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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**SUMMONS FOR JUDGMENT NO.23 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 475 OF 2016**

M/s. Gemini Enterprises ... Applicant /
Plaintiff

Vs.

Government of Maharashtra Thru DGP & IG ... Defendants
Office

Mr. Aniket Ransubhe with Mr. Ajay Basutkar for Applicant /
Plaintiff.

Ms. Jyoti Chavan, AGP for State.

CORAM: R. I. CHAGLA, J.
DATE: 9TH AUGUST, 2019

PC:-

1. Heard, the learned Counsel for the Plaintiff and the learned AGP for the Defendant – State. The Commercial Suit is filed under Order 37 of the Code of Civil Procedure, 1908.

2. The claim arises under a written contract. There is no dispute so far as the written contract is concerned. The contract was for supply of I.P.P. Tent (with all Accessories) numbering 300. There is no dispute that the goods were supplied to the Defendants. The Defendants raised certain objections with regard to the quality of the goods. The requisitions made by the

Defendants as to the defective goods upon inspection were accepted and the Plaintiff supplied the fresh goods in substitute of goods already supplied. The Defendants have confirmed that the goods were in accordance with the contract specifications. Accordingly, there is no dispute as to quality or quantity of the goods. The tax invoices for delivery of goods was raised on 13th February, 2013 and 90% payment was to be made within 30 days from receipt of stores and balance 10% payment within 30 days on receipt of Kit Committee Report along with Certified Bill from the Consignee as per the schedule to the acceptance of tender by the Defendant – State. Thus it is stated in paragraph 28 of the Plaintiff that the cause of action to file the present Suit arose on 12th March, 2013 i.e. 30 days from the date of last delivery made on 12th February, 2013. The Suit has been filed on 3rd March, 2016.

3. The case of the Defendant – State is that the Plaintiff is a benami firm of one Bimal Agarwal who is also in management of a company known as Technotrade. This has been stated in the first reply filed by the Defendant. It has been stated therein that said Company being a benamic firm has cheated the State of Maharashtra and thereby resulting in loss to the State. It has later been stated by the Defendant in the further Affidavit in Reply filed

to the Summons for Judgment that the Suit is barred by the Law of Limitation on account of the date of invoice being 13th February, 2013 and that the Suit is filed on 2nd March, 2016 i.e. beyond the period of three years.

4. It is to be noted that in a virtually identical case between the same parties as the present case, this Court (S.C. Gupte,J.) by an order dated 23rd January, 2018 in Summons for Judgment No.21 of 2018 in Commercial Suit No.395 of 2016 rejected the defence of the Defendant as to the Plaintiff being the benami firm of Mr. Bimal Agarwal. The learned Judge has also held that the Defendant was liable to make a payment of 90% of the total consideration within 30 days from the receipt of goods to the stores of the consignees and balance 10% within 30 days of Kit Committee Report along with the certified bill from the consignees as in the present case and that upon the delivery of goods, the Plaintiff raised invoices, which were duly acknowledged by the Defendant. Although, the issue of limitation was not raised in that case, the issue of limitation has been raised by the Defendants belatedly i.e. after the filing of the reply to the Summons for Judgment in a further Affidavit filed by the Defendant. There is no merit in this defence as the Suit is clearly within limitation. The averments as to limitation in the Plaint at paragraph 28 wherein it

is stated that the cause of action to file the present Suit has arisen on 12th March, 2013 i.e. on expiry of 30 days from the date of last delivery made on 12th February, 2013 are accepted. Hence, the Suit which is filed on 3rd March, 2016 is within three years from 12th March, 2013.

5. This Court had on 23rd January, 2018 in the above referred case made the Summons for Judgment absolute and decree was passed in terms of prayer clause (a) of the Plaint, excepting the entire component of interest forming part of the prayer clause. The very same order is required to be passed in the present case considering that in this case also the learned Counsel for the Plaintiff agrees to waive the entire interest claim in the Suit.

6. The Summons for Judgement is made absolute and decree is passed in terms of prayer clause (a) of the Plaint excepting the entire component of interest forming part of the prayer clause. The decree will, accordingly, be restricted to the principal amount claimed in the prayer clause. The decretal sum shall, however, carry a post decree interest at the rate of 12% p.a. generally. The Defendant state is granted six months time to pay the decretal sum. If the decretal amount is paid within six months no post-decree interest shall be levied. If the decretal sum is not paid within this period, the same will carry interest from the date of the

decree at the rate of 12% p.a. till payment or realisation. No order as to costs.

(R I. CHAGLA, J.)