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

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.86 OF 2017
IN
COMMERCIAL SUIT NO.179 OF 2015

Gayatri Elastomers Pvt. Ltd. ...Plaintiff
vs
M/s. Monotona Tyres Ltd. ...Defendant

WITH
SUMMONS FOR JUDGMENT NO.75 OF 2017
IN
COMMERCIAL SUIT NO.184 OF 2017

Gayatri Rubchem Pvt. Ltd. ...Plaintiff
vs
M/s. Monotona Tyres Ltd. ...Defendant

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Mr. Ghanshyam Upadhyay, a/w. Mr. Kamalesh Mishra, i/b. Law Juris, for the Plaintiff.

Mr. Gaurav Mehta, a/w. Mr. Sairam Subramanian, Ms. Aastha Arora and Ms. Deekshitha Ganesan, i/b. Khaitan & Co., for the Defendant.

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CORAM : S.C. GUPTE, J.

DATED : 22 MARCH, 2018

P.C. :

. Heard learned Counsel for the parties.

2. These two summonses for judgment are taken out in two commercial suits filed under Order 37 of the Code of Civil Procedure seeking decrees in the sums of about Rs.6.57 crores and about Rs.1.37 crores. These claims comprise of principal amounts of about Rs.4.68

crores and Rs.98.05 lakhs, respectively. The facts of the Plaintiffs' cases (there are two separate Plaintiffs in these two suits) and the defences raised by the Defendant (the Defendant is common to both the suits) are more or less similar save and except the figures. Summons for Judgment No.86 of 2017 in Commercial Suit No.179 of 2015 is taken as a lead matter for consideration of the rival cases of the parties.

3. The Plaintiff is engaged in the business of trading and distribution of synthetic rubber, rubber chemicals and rubber compounds. The Defendant is a manufacturer of tyres. In pursuance of various purchase orders, which are referred to in the plaint, placed by the Defendant, the Plaintiff sold and delivered goods of various descriptions generally known as Carbon Black and allied goods to the Defendant. The supplies aggregated to the value of about Rs.5.90 crores. These supplies were made under invoices, which are produced along with the purchase orders as Exhibits to the plaint. A list of the invoices is set out in paragraph 1 of the plaint. These invoices are all dated between 12 May 2011 and 27 March 2012. It is the case of the Plaintiff that the goods supplied by the Plaintiff under these invoices were received in good order and condition without the Defendant ever having raised any dispute as to the quality, quantity or specifications of the goods or indeed the price charged for the goods. Over and above the invoices claiming price of goods sold and delivered, the Defendant has raised a debit note of about Rs.4 lakhs, which is also part of the claim. It is the Plaintiff's case that the Defendant not only omitted to dispute the quality or quantity of goods or price charged for the same, but, in the correspondence between the parties, even confirmed a statement of account showing the outstandings

of the Plaintiff. By its communication dated 8 February 2012, the Plaintiff called upon the Defendant to confirm its outstanding balance as on 31 January 2012 in the sum of Rs.4,37,23,427/-. The statement of outstanding balance submitted along with this communication is said to have been duly confirmed by the Defendant and returned to the Plaintiff. The statement is annexed as Exhibit 'E' to the plaint. The statement reflects the particulars of the various invoices (including their document dates, posting dates and the amounts). The first of the invoices referred to in this statement is of 9 June 2011 and the last is dated 30 November 2011 (with a posting date of 16 February 2012). The aggregate amount of the balance outstanding shown as per the statement is about Rs.4,59,68,280=77. Apart from this correspondence between the parties and the signed statement of outstanding balance, the Plaintiff also relies on minutes of meeting between the parties as of 3 April 2012. These minutes are enclosed by the Defendant itself with a communication of its Director. The minutes indicate a briefing of the Plaintiff by the Defendant's director that during the last few months before the meeting, the Defendant was facing a huge financial constraint, as its plant was not running upto its capacity. The minutes also indicate the anticipated levels of operations in future, against which to adjust various amounts towards the old outstandings of the Plaintiff. Such adjustment is said to be applicable for the next three months, to be reviewed thereafter, if required.

4. In the face of all these documents, the Defendant's defence does not appear to be bonafide or genuine. The defence is based on a lone document, namely, a debit note purportedly issued by the

