

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

IN ITS COMMERCIAL DIVISION

**SUMMONS FOR JUDGMENT NO. 63 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO. 1099 OF 2019**

FIRST FUELS SA FZC	]	
A company duly incorporated and exists	]	
in Fujairah, Free Zone, under trade	]	
license	]	
No. 3378, having office at P.O. BOX	]	
5258,	]	.. Applicant
Akron Building Flat No. 503,	]	(Orig. Plaintiff)
Kuwaiti Road, A1 Sharia 1, Fujairah,		
United Arab Emirates		

IN THE MATTER OF :

FIRST FUELS SA FZC	]	
A company duly incorporated and exists	]	
in Fujairah, Free Zone, under trade	]	
license	]	
No. 3378, having office at P.O. BOX	]	
5258,	]	.. Plaintiff
Akron Building Flat No. 503,	]	
Kuwaiti Road, A1 Sharia 1, Fujairah,		
United Arab Emirates		

VS.

PAN LLOYD SHIPPING & LOGISTICS	]	
PRIVATE LIMITED	]	
Having its registered office at	]	
30 Prakash Kunjn S. Road,	]	
Mulund (West), Mumbai,	]	
Maharashtra – 400 080.	]	.. Defendant

Mr. Zarir Bharucha a/w. Umang Thakar and Mr. Rohaan Pajnigar
i/b ZBA for plaintiff.

CORAM : N.J. JAMADAR, J.
Reserved for Judgment on : 25th November 2019
Judgment Pronounced on : 29th November 2019

JUDGMENT :

1. This commercial division summary suit is for recovery of an amount of US\$ 497271.34 (principal sum of US\$ 374618.03 plus the interest amounting to US\$ 122653.31 charged at the agreed rate of 2% per month upto 15th July 2019) and further interest at the rate 24% per annum, under the invoices raised by the plaintiff evidencing the sale and delivery of the bunkers to defendant.

2. Briefly stated the plaintiff's case is that the plaintiff predominantly deals in the business of trading and sale of all grades of marine fuels and lubricants. Pursuant to the order placed by the defendant, the plaintiff had supplied bunkers to the vessel ESM CREMONA, owned/operated by the defendant at Port Colombo.

3. The sale and delivery of bunkers is evidenced by the invoices raised by the plaintiff on 1st January 2018, 16th January 2018, 28th January 2018, and 3rd April 2018. The plaintiff had also issued bunker nomination and delivery notes. Total amount of US\$ 374618.03 remained outstanding. The plaintiff informed the defendant that in the event of default in payment, the plaintiff would be constrained to initiate legal action. The defendant assured to make payment within a period of ten days from 8th June 2018. However, the defendant committed default in payment, despite arriving at a settlement. Hence, the summary suit.

4. The writ of summons was served upon the defendant. The defendant entered appearance on 11th September 2019 through Advocate Rex Legalis. The plaintiff has thereafter filed the summons for judgment. It was duly served on the defendant on 13th September 2019. An affidavit of service along with service report is placed on record.

5. The defendant has not applied for leave to defend within the period stipulated by Sub-rule (5) of Rule 3 of Order XXXVII of the

Code of Civil Procedure, 1908 (Code) or any time thereafter. None appeared for the defendant when the summons for judgment was listed before the Court on 25th November 2019.

6. The documents on record, especially the invoices dated 1st January 2018, 16th January 2018, 28th January 2018, and 3rd April 2018, coupled with the bunker delivery note and bunker nomination do reveal that the plaintiff had sold and delivered bunkers containing fuel and raised invoices for the price of goods.

7. From the perusal of the invoices, it becomes evident that the invoices contain the particulars of the seller and purchaser, the description of the goods, the quantity/unit in Metric Tons, Price/Unit in US Dollars, total amount including taxes and other dues, the terms of delivery, the period of payment and the stipulation of payment of interest on delayed payment at the rate of 2% p.m.

8. The aforesaid terms when accepted by the defendant, partake the character of a written contract. Thus, the claim falls within the

ambit of Sub-clause (i) of Clause (b) of Sub-rule (2) of Rule 1 of Order XXXVII of Code. Moreover, the documents placed on record, especially the email communication, dated 8th June 2018 reveal that the defendant had acknowledged the liability to pay the outstanding amount and assured to make the payment within ten days therefrom, coupled with a request not to initiate legal action as it would hamper the defendant's capacity to clear the outstanding. The material on record, thus, indicates that no substantial defence is disclosed in the correspondence prior to the institution of the suit. On the contrary, the email communication dated 8th June 2018 constitutes an admission of liability.

9. In view of the above, the summons for judgment is made absolute. The summary suit, thus, stands decreed as under:

(i) The defendant do pay a sum of US\$ 497271.34 to the plaintiff as per the particulars of claim (Exhibit-BB appended to the plaint), alongwith the interest at the rate of 12% p.a. on the sum of US\$ 374618.03 from 16th July 2019, till realization.

(ii) The defendant do pay costs of Rs.5,00,000/- to the plaintiff quantified under Section 35 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act.

(iii) The plaintiff is also entitled to refund of Court fees in accordance with the Rules.

10. The decree be drawn up and sealed expeditiously.

11. The summons for judgment and the commercial suit stand disposed of in above terms.

(N. J. JAMADAR, J.)