

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUMMARY SUIT NO. 2502 OF 1999**

Adar Welding Ltd ...Plaintiff
Versus
Western India Hardware Mart Ltd & Ors ...Defendants

**Mr Anupam Surve, with Nikhil Mutha, i/b Nanu Hormasjee & Co.,
for the Plaintiff.**

**CORAM: G.S. PATEL, J
DATED: 7th January 2019**

PC:-

1. The suit, as amended, is for a decree jointly and severally against Defendants Nos. 1 to 5 in the sum of Rs. 1,67,05,568.95 as per the Particulars of Claim, Exhibit "L" to the plaint (page 50) and further interest. There is also a second prayer (b) for a decree against Defendant No. 6 in the amount of Rs. 96,96,563.25. This is not pressed.

2. In regard to the claim jointly and severally against Defendants Nos. 1 to 5, in the aggregate amount of Rs. 1,67,05,568.95, the claim is pressed only for the second and third items at page 50, i.e. Rs. 54,08,571.83 and Rs. 16,00,433.87 which total to Rs. 70,09,005.70.

3. The Defendants have been served. None has entered a Written Statement. A compilation of documents was earlier filed. These documents are marked Exhibit “P1” (colly) in evidence. The Evidence Affidavit of Mr Mansukhani is tendered and is taken on record.

4. The plaint is on the basis that amounts are recoverable for supplies made under irrevocable letter of credit (which is not pressed), bills of exchange and under credit balances. It is the case of the Plaintiffs that despite the supplies having been made, and quarterly statements being received from Defendant No. 1, the 1st Defendant failed and neglected to pay the amount of the supplies. It is in these circumstances that the claim is mounted. As against Defendants Nos. 2, 3, 4 and 5, it is stated that Defendant No. 5 who is son of Defendant No. 2 and held himself out as a partner. Defendant No. 5 was a partner and Defendants Nos. 2, 3 and 4 are also partners.

5. Having regard to these circumstances, and the fact that there is none to controvert the statements made in the plaint by the Plaintiffs, decree would have to follow. It is true that the Defendants would, even without a written statement be entitled to cross-examine the Plaintiffs’ witness but even that opportunity is not taken though available.

6. The suit is accordingly decreed jointly and severally against Defendants Nos. 1 to 5 in the amount of Rs. 70,09,005.70 with

further interest on the two principal amounts at the rate of 12% per annum from the date of the suit till payment or realization.

7. Since this is a commercial suit, under the amended Section 35 costs are required to be awarded and these costs must be reasonable though also realistic having regard to litigation expenses. I believe an amount of Rs. 5 lakhs would be reasonable. The suit was filed in the year 1999 and the court fees paid at that time was Rs. 75,000/-. There will also be a decree jointly and severally against Defendants Nos. 1 to 5 in the amount of Rs. 5 lakhs but without interest.

8. Drawn up decree is expedited.

(G. S. PATEL, J)