Defendant on 30 March 2012. (The debit note is said to have been received by the Plaintiff on 24 April 2012.) The debit note passes a general debit entry in the sum of Rs.4,43,45,550/- describing this entry as "being your account debited towards quality claims, scrap arises due to inferior quality of materials supplied by you". A general entry like this for a huge sum of over Rs.4 crores and that too more than a year after the last of the suit sales, has nothing bonafide or genuine about it. It is the case of the Defendant in its reply to the summons for judgment that upon receipt of the goods from the Plaintiff, the Defendant had supplied the same to its customers; after it received numerous complaints from its customers regarding the inferior quality of goods supplied by the Defendant, the Defendant conducted sample tests on the goods supplied by the Plaintiff; and, upon conducting these tests, it was found that the goods were of inferior quality and did not meet the required specifications. The Defendant relies on certain debit notes issued by two of its customers, namely, Falcon Tyres Ltd. and Bajaj Auto Ltd. There are in all six debit notes referred to in this behalf. These debit notes are, respectively, dated 1 March 2011, 3 May 2011, 4 August 2011, 2 September 2011, 8 November 2011 and 6 April 2012. These debit notes are issued by one Falcon Tyres Ltd., which, according to the Plaintiff, is only a group company of the Defendant. The Plaintiff relies on some documentary evidence in this behalf. Be that as it may, the debit notes do not indicate that any particular goods supplied by the Plaintiff to the Defendant, the value of which forms part of the Plaintiff's claim in the present suit, was defective. The reference to the alleged defective goods is claimed on the basis of some rejection notes. Eight such rejection notes are produced with the reply to the summons for judgment. These rejection notes are all dated 1 April 2010, 2 April 2010, 10 April 2010, 16 April 2010, 17 April 2010, 19 April 2010 and 21 April 2010. That means the goods covered by them are not even goods, for the value of which the present suit is filed. This, at the highest, could be said to be pertaining to the Plaintiff's goods (assuming that they do deal with the Plaintiff's goods) forming part of prior supplies. Based on this perfunctory material produced with the reply, the Defendant cannot possibly seek to support its claim made in the debit note, on which alone its defence is based. In any event, these so called debit notes of two parties and quality claims account for a sum of Rs.46,49,139. As far as the statement of account signed by the Defendant concerned (i.e. the statement as of 16 February 2012 referred to above), there is no stand taken in the Defendant's reply to the summons for judgment. On the other hand, there is on record an admitted letter addressed by the Defendant to the Assistant Commissioner of Police as late as on 20 December 2012, where the Defendant admits and acknowledges its liability which is offered to be settled (para 5) and reaffirms the Defendant's commitment to pay (para 6).

5. Based on this material and averments made in connection therewith in the reply to the summons for judgment, no plausible defence giving rise to a triable issue is disclosed, let alone a probable defence. Learned Counsel for the Defendant relies on some averments of the Plaintiff itself, particularly in paragraphs 6, 7, 9, 16 and 23 of the plaint, and submits that these averments themselves indicate that there could be triable issues. First of all, these averments do not bear on the Plaintiff's case but on the Defendant's defence and, secondly, and at any

rate, even if one were to disregard these averments, the claim formulated on the basis of purchase orders and corresponding invoices and goods sold and delivered thereunder and the admitted statement of account duly signed by the Defendant, cannot be contested. The receipt of the goods is not a matter of contest. So also, the amounts claimed in the invoices raised by the Plaintiff in respect of the goods are not matters of contest. The Defendant does not claim to have made any payment, which is not reflected in the statement on account relied upon by the Plaintiff. The only dispute, as I have noted above, is the so called defect in the quality of the goods, which, as noted above, is raised around the same time as the Plaintiff's statutory notice issued in respect of the suit claim. Learned Counsel for the Defendant states that the debit note was, in fact, issued before the Plaintiff served its statutory notice. It is obvious that the purported debit note is around the same time. It is claimed to have been received by the Plaintiff on 25 April 2012, that is to say, after the statutory demand notice was raised by the Plaintiff. Anyway, it does not really matter whether the so called debit note is issued before or after a couple of days of the statutory notice. What is important is that there is no correspondence or claim of defect contemporaneously made, when the goods were sold and delivered. There is not even a single communication placed on record or even indicated by the Defendant disputing or raising a claim concerning the quality of goods sold and delivered before issuance of the alleged debit note. The alleged debit note has come as a stand-alone document generated over a year after the last of the suit sales.

6. In the premises, the defence is simply moonshine or

nominal. But even if one were to view it liberally and even term it as a plausible defence, which gives rise to triable issues and calls for a trial, though as a matter of form and not really of substance, it certainly cannot be termed as a credible defence, which should earn the Defendant an unconditional leave to defend. In the premises, this Court is of the view that in the interest of justice, the Defendant may be allowed to defend the suit, but subject to payment into the Court of the entire principal amount of the invoices as claimed due and payable by the Plaintiff.

7. Insofar as the companion summons for judgment in Commercial Summary Suit No.184 of 2017 is concerned, the facts of the case and the defence are more or less the same except for the amounts involved. This suit concerns sales of the aggregate value of Rs.2,74,57,807/-. The payment made by the Defendant for the goods sold and delivered accounts for Rs.1,76,52,716/-, leaving a balance of Rs.98,05,091/- as due and payable. There is a balance confirmation statement in respect of dues of Rs.1,43,77,166/- as of 16 February 2012. A similar Minute of Meeting is prepared and signed offering to settle the outstandings. A similar debit note is issued by the Defendant of an omnibus debit entry of Rs.1,56,25,350/- towards quality claims, on which alone the defence is based, and there is no contemporaneous quality claim raised raised for over a year after the last of the suit supplies. For the reasons discussed above, even here the Defendant must be put to conditions.

8. Accordingly, the following order is passed:-

Commercial Summary Suit No.179 of 2015 :

(i) Leave to defend is granted to the Defendant on and subject to the condition of deposit of a sum of Rs.4.68 crores in Court within a period of six weeks from today.

(ii) The amount, if any, deposited by the Defendant, shall be invested by the Probationary 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) The Defendant may file its written statement within four weeks after deposit of the amount indicated in (i) above.

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

(v) The summons for judgment is disposed of.

Commercial Summary Suit No.184 of 2017 :

(i) Leave to defend is granted to the Defendant on and subject to the condition of deposit of a sum of Rs.94.88 lakhs in Court within a period of six weeks from today.

(ii) The amount, if any, deposited by the Defendant, shall be invested by the Probationary 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) The Defendant may file its written statement within four weeks after deposit of the amount indicated in (i) above.

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

(v) The summons for judgment is disposed of.

(S.C. GUPTE, J.)