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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 59 OF 2015
IN
COMMERCIAL SUIT NO. 137 OF 2015
WITH
CHAMBERS SUMMONS NO. 330 OF 2017
IN
COMMERCIAL SUIT NO. 137 OF 2015

Agritrade India Services Pvt. Ltd.

... Plaintiff

vs.

Subhalabh Nirmaan Pvt. Ltd.

... Defendant

Mr. Karl Tamboly a/w. Mr. Harsh Moorjani i/b. Jaykar & Partners for the Plaintiff.

Mr. Sanjay Udeshi i/b. M/s. Sanjay Udeshi & Co. for the Defendant.

CORAM : A.K. MENON, J.

DATE : 30th JULY, 2018

P. C.

1. By this suit the plaintiff seeks to recover a sum of Rs. 1,94,09,755/- due under a written undertaking and a post dated cheque issued by the defendant to the plaintiff. It is the case of the plaintiff that one Agrocorp International Private Limited, Singapore, the parent company of the plaintiff was approached by the defendant for supply of Canadian Red Lentils by importing the same from Canada and sending them to Calcutta. The parent company is stated to have raised two

invoices in US Dollars. As part of the arrangement between parties, the defendant executed an undertaking dated 26th December, 2012 agreeing to pay the amount of the two bills on or before 31st January, 2013. In pursuance of this agreement they issued suit post dated cheque for a sum of Rs.1,94,09,755/- favouring the plaintiff. The undertaking records that the defendant would provide collateral security by way of deposit of title deed of certain property situated in State of Tamil Nadu. By virtue of the said undertaking the plaintiff invoked collateral security upon failure to pay amount of two invoices.

2. It is the plaintiffs case and as canvassed by Mr. Tamboly that despite demands, the amount due was not paid and therefore plaintiff became entitled to encash the suit cheque. In the meanwhile vide email dated 21st June, 2013 the defendant called upon the plaintiff not to deposit the cheque since the account at the relevant branch of the bank had been closed. The defendant thereafter issued a fresh cheque on 9th August, 2013 drawn on a Mumbai branch. The cheque was deposited on its due date but it was dishonoured with the remarks "funds insufficient". It is therefore submitted that the plaintiff are entitled to recover the amount of the cheque with interest @ 18% per annum.

3. In its affidavit in reply, the defendant has taken up the plea that the suit undertaking is not sufficiently stamped and is therefore inadmissible in evidence. As far as the cheque is concerned, it is also contended that it represents an amount payable to the company incorporated by the laws of Singapore and that the defendant cannot make payment to the said company directly and it is for this

reason that the suit is not maintainable since it is filed by the subsidiary of a holding company based in Singapore.

4. Mr. Udeshi learned counsel for the defendant who opposes the Summons submitted that the cheque was handed over only by way of security and that certain documents of title of immovable property had already been provided and therefore there is no occasion to seek payment of the cheque or to file the present suit. Mr. Udeshi further submitted that a suit under order XXXVII can only be filed as contemplated in Order XXXVII and the said undertaking is violative of the laws in India and particularly provisions of the Foreign Exchange Management Act, 1999 and Rules. The cheque has been issued in pursuance to the undertaking and therefore the amount of the cheque is not payable to the plaintiff as it is tendered in violation of the said Act. The other defence taken up is that the undertaking is not sufficiently stamped. Mr. Udeshi also submitted that immovable property to secure the amount of the claim since now documents of title in respect of immovable property for the claimant are already in possession of the plaintiff and therefore there is no occasion to file the present suit and now seek a decree.

5. I have heard the learned counsel for the parties and with their assistance perused the documents based on which the suit is filed. The suit claim is the amount of cheque dated 31 January, 2013 Exhibit "C-2" to the Plaint. It is undoubtedly drawn in favour of the plaintiff for the amount of the suit claim. The written undertaking which is also subject matter of the suit evidences, in no uncertain terms, an unconditional undertaking to pay the amount of two of the

captioned bills along with port charges, clearing charges and shipping line detention / demurrage charges. It is in this respect that the cheques came to be issued for a sum of Rs. 1,94,09,755/-.

6. The suit is filed on the basis of a negotiable instrument. The property in question has been provided only as collateral security. The cheque was at all times legal tender and not the undertaking. The undertaking is an additional document on which plaintiff has placed reliance in relation to the collateral security offered therein. In the circumstances there can be no doubt that the cheque when issued was intended to be payment of the principal sum of the two invoices and not as collateral security since undertaking itself mentioned the fact that the property is being offered as collateral security. The cheque in my view was not provided as collateral security.

7. That having been said on the aspect of document being insufficiently stamped it is now well settled that an insufficiency of stamps will not defeat the plaintiff's right to claim under the document. It can always be impounded by this Court and sent for stamping to the appropriate authority. The same is therefore liable to be impounded and sent to the stamp office to be stamped with appropriate duty. In the circumstances, I am of the view that the defendant should be put to terms. I therefore pass the following order :

- (i) Defendant shall deposit a sum of Rs. 1,00,00,000/- (Rupees One crore) in this Court in a period of six weeks from today.

- (ii) If the amount is deposited the defendant shall file its written statement within a period of four weeks.
- (iii) Parties to exchange affidavit of documents and complete discovery and inspection within two weeks thereafter.
- (iv) If the amount is not so deposited the plaintiff is at liberty to apply for ex-parte decree.
- (v) In the meantime undertaking dated 26th December 2102 shall be produced in this court for being impounded.
- (vi) Summons for judgment disposed of in the above terms. List the suit for framing issues.
- (vii) Meanwhile stand over to 6th August 2018 for directions. The plaintiff shall produce the original undertaking in court on that day.

At this stage Mr. Udeshi seeks a direction to the plaintiff to deposit the title deeds in their custody in this court. In my view the request is premature. It will be open to the defendants to apply for return of title deeds after the deposit of Rs.1,00,00,000/- as ordered is made.

(A.K. MENON, J.)

Rajeshwari
Ramesh
Pillai

Digitally signed
by Rajeshwari
Ramesh Pillai
Date: 2018.08.04
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