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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

SUMMONS FOR JUDGMENT NO. 48 OF 2018

IN

COMM SUMMARY SUIT NO. 271 OF 2016

Unique Tooling Solutions Pvt Ltd ...Applicant/ Plaintiff

Versus

Ganesh Forgings Ltd ...Defendant

WITH

COMM CHAMBER SUMMONS NO. 493 OF 2018

IN

SUMMONS FOR JUDGMENT NO. 48 OF 2018

IN

COMM SUMMARY SUIT NO. 271 OF 2016

WITH

COMM NOTICE OF MOTION NO. 138 OF 2016

IN

COMM SUMMARY SUIT NO. 271 OF 2016

Mr Uday Warunjikar, *for the Applicant/Plaintiff.*
Ms Gulnar Mistry, *with Ms Sonam Ghiya, i/b Jhangiani Narula & Associates, for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 26th November 2018

PC:-

1. Heard.

2. The Suit seeks a summary decree under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908 ("**CPC**") against the Defendant in the amount of Rs. 1,47,37,169/-. The principal claim is Rs.60,12,639/-, and then there is a claim for interest at the rate of 24% per annum.

3. The Plaintiff says it is a dealer and distributor of Mitsubishi-brand cutting tools. The Defendant placed orders on the Plaintiff periodically for the supply of these Mitsubishi-brand goods. A list of the purchase orders is annexed to the Plaint. The Plaintiff claims to have supplied the goods in question. Paragraph 4 of the Plaint says that "a running account was maintained by the present Plaintiff in respect of the supply of the goods which were made by the present Plaintiff from time to time". In a Summary Suit, a plea of running account would, in my view, immediately raise a triable issue because the amount due at the foot of a running account is always a matter of evidence. I will, however, for the present purposes proceed on the footing that there is some inaccuracy in this pleading and all that the Plaintiff intends to convey is that it has maintained accounts in the usual and ordinary course of its business. The Plaintiff then says that the Defendant acknowledged delivery of the goods in question.

4. Paragraph 5 refers to purchase orders placed telephonically and verbally, as also those placed by e-mail. The Plaint then goes on to say that the Defendant did not make payment in a timely fashion.

5. The Plaintiff issued a notice on 20th June 2011 demanding payment of the amount of Rs.60,12,639/-. Another notice followed on 25th November 2011. The Defendant replied on 14th January 2012, and this reply claims that some of the goods supplied by the Plaintiff were defective and possibly spurious. The Plaintiff filed a winding up Petition, Company Petition No. 324 of 2012. The Defendant filed an Affidavit in Reply, in which it again took the defence that at least some of the supplies were sub-standard. The Plaintiff entered a Rejoinder. Ultimately, by his order of 24th August 2015, SC Gupte J disposed of the Company Petition holding that there was a dispute about some of the deliveries. He directed the Defendant to deposit of Rs.25 lakhs within six weeks. This has been done. The Plaintiff was at liberty to file a suit within three weeks thereafter, and the amount deposited was to be taken to the credit of that suit. There was, of course, the usual default provision. The deposit having been made, the Plaintiff filed the present Summary Suit. On being served with the Writ of Summons, the Defendant entered appearance, the Plaintiff filed a Summons for Judgment, and there is now a Reply and a Rejoinder.

6. Mr Warunjikar for the Plaintiff contends that there is no valid defence to the claim at all. At best, there may be one or two invoices that are disputed; the rest are not. There is no reason, he submits, why the Defendant should not suffer a decree or, at the very least, be put to terms i.e. be required to deposit the entire principal claim.

7. Ms Mistry for the Defendant submits that there is contemporaneous correspondence, copies of which are at pages 32 to 44 of the Affidavit in Reply, all dated 30th March 2009, pointing out the defects in the supplies that the Plaintiff made. She also refers to a meeting held on 1st October 2009 (pages 45 and 46) where both parties accepted that there were defects in the Plaintiff's supplies and sought a resolution of these problems. I am not satisfied with Mr Warunjikar's response that these complaints pertain only to a few isolated instances. He raises a dispute as to the receipt of these letters of complaint and their accompanying trial reports. That is in itself a triable issue and will require evidence.

8. In his order on the Company Petition, SC Gupte J left all contentions open, and one of the principal contentions taken by the Defendant is that the entire claim is barred by limitation. Ms Mistry invites my attention to Exhibit "C" to the Plaint from pages 37 to 42. This is a listing of at least some of the bills and their dates and amounts. The total of these is Rs.35,43,639/-. The caption of this list is "details of proof of delivery". This suggests that there are other bills without proof of delivery, also a matter to be tried, but more importantly, all these bills are within the period 13th February 2009 to 1st February 2010. The Suit itself was filed in 2016. I do not believe it would be correct to say that the pendency of the winding up Petition would save the bar of limitation. That is not a recovery proceeding, and the law in that regard is well settled. As Ms Mistry points out, the Summary Suit could also have been filed at the same time. In any case, the plea of limitation was specifically kept at large by the order of SC Gupte J.

9. For these reasons, I am not inclined to grant the Plaintiff relief. I believe triable issues do arise. I will grant the Defendant unconditional leave to defend. The Summons for Judgment is dismissed. There will be no order as to costs.

(G. S. PATEL, J)