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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 99 OF 2018
IN
COMM SUMMARY SUIT NO. 1198 OF 2018**

Wilson Jacobs	...Plaintiff
<i>Versus</i>	
Lucid Print & Ors	...Defendants

Mr Rashid Khan, *i/b Ms Sumi Soman, for the Plaintiff.*
Mr Manoj Harit, *i/b M Harit & Company, for Defendants Nos. 1 to 3.*

CORAM: G.S. PATEL, J
DATED: 13th December 2018

PC:-

1. Heard.

2. The claim in this Summary Suit under Order XXXVII Rule 2 of the Code of Civil Procedure 1908 (“**CPC**”) is for recovery of an amount of Rs.2,64,19,454.56 with interest at 18% per annum. The particulars of claim are at Exhibit “O” at page 520 of the Suit. This lists 140 invoices giving their invoice number, the invoice amount, the interest (which is separately computed in Exhibit “N”) and the outstanding dues (claimed in accordance with Exhibit “L” to the Plaintiff).

3. Briefly stated, the transactions between the parties ran thus.

4. It is not disputed even in the Affidavit in Reply to the Summons for Judgment that the parties did have, and indeed continue to have, business dealings. The 1st Defendant is a partnership firm that does business in offset printing. Defendants Nos. 2 and 3 are partners of the 1st Defendant. The Plaintiff periodically supplied different types of papers, cards and other material to the 1st Defendant. The business and commercial relationship was of considerable longevity and continued for over two decades. The 1st Defendant purchased art paper, bond paper, card paper and so on from the Plaintiff. Some of these requests were oral or telephonic but in this case that is not an issue that would arise because the Defendants do not dispute the existence of this business relationship or the supplies made to the 1st Defendant. The Plaintiff says that according to its books on 25th August 2016 there was a substantial amount due to it from the 1st Defendant. The Plaintiff asked the Defendants for payment. The Defendants responded on 31st August 2016 confirming that an amount of Rs.1,85,96,745/- was due. There is some dispute, to which I will turn later, raised about the reason why this confirmation was issued by the Defendants and I will assess whether that answer is at all plausible or acceptable. To continue for the present with the factual narrative, the Plaintiff goes on to say that the Defendants made some payments but they did so without specifying any particular invoice. In other words payments were not invoice-specific. Payments from the 1st Defendant were not on a back-to-back basis with the invoices. From September 2016 to February 2017, the Plaintiff's lawyers demanded payment from the Defendants. The Plaintiff received

about Rs.9 lakhs in that period (the correspondence inadvertently mentioned a slightly lower figure of Rs.7.5 lakhs but that furnishes no defence). The aggregate amount, according to the Plaintiff, due to it on 3rd February 2017 was Rs.1,78,08,676/-. The Plaintiff sent the Defendants a legal notice demanding payment and, in default, threatened recovery proceedings.

5. There was a response to the legal notice and this is dated 23rd February 2017. A copy of this reply is at Exhibit “E” at page 39 to the Plaint. In paragraph 6, the Defendants said they were ready and willing to pay amounts in instalments between Rs.2 lakhs to Rs.5 lakhs per month. This is an unqualified commitment and on its own indicates an acceptance and admission of a liability. I will at this stage address the contention in regard to the balance confirmation of 31st August 2016 at Exhibit “C” page 36. The Defendant states that this document was issued for security purposes or, more specifically to enable the Plaintiff to raise finance. That in itself is not credible. There is no such qualification in the document itself and I find no such qualification or contention raised in the response to the Plaintiff’s Advocate’s demand notice either.

6. The Writ of Summons having been served, the Defendants entered appearance. The Plaintiff then filed present Summons for Judgment to which there is an Affidavit in Reply and an Affidavit in Rejoinder. The Affidavit in Reply says very many things, non of them persuasive. The oral submissions have been advisedly more subtle, and the argument before me today is that while the business relationship is not in dispute the Defendants do dispute that all 140 invoices are unpaid. According to them there are 13 invoices unpaid.

On hearing this, I asked Mr Harit, the learned Advocate for the Defendants. to tell me what the admitted value of those 13 invoices was. I did so on the basis that if the Defendants say that the 13 invoices are due for payment, the Defendants must know which invoices are so due and what their value is. I have received no answer to this except to say that average invoice value is around Rs.50,000/-. This is no answer at all. It was also argued that the Defendants made payments from time to time. Indeed they have. The Plaintiff admits this. What the Defendants are unable to show is that any payments were made in respect of any particular invoice. The law in this regard is well settled. If a party makes payment to his creditor against a specified bill and that payment is accepted it can only be applied towards satisfaction of the claim under that bill. If no particular invoice is specified, the creditor is entitled to apply the payment to the earliest unpaid bill. This hardly admits of any dispute, especially in the commercial division of a High Court in the commercial capital of the country and I do not propose to spend any more time in addressing this.

