

rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 61 OF 2017
IN
COMMERCIAL SUMMARY SUIT NO. 446 OF 2017

V. K. Industrial Corporation Ltd. ... Plaintiff
vs.
Jyoti Structures Ltd. ... Defendant

Mr. Anil Agarwal for the Plaintiff.

Ms. Supriya S. Devergudi i/b. ANS Law Associates for the Defendant.

CORAM : A.K. MENON, J.

DATE : 16th OCTOBER, 2018

P. C.

1. The suit claim is a sum of Rs. 1,73,80,882.70- which includes a principal sum of Rs.1,24,99,058.85. The defendant is a company incorporated under Companies Act, 1956 presently facing proceedings before the National Company Law Tribunal. The initial order of moratorium is stated to have ended. The summons for judgment is therefore taken up for hearing.

2. The claim in the suit is based on goods sold and delivered pursuant to purchase orders issued by the defendant and copy of which appears at Exhibit A to the affidavit in reply and invoices raised pursuant to the purchase orders.

3. The controversy in the suit is now restricted only to the rate of interest since the defendant has admitted the principal sum claimed in the invoices. Interest is computed @ 24% per annum. In response to a demand notice dated 18th May, 2017 which the defendant admits to have received on 22nd May, 2017, the defendant has admitted that goods of the value of Rs.1,24,99,058.85 had been supplied and that the said amount is due to the plaintiff as per books of accounts of the company. They have however denied that they have agreed to pay interest @ 24% per annum. Therefore they have disputed the claim of interest of Rs. 48,81,823.85.

4. Learned counsel for the defendant also submitted that there is no agreement to pay interest and that the purchase orders does not provide for payment of interest and therefore there is no liability to pay interest. As an absolute proposition it is not possible to accept contention there is no liability to pay any interest in a commercial transaction of sale of goods. However, the rate of interest not being specified in the purchase orders it does not itself prevent the plaintiff from claiming interest @ 24% rate mentioned in the invoices. Admittedly there is no dispute under the terms and conditions on which supplies were made and as incorporated in the invoices. The principal sum not being in dispute, in my view it is appropriate that the defendant be granted conditional leave to defend. I therefore pass the following order :

- (i) The defendant shall deposit in this Court a sum of Rs.1,24,99,058.85 within a period of six weeks from today.

- (ii) If the amount is deposited the same will be invested by the Prothonotary and Senior Master in a nationalised bank initially for a period of one year and to be renewed for similar periods thereafter.
- (iii) If amount is deposited defendant are at liberty to file written statement within a period of four weeks thereafter.
- (iv) If written statement is filed parties shall file affidavit of documents within a further period of two weeks.
- (v) Discovery and inspection to be completed forthwith thereafter.
- (vi) Place the suit for framing issues on 10th December, 2018.
- (vii) In the event amount is not deposited liberty to the plaintiff to apply.
- (viii) Summons for judgment disposed in the above terms.

(A.K. MENON, J.)