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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL LODGING NO. 105 OF 2017
IN
SUMMONS FOR JUDGMENT NO. 19 OF 2017
IN
COMMERCIAL SUIT NO. 476 OF 2016
(SUMMARY SUIT NO. 811 OF 2016)
WITH
NOTICE OF MOTION LODGING NO. 162 OF 2018

Shiv Shakti Enterprises

.. Appellant

Vs.

Anchor Electricals Private Limited

.. Respondent

Mr. Raja Gopal i/by Mr. A. K. Saxena for appellant.

Mr. Kunal Mehta i/by Crawford Bayley & Co. for respondent.

CORAM: NARESH H. PATIL &
G. S. KULKARNI, JJ.

APRIL 02, 2018.

P.C.

1. This appeal is directed against the order dated 23rd November, 2017 passed by the learned Single Judge in Summons for Judgment No.19 of 2017 in Commercial Suit No. 476 of 2016.

2. The Summons for Judgment was filed seeking a judgment against the defendant (appellant herein) in the sum of Rs.1,26,98,891.87 (aggregate of Rs.1,05,05,467.87) being outstanding amount under the suit invoices and debit memos together with interest, aggregating to Rs.21.23 lacs.

3. The plaintiff had appointed the defendant to be a dealer of its products / goods for Ahmedabad. The defendant purchased various quantities of goods from the plaintiff between November 2014 to January 2015. The plaintiff claimed that the goods were supplied. They raised invoices upon the defendant, out of which payment under 39 invoices remained outstanding and payable. Out of these 39 invoices, 22 invoices were raised between 29th November, 2014 to 29th December, 2014 (aggregating to Rs.69.75 lacs), whilst 17 outstanding invoices were raised between 30th December, 2014 to 8th January, 2015 (aggregating to Rs.31.94 lacs). It is the plaintiff's case that despite receipt of the goods, no payment was made by the defendant. The defendant issued invoices to the plaintiff and defendant issued cheque dated 26th December, 2014 in the sum of Rs.4 lacs in favour of the plaintiff, which stood honoured. The defendant issued a letter dated 29th December, 2014 promising to pay plaintiff a sum of

Rs.50 lacs between 1st January, 2015 and 20th January, 2015. The plaintiff further promised to pay remaining amount between 21st January, 2015 and 30th January, 2015 respectively.

4. As no payment was coming forth, on 1st January, 2015, the plaintiff deposited a cheque issued by the defendant dated 31st December, 2014 in the sum of Rs.5 lacs, which was dishonoured for the reasons “funds insufficient”. Another cheque was issued by the defendant dated 23rd January, 2015 drawn on Indian Overseas Bank in the sum of Rs.50 lacs. The said cheque was deposited by the plaintiff on 17th April 2015, which was also dishonoured for the reasons “account closed”. In the meanwhile a communication was received by the plaintiff from the defendant stating therein that the account has been finalized and pursuant thereto it was agreed that the defendant's dues towards the plaintiff were settled by accepting a sum of Rs.4 lacs. By a communication dated 28th February, 2015, the plaintiff denied the same. After filing a suit and writ of summons, defendant filed an affidavit-in-reply on 4/3/2017. The defendant did not deny receipt of invoices and lorry receipts. The reply is silent on this aspect. The defendant replied that present suit was not maintainable as summary suit. Cause of action has arisen outside the jurisdiction of this

court. The defendant claimed that there was no outstanding amount as stated by the plaintiff and the suit was filed to harass the defendant.

5. Additional affidavit came to be filed on 13/10/2017. In the said affidavit, the defendant had come out with a new theory and story. The defendant questioned the invoices and denied signatures and endorsement of the defendant in relation to all invoices except three. All this was raised for the first time by the defendant in the additional affidavit. The learned Single Judge, after taking into consideration all the relevant aspects of the matter, granted conditional leave.

6. The learned counsel appearing for the appellant-defendant submitted that the contentions raised in additional affidavit are not after thought. The learned Single Judge committed error in granting conditional leave to contest the suit. The appellant does not have financial capacity to pay such a huge amount within the stipulated period. It is submitted that balance confirmation letter is a forged one. It is submitted that the trial court ought to have looked into the cross-examination recorded in C. C. No. 1802/SS/2015 which is pending for hearing and final disposal before the Metropolitan Magistrate, 33rd Court at Bellard Pier, Mumbai filed by

the respondent-plaintiff against the appellant-defendant.

7. The learned counsel appearing for the respondent-plaintiff submitted that the learned Single Judge has taken a reasonably balanced view of the matter. In the facts, no interference is warranted. The defendant has adopted different stand in two affidavits. The stand adopted in the second affidavit by defendant shows that he has no inclination to pay dues of the plaintiff for the goods supplied by the plaintiff to the defendant.

8. We have perused the record placed before us and considered the submissions advanced. We have also perused the contentions raised by the plaintiff and the defendant. The learned Single Judge has recorded the contention of the appellant-defendant in the first affidavit and the second affidavit. In the affidavit filed on 4/3/2017, the defendant stated in para 7 (b) and (c) as under :-

7. Now I deal parawise with Affidavit of Shri Nilesh Kumar Pandya in Support of Summons for Judgment dated 10.2.2017.

(a)

- (b) With reference to paragraph 3 of the Affidavit in support of Summons for Judgment, I say that in this paragraph the Plaintiff has deliberately not mentioned since when I have been appointed as a dealer and purchasing the goods from the plaintiff. Plaintiff has only stated in this paragraph about the purchases from November, 2014 to January, 2015 without disclosing the earlier purchases and the payments made by me.
- (c) With reference to paragraphs 4 to 10 of the Affidavit in support of Summons for Judgment, I say that the contents of these paragraphs are denied and further say that the goods received during this period were paid for which is clear from my Advocate's Notice dated 6.2.2015 annexed by the Plaintiff at Exhibit "M" to the Plaintiff. I say that the said notice is self explanatory and clear all the position and the plaintiff be put to the strict proof thereof of the contents of this paragraph.

9. The plaintiff has placed on record clinching material relating to invoices, correspondence of issuance of cheques by the defendant in

favour of the plaintiff, its bouncing for insufficient fund and account getting closed. The learned Single Judge, therefore, took a view which is in consonance with the pleadings and the record. It is a sound view. We do not find any error or perversity in the view adopted by the learned Single Judge. We inquired from the learned counsel appearing for the defendant as to whether the appellant-defendant required some more time for depositing the money or whether, at this stage, some lesser amount would be deposited by the defendant. The learned counsel appearing for the appellant-defendant, on instructions, submitted that appellant does not have financial capacity to deposit the amount.

10. On merits, we find that no interference is warranted in the appeal and the same is dismissed.

11. Notice of Motion Lodging No. 162 of 2018 does not survive and is disposed of.

(G. S. KULKARNI J.)

(NARESH H. PATIL,J.)