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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 63 OF 2018
IN
COMM SUMMARY SUIT NO. 540 OF 2018**

Natco AG Internationale Transporte	...Plaintiff
<i>Versus</i>	
Value Freight (Mumbai) Pvt Ltd	...Defendant

Mr Nihal Shaikh, i/b Mustafa Motiwala, for the Applicant/Plaintiff.
Mr KP Ravikumar for the Defendant.

CORAM: G.S. PATEL, J
DATED: 21st November 2018

PC:-

1. Heard. It is not possible to accept the case of the Plaintiff that there is a liquidated debt or ascertained sum of USD 222,581.94/- and interest at the rate of 9% per annum. The reasons are these.

2. The Plaintiff nominated the Defendant for transportation of a Reactor Dump Tank from the factory of Lloyds Steel Industries Limited at Murbad to Nhava Sheva Port. The Plaintiff confirmed the consignment booking by an email dated 8th May 2017 and

provided details of the vessel and the laycan time for lading the consignment. On 28th April 2017, the Plaintiff provided the Defendant with various documents relating to the consignment as also with the information regarding risk management assessment. According to the Plaintiff, on 18th May 2017, the Defendant arranged for a trailer to transport the Reactor Dump Tank. It engaged a sub-contractor, Premier Transport Limited. It seems that there was some incident regarding a power shut down. It resulted in what is described as a major casualty. Of the four linesmen involved between the shut down team and the State Government Electricity Office, one of them lost his life.

3. There is a letter at Exhibit “G” to the Plaint dated 24th May 2017 from the Plaintiff to the Defendant where the Plaintiff asserts that the Defendant would be liable for all the losses and financial consequences attributable to this incident and casualty. The Defendant in turn wrote on 26th May 2017 to its sub-contractor. According to the Plaintiff, the consignment was to be loaded aboard the vessel, *MV Seraser*, between 29th May 2017 and 5th June 2017. The Master of that vessel tendered a notice of readiness on 30th May 2017. The consignment reached Nhava Sheva Port only on 22nd June 2017, after a delay of some 27 days. This is the sole and only basis of the Plaintiff’s claim for detention charges incurred in the amount of USD 222,581.94/- The shipping line invoiced the Plaintiff for this amount. The Plaintiff has made the bulk of this payment. It has then claimed the amount from the Defendant. The Defendant responded to the Plaintiff on 9th January 2018 pointing out that sea freight was outside the Defendant’s scope of work and

that there was no written contract or agreement in regard to any penalty for vessel detention.

4. Paragraph 15 of the Affidavit in Support, and which corresponds to paragraph 13 of the Plaint, reads thus:

"15. I say that the Defendant did not obtain the required permissions from the government and electricity board for transportation of consignment from the supplier's factory at Murbad to Nhava Sheva Port, the permit for power shut down and nor provided any valid proof/reason for the delay of delivery of consignment to the Plaintiff. The **Defendant has deliberately failed to perform its duties. Furthermore, the death of the linesman (being a major casualty) occurred as a direct consequence of Defendant's negligence and inaction, further resulting into delayed delivery of consignment.**"

(Emphasis added)

5. From this I believe it is sufficiently clear that the claim as filed cannot possibly lie within the ambit of Order 37 Rule 2 of the Code of Civil Procedure, 1908. The claim is essentially one in damages. There are certainly triable issues including as to financial liability, if any, of the Defendant having regard to the terms of the contract and the events that transpired.

6. The Summons for Judgment is dismissed.

7. The Defendant is granted unconditional leave to defend. Written Statement is to be filed and served on or before 19th

December 2018 along with the Defendant's Affidavit of Documents and compilation of documents.

8. List the Suit for framing issues on 11th January 2019.

(G. S. PATEL, J)