

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

CHAMBER SUMMONS NO.858 OF 2016

IN

SUIT NO.1854 OF 2004

Vegetable Processors (India) Pvt. Ltd. & Ors.Applicants/Plaintiffs

Vs.

Global Green International NVDefendant

Mr. Shanay Shah a/w. Ms. Benedicta Lobo, Mr. Shahzad M. Pandey and Ms. Nimisha Ghetla I/b. Katariya and Associates for applicants/plaintiffs.

Mr. Ravindra Kasturilal Kumar, Director of all plaintiffs present.

Mr. Astad Randeria a/w. Mr. Pinkesh Shah I/b. Mulla and Mulla and CBC for defendant.

CORAM : K.R.SHRIRAM, J.

DATE : 25th SEPTEMBER 2018

P.C.:

1 This chamber summons is taken out by plaintiffs to issue witness summons to Customs Authorities in Tuticorin, Chennai and Kochi for production of documents as mentioned in Schedule 1 to the chamber summons and for fixing the Bhatta charges payable to the officers for attending the Court.

2 The suit filed by plaintiffs is basically claiming damages for breach of contract by defendant. The facts in brief are, plaintiff no.2 and 3 had entered into a Joint Venture Agreement dated 9th January 1996 with defendant to set up plaintiff no.1. It is plaintiffs' case that as per the agreement, defendant had to procure the produce/products solely from plaintiff no.1 and had agreed that plaintiff no.1 will earn commission of

5% on the produce sold to/through defendant. It is plaintiff's case that defendant wrongfully and unlawfully breached the terms and conditions of the Joint Venture Agreement and started sourcing products from other entities in India because of which plaintiffs suffered losses. Plaintiffs have claimed the loss that plaintiffs suffered due to investments by plaintiff no.1 on machineries, commission that plaintiffs would have earned for the period 1998-2001 because that was the term of the Joint Venture Agreement which plaintiffs lost since defendant committed breach and stopped sourcing products from plaintiff no.1, plus interest, plus cost.

3 Mr. Shah, counsel for applicants, on instruction from Mr. Ravindra Kumar, director of plaintiffs, states that though the Schedule mentions "to produce shipping bills and/or relevant Customs Export Manifest/Export Register and all other documents filed by any party in which", if the Customs Authorities provide certified copies of bills of entry filed by exporters, that should suffice. Bills of entry will certainly indicate the name of the consigner and consignee. The reason why plaintiffs want these documents is to ascertain the value of the goods exported to defendant allegedly in breach of the Joint Venture Agreement.

4 Mr. Randeria, counsel for defendant submitted that these documents are absolutely irrelevant and it is defendant's case that it is plaintiffs who have breached the Joint Venture Agreement. Mr. Randeria

also relied on a judgment of the Apex Court in ***Basanagouda V/s. Dr. S.B. Amarkhed and Ors.***¹ to submit that the Court before orders production of documents shall examine expediency, justness and relevancy of the documents to the matter in question.

5 Paragraph 16 of the plaint reads as under :

16. The plaintiffs submit that the Defendants had, by their Letter dated 7th December 1998 agreed with the Plaintiff that for every consignment which the Defendants procure from other sources, they would pay the Plaintiff No.1 commission of 5% for the total purchase value of these containers. The plaintiffs submit that the Defendants have been producing and exporting gherkins through their Indian company and/or other sources, during the entire period of the Joint Venture Agreement, i.e., from November 1998 till April 2001 through the Indian Company, Intergarden (I) Pvt. Ltd. And from November 1998 till April 2001 from other sources. The plaintiffs were unaware of the fact that the Defendants had started their own company in India, which came to light just recently. The plaintiffs submit that the Defendants have purchased a total quantity of 60,000 metric tonnes (approximately 20,000 metric tonnes per year – 1998-99, 1999-2000, 2000-01) from the local market at an approximate market value of Rs.40/- per kilogram. Therefore, the Defendants have purchased gherkins for an approximate value of Rs.800,000,000/- per annum and therefore, the 1st Plaintiffs are entitled to a commission of 5% on the said amount, amounting to Rs.4,00,00,000/- per annum. Therefore, the Plaintiffs are entitled to claim the amount of Rs.12,00,00,000/- as their commission for the reasons stated above. The Plaintiffs submit that the figures given above about the approximate amount of gherkins purchased by the Defendants from the local market is only an estimate. At the time of the Joint Venture Agreement, the Plaintiffs and the Defendants had jointly projected to the Banks including the Reserve Bank of India that an average of 3000 metric tonnes of gherkins would be produced in the first year of the contract, approximately 10,000 metric tonnes during the second year and thereafter, at least 15000 – 20000 metric tonnes from the third year onwards. This quantity of 15000 – 20000 metric tonnes was projected as the approximate quantity of gherkins, which the Defendants were likely to buy from the India Joint Venture company, namely the 1st Plaintiffs herein. The Plaintiffs submit that the Defendants may be called upon to produce the details of total quantity of gherkins purchased by them from the local market, during the period November 1998 till April 2001, in complete contravention to their obligation to buy back the entire stock produced by the Plaintiffs, under the Joint Venture

1. (1992) 2 SCC 612

Agreement. The Plaintiffs are also entitled to interest on the aforesaid amounts from 30th April 2001 till the date of filing of the action, i.e., 28th April 2004, at the rate of 12% per annum. The Plaintiffs have invested an amount of Rs.32,43,037/- in the bottling plant till date, on which amount also, interest would accrue at the rate of 12% per annum from 30th April 2001 till the date of filing of suit. The Plaintiffs are also entitled to interest at the rate of 12% per annum on the entire principal amount of Rs.12,32,43,037/- from the date of filing of the suit till payment/realisation. The Plaintiffs will rely upon the Statement of Claim, setting out the details of the Plaintiffs claim, which is annexed hereto and marked as Exhibit D.

