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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM SUMMARY SUIT NO. 104 OF 2014**

Ameet Enterprises

...Plaintiff

Versus

Masscorp Ltd

...Defendant

Mr Tejas Vora, *with Sagar Sheth & Nikita Hinger, i/b Nikita Hinger,
for the Plaintiff.*

CORAM: G.S. PATEL, J

DATED: 13th March 2019

PC:-

1. The suit was filed as a summary suit in the Commercial Division of this Court for recovery of an amount of Rs. 5,12,50,055/-. The Plaintiff is the sole proprietorship firm of one Sangeet Kumar Hissaria. He trades in pig iron, iron chips and so on. The Defendant is one of its purchasers and approached Hissaria for supplies of various quantities of these products. The plaint proceeds on the footing that there were unpaid invoices with interest overdue in the aggregate amount set out above. At this stage, further details are not necessary.

2. The writ of summons having been served, the Defendant entered appearance and sought leave to defend. The Plaintiff filed Summons for Judgment No. 49 of 2015. On this KR Shriram J

granted conditional leave on 20th June 2016, making an order for deposit of Rs. 5 crores within six weeks. The Defendants did not do so. They went in appeal. The Appellate Court by its order dated 17th July 2018 reduced the amount of deposit to Rs. 2.5 crores and extended time to six weeks from that date. The Defendants challenged that Division Bench order before the Supreme Court but without success. The Special Leave Petition stood dismissed on 4th September 2018.

3. Even today nothing is deposited.

4. Consequently the Plaintiff is entitled to a decree as provided under Order XXXVII Rule 3(6)(b) of the Code of Civil Procedure 1908 and to a judgment forthwith upon failure of the Defendants to comply with the conditions specified as precedent to the grant of leave to defend.

5. On behalf of the Plaintiff, Mr Adarsh Gupta, Constituted Attorney of Hissaria is present in Court. He tenders a compilation of documents, an Affidavit of Documents and an Evidence Affidavit and a separate compilation of orders. These are taken on file. The compilation of documents is taken on record and marked **Exhibit “P1”** in evidence.

6. The original documents will be returned to the Advocates for the Plaintiff upon these being substituted with authenticated photocopies.

7. The suit is accordingly decreed in the amount of Rs. 5,12,50,055/- with interest at 18% per annum thereon from the date of the suit until payment or realization.

8. This being a suit in the Commercial Division of this Court, the Plaintiff is entitled to a decree in costs under amended Section 35. I notice that at no stage in the proceedings have costs been awarded to the Plaintiff although from the time of Summons for Judgment the matter was carried all the way to the Supreme Court. Having regard to this accumulation of expenses and litigation costs, in my view, there will have to be a substantial order of costs in favour of the Plaintiff covering all costs incurred till today. There will have been costs incurred at the stage of Summons for Judgment, the appeal, all appearances in the appeal, hearings before the Supreme Court and the present suit. In view of this, Rs. 30 lakhs is reasonable as costs but without interest.

9. There will be also be a decree in this amount against the Defendant and in favour of the Plaintiff.

10. The suit is decreed in these terms. Drawn up decree dispensed with; if sought, its issuance is expedited. Liberty to the Plaintiff to move in execution without awaiting sealing of the decree.

(G. S. PATEL, J)