Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 82 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 734 OF 2018

Standard Retail Pvt Ltd ...Plaintiff

Versus

Ridhi Sidhi Iron & Steel ...Defendant

Mrs Kenny Thakker, *i/b BhagyaLaxmi AD, for the Plaintiff.*
Mr Sunil Vyas, *i/b M/s. Mansukhlal Hiralal & Co, for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 4th December 2018

PC:-

1. The Defendant seems to be under the impression that Summary Suits are filed in the Commercial Division only as a matter of form and for no other reason. The suit itself was filed on 23rd February 2018. The Writ of Summons having been served, the Defendant filed a vakalatnama on 10th August 2018. The Plaintiff then filed the present Summons for Judgment on 21st August 2018 and served it on 25th August 2018. The Defendant filed no reply within the time provided by Order XXXVII of the Code of Civil Procedure 1908 ("**CPC**"). The matter came up for AK Menon J on 15th October 2018 when the Defendant sought time. AK Menon J granted time for two weeks and directed that the Rejoinder be filed by 29th October 2018. More than two months have passed and the Defendant has done nothing. Before me today, the Defendant seeks yet another adjournment and I am told that the Defendant's proprietor's son is hospitalized. He cannot have been hospitalized since August 2018 and I see no reason why an order passed by AK Menon J ought not to have been complied with in time. The provisions of the Commercial Courts Act 2015 are abundantly clear and the entire rationale for that Act is the speedy disposal of Commercial Suits i.e. suits filed in the Commercial Division. The intention of that Act is not to provide Defendant with more reasons to delay the commercial actions.

2. The application for an adjournment is refused.

3. The Suit seeks the recovery of an amount of Rs.8,68,10,595.50/- and interest at 18% per annum. It is filed under Order XXXVII Rule 2 of the CPC in the following circumstances. The Defendant is a sole proprietorship of one Subodh Sanghavi. The Plaintiff says that it sold, supplied and delivered to the Defendant various goods for use in the steel industry. These were direct orders placed by the Defendant on the Plaintiff. Between 2014 and 2015 over Rs.14 crores of business was thus transacted. Between 16th January 2016 and 4th June 2016 the Defendant placed multiple orders in the aggregate of Rs.8,68,10,595.50, the claim made today. The Plaintiff received some part payments. On 12th September 2016 the Defendant admitted its liability to the Plaintiff in the amount of Rs.8 crores and interest at 18% per annum. On 25th December 2016 the Defendant issued two cheques to the Plaintiff in the aggregate amount of Rs.9,13,08,870.00/-. The Defendant then requested that these cheques not be deposited. When the Plaintiff did deposit the cheques both were returned dishonoured with the remark that the payment had been stopped by the Defendant. The Defendant thereafter issued a letter promising repayment in instalments. No payment having been received, the present Suit has been filed on the basis of the undisputed invoices the acceptance of which according to the Plaintiff constitutes the contract in question, as also the dishonour of the aforesaid two cheques and the letter from the Defendant at Exhibit "E" assuring payment.

4. There is no defence to the claim even in correspondence prior to the Suit. The Defendant failed to enter an Affidavit in Reply despite opportunities and despite the expiry of the time provided under Order XXXVII of the CPC, the Summons for Judgment will have to be made absolute. It is made absolute accordingly. The Suit is decreed.

5. The compilation of original documents tendered by the Plaintiff is taken on record and marked "P1" for identification with today's date. The decretal claim for the principal will carry interest at the rate of 18% per annum as agreed in correspondence vide the Plaintiff's letter of 12th September 2016 and the Defendant's response thereto received on 29th September 2016.

6. I come now to the provisions of the Commercial Courts Act and Section 35 of the CPC as amended. Sub section 2 of Section 35 of the CPC requires the costs must be awarded to the successful party and reasons are required to be given if costs are not to be awarded. The explanation to sub-section (1) clarifies that the expression "costs" includes legal fees and expenses incurred and all other expenses incurred in connection with the proceedings. In my assessment of it this would therefore include all fees and costs of institution i.e. Court fees and attendant cost as also all legal fees. These are set out by the learned Advocate for the Plaintiff in a statement tendered, taken on record and marked "X1" for identification with today's date.

7. There will also be a decree for costs in this amount but without interest.

8. Decree to be drawn expeditiously.

9. All concerned will act on an authenticated copy of this order.

(G. S. PATEL, J)