

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
SUMMONS FOR JUDGMENT NO. 4 OF 2019
IN
COMM SUMMARY SUIT NO. 477 OF 2018**

Doka India Private Limited	...Plaintiff
<i>Versus</i>	
Suvilas Properties Pvt Ltd	...Defendants

Ms Archana Deshmukh, *i/b Singhania & Co, for the Plaintiff.*
Mr MA Habbali, *with Mr Raghavendra KP, for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 24th April 2019

PC:-

1. The commercial division summary suit is for recovery of an amount of Rs.2,56,84,958.00 under six cheques. These cheques were all dated 22nd February 2017 and copies are annexed to the Plaint. The cheques were given in payment of amounts due for goods sold, supplied and delivered by the Plaintiff to the Defendant. The Defendant made part payment leaving this amount represented by these cheques yet due. The cheques were drawn in favour of the Plaintiff. All of them were dishonoured on presentment. The goods in question were shuttering materials. The Plaintiff issued a legal

notice on 27th March 2017 but there was no compliance with the demand. The Plaintiff has separately filed proceedings under Section 138 of the Negotiable Instruments Act. Paragraph 9 of the Plaint says that on 30th June 2017, the Defendant paid an amount of Rs. 10.5 lakhs and another amount of Rs. 10 lakhs on 1st November 2017. The Plaintiff's claim is thus Rs.2,36,34,958.00 being the balance amount due under the dishonoured cheques with interest claimed at 18% per annum as permissible in law.

2. The Writ of Summons having been filed and served the Defendants entered appearance through Advocate Subodh Gokhale, The Plaintiff then filed this Summons for Judgment of 21st January 2019 and served it on the Defendant. The Court record indicates that even on 19th March 2019, the Defendant took an adjournment. It is true that Mr Gokhale was himself unwell and had later actually undergone a surgery. The Defendants say they engaged another Advocate thereafter but they took no further steps to filing a reply. Even as late as end-April 2019 they only seek further adjournments. This is not the purpose of the Commercial Courts Act. These matters brook no delay.

3. There is no defence at all disclosed in the correspondence prior to the suit regarding the dishonour of these cheques. Indeed the part payment that was made of Rs.20,50,000/- itself constitutes an admission of liability.

4. The Defendant is a private limited company and therefore there is no question of it alleging that any of these cheques were

forged or fabricated. In fact the photocopies of the cheques show that they were signed on behalf of the Defendant. All the cheques are account payee cheques drawn in the name of the Plaintiff.

5. There can be no defence to a claim such as this. The Summons for Judgment is made absolute. The Suit is decreed in terms of prayer clauses (a) and (b). The decree will be drawn and sealed expeditiously. Liberty to the Plaintiff to move in execution without awaiting sealing of the decree. In view of Section 35 of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, the Plaintiff is entitled to an award of costs which I quantify as an additional amount of Rs.6 lakhs payable by the Defendant to the Plaintiff but without interest. The Plaintiff is also entitled to refund of Court fees in accordance with the Rules.

6. The Summons for Judgment and the Commercial Summary Suit are disposed of in these terms.

(G. S. PATEL, J)