7. There is then an argument that between the parties there was a running account. The fact that there were continuous transactions does not make it a running account. Again the concept of a running account in commercial practice is well-known. It must be demonstrated that there are debits and credits going on simultaneously or on a regular basis and that balances are struck with some periodicity; not that there are a number of invoices, some of which remain unpaid. Non-payment of invoices and payment without specifying a particular invoice does not make the transactions a “running account”.

8. The next submission is one that I find more than somewhat fantastic. The Plaintiff has claimed interest after 120 days. It is true that the invoices mention an interest rate but do not mention a credit period. The argument before me is that the Plaintiff could not have given the Defendants merely 120 days' credit. The Defendants were entitled to at least 450 days' credit and, having regard to their relationship, over 800 days' credit. This is why I said the submission was fantastic. I do not believe that there is a single commercial entity in this city who (being of sound mind) would afford anybody 450 days' credit let alone 800 days' (over two years) credit. If no credit period is specified, a reasonable period will be taken. That may be 30 days, 60 days or, as in this case, 120 days. In no case is 450 days or 800 days a commercially reasonable period. The argument is actually against the Defendants because if the invoice does not specify a credit period, then it clearly means that the invoice is payable on presentation, and then there is no credit period whatsoever. There is no warrant in law to demand any minimum credit period absent a specific contract to the contrary. The result is that the Plaintiff has possibly made a lower claim in interest by granting 120 days rather than computing interest from the date of invoice. The Defendants cannot demand that that claim be reduced even further by insisting on an interest-free credit period stretching into years on end for each invoice.

9. In the Affidavit in Reply the averment in paragraph 3(b) at page 16 is that because in the past the Defendants enjoyed 450 to 800 days of credit, therefore, the Defendants are entitled to this as a matter of right. The Plaintiff's forbearance confers no right on the Defendants and it most certainly furnishes no tenable defence. In

sub-paragraph (d), there is a denial of the Defendants' letter dated 31st August 2016 at least to this extent: that it contains an admission of liability. The execution of the document is not disputed. The denial is without substance. The document itself in terms admits liability and confirms the balance that was according to the Defendants themselves due as on that date. To say that it was obtained by misrepresentation and it is being used for oblique purposes is without substance.

10. The next sentence is merely befuddling for the Defendants say that a summary suit cannot be filed in July 2018 on a letter dated 31st August 2016. I do not see why not. Nothing prohibits it and in any case the suit is brought on the basis of the amounts of unpaid invoices and interest. Sub-paragraph (i) claims that the present summary suit is in violation of accounting principles. What those principles are and how they have been violated is unclear. I imagine that the demand for endless credit is, to the contrary, itself in the face of well-established mercantile practises. There is no point either in insisting that the balance confirmation of 31st August 2016 is a sham document.

11. I am generally not inclined to grant conditional leave. In the present case, I see no defence whatever let alone one that is either plausible or even probable to use the words of the Supreme Court in the *IDBI Trusteeship Services Ltd v Hubtown Limited*.¹

1 AIR 2016 SC 5321.

12. I will, however, as an exceptional case consider an order of conditional deposit today for one reason only and that is because the parties have had a business relationship stretching back several decades and will give the Defendants, therefore, an opportunity to secure the Plaintiff's claim as a condition precedent to being able to defend the suit. In default, and on obtaining a non-deposit certificate, the Plaintiffs would be entitled to apply for an *ex parte* decree.

13. The Defendants will deposit the amount of Rs.2,64,19,454.56 with the Prothonotary and Senior Master on or before 18th January 2019. Upon that deposit being made, the Defendants will be entitled to leave to defend and will then file their Written Statements on or before 22nd February 2019.

14. The suit will be listed for framing issues thereafter on 1st March 2019.

15. If that deposit is made, the amount deposited is to be invested by the Prothonotary and Senior Master in accordance with the usual practices of his office.

16. If the deposit is not made by 18th January 2019, the Prothonotary and Senior Master will, by 25th January 2019, issue to the Advocates for the Plaintiffs a non-deposit certificate and the Plaintiffs will then be entitled to apply for an *ex parte* decree by mentioning the matter for having it placed after 28th January 2019.

17. The Summons for Judgment is disposed of in these terms.
There will be no order as to costs.

(G. S. PATEL, J)