per order dated 4th December 2018 and the corrections (substitution in para 10 & insertion of paragraphs 17 & 18) are shown in italics.