

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL ORDINARY CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.107 OF 2017
IN
SUMMARY SUIT NO. 97 OF 2017
(COMMERCIAL SUIT (L) NO.73 of 2016)

Diamond Iron & Steel Pvt.Ltd...	Plaintiff
vs	
Pranav Constructions Systems Pvt.Ltd..	Defendant

Ms.Krishma Agarwal I.b M/s Vigil
Juris for Plaintiff

Mr.Nikhil Jaykar with Mr.Levi Ruebens,
Mr.Manish Acharya and Ms.Ankita Singhania
with Ms,.Swati Verma I.b M/s Phoenix Legal
for Defendant

Coram : A.K.MENON, J
Date : 2ND JULY, 2018

P.C

1. In this summary suit, the plaintiffs seeks a recovery of a sum of Rs.1,12,23,438/- towards the principal sum said to be owing from the defendant along with interest at 12% p.a. amounting to Rs.25,24,154/-. A sum amounting to Rs.5,30,528/- has been claimed towards delayed payment charge in the particulars of claim of which is at Exhibit H. Learned counsel for the plaintiff submitted that

the particulars of claim are in two parts. First, in respect of value of unpaid invoices for the goods, sold and delivered and valued at Rs.10,20,3,478/- and interest thereon. The second part is the computation of interest amounting to Rs.5,30,528/- in respect of diverse invoice amounts of which have been paid but, belatedly. Interest is computed at 12% p.a. in respect of this claim as well. It is submitted that the aforesaid amounts constitutes a liquidated sum of money that is payable in terms of the agreement contained in the purchase orders and invoices in respect of the goods sold and delivered.

2. Learned counsel for the plaintiff fairly states from a query of the Court that the rate of interest has not been agreed upon and that neither the purchase orders nor the invoices specify the liability to pay interest at 12% p.a. He however, submits that the Court has the discretion to award interest even in a suit under Order XXXVIII of the Code of Civil Procedure, 1908. In the course of his submissions, learned counsel for the plaintiff points out that the defendant has in fact admitted the liability to the extent of Rs.20,19,170/-. In an affidavit of one Mr.Ravindra Nana Padave the authorised signatory of the defendant the defendant has admitted liability to the extent of Rs.20,19,170/-. The counsel for the defendant confirms that this amount is still owing from the defendant to the plaintiff. The deponent is authorised under a

resolution dated 11.11.2017 to represent the defendant including in the suit.

3. In the circumstances, I am of the view that the plaintiffs are entitled to a decree on admission to the extent of the said sum of Rs.20,19,170/-. As far as remainder of the claim is concerned, the plaintiff will have to establish its claim at trial of the suit in view of several triable issues that arise not only insofar as the principal sum is concerned, but also the claim of interest is concerned.

4. In the meantime, when faced with inclusion of prayer clause (b), counsel for the plaintiff states on instructions, that the same is not being pressed and is incorrectly incorporated in the plaint. He seeks leave to delete prayer clause (b) of the plaint. In the circumstances, I pass the following order :

ORDER

- (i) Leave to amend and delete prayer clause (b) and for carrying out consequential amendments in the prayer clause;
- (ii) Amendment to be carried out within one week;
- (iii) The suit is decreed in a sum of Rs.20,19,170/- with interest at 9 % p.a. from the date of the suit, till payment and/or realization;
- (iv) As far as remainder of the sum is concerned, there will be unconditional leave to defend the suit;

(v) Written statement to be filed within a period of six weeks. If no written statement is filed, liberty to the plaintiff to seek Exparte Decree.

(A.K.MENON, J)