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

SUMMONS FOR JUDGMENT NO.24 OF 2018
IN
SUIT NO. 598 OF 2017

M/s. Gemini Enterprises … Applicant / Plaintiff

V/s.

Government of Maharashtra Thru. DGP & IG Office. … Defendant

Mr. Ajay Basutkar, for the Applicant / Plaintiff.
Ms. Jyoti Chavan, AGP for the Defendant.

CORAM: R. I. CHAGLA, J.
DATE: 10TH JULY, 2019.

PC:-

1. The Summons for Judgment has been taken out by the Plaintiff applying for judgment to be entered for Plaintiff in the above Suit against the Defendant in Commercial Suit against the Defendant for a sum of Rs.1,85,95,312/- together with interest @ 21% p.a. from the date of filing of the Commercial Suit until realisation of payment and taxes as payable. It appears that the dispute is related to two invoices for supply of water bottles. The first tax invoice is dated 13th February, 2012 and the second tax invoice is 16th November, 2012. The Summons for Judgment has been taken out on 15th March, 2018 in the Suit filed on 10th April, 2017. The defence has been taken in the Affidavit in Reply filed by

the Defendant viz that the Suit is barred by the limitation as it is in respect of two invoices which were issued in 2012 and the Suit has been filed in 2017 as mentioned above.

2. The learned Counsel for the Plaintiff has relied upon the letter dated 2nd September, 2014 and claims that there is an admission of liability on the part of the Defendant in respect of these invoices as statement has been made by the Defendant therein that supply had been fully made under these transactions as well as other transactions mentioned therein. Further it is stated therein that since the two companies namely M/s. Pancharatna Plastic and M/s. Gemini Enterprises (the Applicant herein) were alleged to be benami companies of Shri Bimal Agrawal, till the sum of Rs.6,21,00,000/- for purchase of Bomb suits is received back from Shri Bimal Agrawal, it was appropriate to withhold the amounts to be paid including under these invoices. He thus submits that there is a clear acceptance of liability that these invoices are payable. He states that most of the transactions mentioned in the chart set out in the said letter have thereafter been settled by the Defendant, making payment, as the benami issue raised by the Defendant has not been accepted.

3. The learned Counsel for the Defendant has submitted that it is all along the contention of the Defendant that these amounts

under the subject invoices are not payable and she has referred to letters dated 20th October, 2012, 1st August, 2013, as well as letter dated 2nd September, 2014 and has submitted that there is no clear admission of liability on the part of the Defendant to pay under the subject invoices. She states that insofar as the transactions which are set out in 2nd September, 2014 and in respect of which the payments have been made by the Defendant, there was no issue of limitation. She states that although the benami issue was raised by the Defendant, the Court has not accepted this contention of the Defendant. She submits that since the issue of limitation has been raised unconditional leave be granted to the Defendant to defend the Suit.

4. Having considered the submissions, it is apparent that the invoices have been issued on 13th February, 2012 and 16th November, 2012 in respect of supplies made of water bottles. The Suit is filed on 10th April, 2017 and the Summons for Judgment taken out in March, 2018. There is thus an issue of limitation raised by the Defendant. The Suit has in fact been filed over three years after the issuance of the invoices in respect of which claims are made. Although the Plaintiff has relied upon letter dated 2nd September, 2014 addressed by the Defendant to the Additional Chief Secretary, Home Department wherein it is mentioned that

the supply in respect of these transactions have been made, the Court will still have to go into the issue as to whether this amounts to an acceptance of liability and thereby extending the limitation period. Further it is submitted on behalf of the Defendant that the transactions in respect of which the payments were made and which are set out in the letter dated 2nd September, 2014 were transactions in which the issue of limitation had not been raised. In this case there is squarely an issue of limitation which has been raised by the Defendant. Considering that there is an issue of limitation raised, it is not possible to say that there is no plausible or possible defence disclosed. This issue would necessarily have to be gone into at the trial of the Suit.

5. Accordingly, the Summons for Judgment is dismissed.

6. The Defendant is granted unconditional leave to defend. The Written Statement will be filed and served within the time permitted by the Commercial Courts Act, the time being computed from today.

7. List the matter for framing of issues two weeks after the Written Statement is filed and served.

(R I. CHAGLA, J.)