6 In the written statement dated 3rd February 2009 paragraph 20 reads as under :

20. With respect to paragraph 16 of the plaint, the Defendants state that the contents thereof have been substantially responded to hereinabove at paragraph 12 of this written statement and the same is reiterated herein. Additionally, the Defendants deny categorically that they are liable to pay any amount to the Plaintiffs as commission for alleged Gherkins procured by the Defendants from other sources in India. The Defendants deny the assertion as to the quantum, price and period of purchase allegedly made by the Defendants from India. The Plaintiffs have not indicated any credible source for this information, which is liable to be disbelieved in entirety. The Defendants therefore deny that the Plaintiffs are entitled to 5% or Rs.12,00,00,000/- as claimed or any other amount whatsoever. This entire claim of the Plaintiffs is speculative and not founded on any cogent material or basis. The Defendants deny that the Plaintiffs are entitled to any or all of the amounts claimed in Exhibit D to the plaint.

7 Paragraph 12 of the written statement reads as under :

12. With respect to paragraph 8 of the plaint, the Defendants put the Plaintiffs to strict proof of the investments that the Plaintiffs claim to have made under the terms of the JVA. The Defendants deny the allegations made in the said paragraph which are in any event without any particulars and details. The Defendants categorically deny that all the work done by Plaintiffs was fully in compliance with the terms and conditions of the JVA. The Defendants state that the Plaintiffs have themselves been in breach of the terms and specifications of the JVA, because of which the Defendants could not procure the agricultural produce that was processed and packaged by the Plaintiffs under the terms of the JVA. Even assuming without admitting that the operations of the Plaintiffs were periodically supervised by the technical staff of the Defendants, it does not assure that quality of the products that were

exported by Plaintiff No.1 to the Defendants. In fact from time to time various defaults and breached on the part of Plaintiff No.3 were pointed out and some of which even till date have remained un-remedied.

8 In the written statement, defendant has not denied that defendant sourced products from any other party in India. Ofcourse it is defendant's case that there was no such exclusive arrangement with plaintiffs, plaintiffs committed breach and therefore, defendant decided not to continue with the relationship with plaintiffs and no amount is payable to plaintiffs. Plaintiffs' case is that plaintiffs' sources informed them that defendant had purchased approximately 60,000 metric tonnes of gherkins and the value of the gherkins was approximately Rs.80 Crores and 5% commission on that would be Rs.4 Crores per annum. In paragraph 16 of the plaint, plaintiffs states defendant be called upon to produce the details of total quantity of gherkins purchased by defendant from the local market during the period November 1988 till April 2001. This is because how much has been purchased by defendant from Indian market will be to the exclusive knowledge of defendant. Naturally defendant will not be inclined to produce any such details and hence plaintiffs have taken out this chamber summons to direct the Customs Authorities in Kochi, Tuticorin and Chennai to produce various documents mentioned in the Schedule annexed to the chamber summons.

9 Having considered the plaint, the averments in the plaint, the claim of plaintiffs and the fact that defendant has not denied in the written statement that it had sourced goods during the aforesaid period, i.e., 1998-2001, from other parties in India, in my view, the documents sought are certainly relevant to ascertain the quantum of damages plaintiffs will be entitled to, if plaintiffs succeed in proving that defendant has committed a breach of the contract and it is entitled to 5% or so commission. Moreover, in the affidavit in support, it is mentioned that plaintiffs applied to the Customs Authorities to provide the documents under the Right to Information Act, which was declined. I find the documents sought to be very relevant for the effective consideration and disposal of the suit.

10 In the circumstances, chamber summons is allowed and accordingly disposed in terms of prayer clause – (a).

11 The Commissioner of Customs at (i) Tuticorin (Thoothukudi), (ii) Willington Island, Kochi and (iii) Rajaji Salai, Chennai are directed to provide certified copies of the following documents for the period 1st November 1998 to 30th April 2001 :

- (a) all the shipping bills where the consignee is N V Intergarden SA and
- (b) all the shipping bills where the consignor is Intergarden (I) Pvt. Ltd. or Intergarden India Pvt. Ltd.

12 This suit is of the year 2004 and trial is already in progress. Therefore, the Customs Authorities are directed to provide certified copies of these documents within six weeks of receiving a copy of this order.

13 All to act on an authenticated copy of this order.

(K.R. SHRIRAM, J.)

Gauri
Amit
Gaekwad

Digitally signed
by Gauri Amit
Gaekwad
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