sg **IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.73 OF 2017
IN
COMMERCIAL SUIT NO.303 OF 2017

Thinkink Print Solutions L.L.P. ...Plaintiff

vs

Inspiration Publication (India) ...Defendant

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Mr. Arshil Shah, a/w. Mr. Darshan Shah and Ms. Madhuri, i/b. Sudhir Shah & Associates, for the Plaintiff.

Mr. Karl Tamboly, a/w. Mr. Malcom P. Siganporia, Mr. Rachit Lakhmani, Msr. Harish Khedkar and Mr. Nihar Thackeray, i/b. Vis Legis Law Practice, for the Defendant.

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CORAM : S.C. GUPTE, J.

DATED : 22 MARCH, 2018

P.C. :

. Heard learned Counsel for the parties. This summons for judgment is taken out in a summary suit filed under Order 37 of the Code of Civil Procedure. The suit seeks a decree in the sum of about Rs.1.86 crores, out of which, a sum of about Rs.1.20 crore is said to be towards principal amount and the balance towards interest. The suit claim arises out of 8 print orders placed by the Defendant on the Plaintiff and 24 invoices raised by the Plaintiff on the Defendant in respect of goods sold and delivered in pursuance of the print orders. The total amount of invoices is said to be about Rs.2.56 crores. The Plaintiff admits having received a sum of about Rs.1.36 crores towards value of

these goods, leaving a balance of about Rs.1.20 crores, the principal sum due and payable in respect of the value of the goods sold and delivered.

2. In its reply to the summons for judgment (termed as an application of the Defendant to seek leave to defend), the Defendant raises several defences. These defences mainly pertain to defects in the goods. It is submitted that the Defendant had to stock a large quantity of these goods, which could not be sold due to defect in the quality. The only material placed in support of the Defendant's case that the defective goods are lying in stock with it is the statement produced by the Defendant as Exhibit 'E' to its reply. According to the Plaintiff, without accepting that these goods are lying in stock with the Defendant, they are valued at the most in the sum of about Rs.25 lakhs. Learned Counsel for the Defendant does not dispute the valuation of the goods. Besides claiming that these goods could not be sold due to defect in quality, which, accordingly, accounts for a sum of Rs.25 lakhs, there is no other probable, or even plausible, defence raised by the Defendant in respect of the suit claim. The only other defence is in the Defendant's sur-rejoinder that the Defendant had to issue credit notes in respect of the goods, which could not be supplied to its clients, namely, the schools for whom the books were meant. There is nothing to suggest that the goods returned by these schools, and for which these credit notes were issued by the Defendant, were different from the goods, which are claimed to be lying in stock with the Defendant.

3. There is, thus, no plausible defence as far as the amount of about Rs.95 lakhs is concerned. If the Defendant is to be granted leave

to defend, he must be put to the condition of deposit of this amount of Rs.95 lakhs.

4. Learned Counsel for the Plaintiff submits that in the e-mails exchanged between the parties, the Defendant has admitted the entire principal amount of the suit claim, namely, about Rs.1.15 crores as of 16 April 2018. Based on this admission, it is claimed that the Defendant should be ordered to deposit not only the sum of Rs.95 lakhs, but the entire principal amount of Rs.1.20 crores under the second proviso of sub-rule (5) of Rule 3 of Order 37 of the Code of Civil Procedure. I am afraid there is no unequivocal admission on the part of the Defendant in the e-mails referred to in this behalf. The Plaintiff's mail does claim an amount of Rs.1.15 crores as due towards principal. In reply to this mail, the Defendant has indicated that there was some defect in the binding of the books; that such defect caused damage to the goodwill of the company; and that the Defendant received several complaints regarding the binding of the books and lost business from several schools as a result. By way of an example, the Defendant has referred to a certain series of books. The Defendant has indicated that leaving these issues for the time being, which could be discussed later and settled amicably, the Defendant was committed to clear the principal amount first. This cannot be termed as an unequivocal admission of the Defendant's liability to the extent of the entire principal amount indicated by the Plaintiff in its mail.

5. In the premises, the summons for judgment is disposed of in terms of the following order :

(i) The Defendant is granted leave to defend on and subject to the condition of deposit of a sum of Rs.95 lakhs in Court within a period of eight weeks from today.

(ii) The amount, if any, deposited by the Defendant, shall be invested by the Prothonotary and Senior Master in fixed deposit/s of nationalized bank/s, initially for a period of 13 months and renewable from time to time and to abide by further orders that may be passed in this suit.

(iii) Written statement within four weeks after deposit of the amount indicated in (i) above.

(iv) Place the suit for directions after twelve weeks.

(S.C. GUPTE, J.)