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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN COMMERCIAL DIVISION
SUMMONS FOR JUDGMENT NO. 86 OF 2018
IN
COMM SUMMARY SUIT NO. 180 OF 2015**

Aura Impex Pvt Ltd	...Plaintiff
<i>Versus</i>	
RK Metal Corporation & Ors	...Defendants

Mr Farooq A Chowdhary, for the Plaintiff.
Mr RS Tripathi, for Defendants Nos. 1 to 3.

CORAM: G.S. PATEL, J
DATED: 24th January 2019

PC:-

1. The Plaintiff filed this suit in the Commercial Division under the provisions of Order XXXVII of the Code of Civil Procedure Code 1908 (“CPC”) seeking a summary judgment against the Defendants in the amount of Rs.1,40,28,978/-. The particulars of the claim are set out at Exhibit “D”. The entire claim is based on three cheques, details of which are set out in paragraph 5 of the Plaint and which are in the aggregate amount of Rs.1,40,28,978/-. This is clear from paragraph 8 of the Plaint. All three cheques were issued by the Defendants and were dishonoured on presentment.

The Plaintiff says that these cheques were in respect of amounts due as the price of goods sold, supplied and delivered by the Plaintiff to the Defendants. There are some particulars of 10 invoices mentioned in paragraph 3 of the Plaint. Then in paragraph 4 of the Plaint the Plaintiff says that these invoices were not cleared despite reminders. In paragraph 5 of the Plaint, there is a statement that the amount of the invoices and the agreed interest having remained unpaid, the Defendants issued three cheques to which I have referred above.

2. After the Plaintiff served the Writ of Summons, the Defendants entered appearance. The Plaintiff therefore filed this Summons for Judgment. There is a Reply and Rejoinder.

3. In the Reply, there are two principal defences. The first is that the Plaintiff has not given credit for an amount of Rs.1,08,49,000/- said to have been paid by the Defendants to the Plaintiff. The second, set out in paragraph 2 of the Affidavit in Reply at page 8 of the Summons for Judgment is that on 3rd July 2015, the Plaintiff's representative visited the Defendants and "obtained fraudulently" first, one blank undated cheque and later, two post-dated cheques on 15th July 2015. It is alleged that the two cheques were filled in by the Defendants for Rs.10 lakhs each and that the Plaintiff filled in the blank cheque for the remaining amount instead of returning it. This actually affords the Defendants no defence at all. The issuance of the two cheques for Rs.20 lakhs in the aggregate is thus admitted. There is no denial of the signature on the alleged blank cheque either. No particulars of any so-called fraud are set out anywhere in this Affidavit in Reply. It is never sufficient to merely allege fraud in

this fashion. What is more relevant is the reason for dishonour and this is set out in the copies of the return memos at Exhibits “C1”, “C2” and “C3” of the Plaint at pages 25 to 27. These return memos do not indicate that it was the Defendants who, on a realisation of the so-called fraud, stopped payment of any of these cheques. On the contrary all three cheques were returned unpaid for a single reason: insufficiency of funds.

4. Mr Tripathi for the Defendants would have it that the payments said to have been made by the Defendants have been acknowledged. That is not in fact so. In the Rejoinder the Plaintiff maintains that any payments by the Defendants were appropriated towards amount due under past transactions. There is a complete explanation in paragraph 5 of the Rejoinder at pages 17 to 19 and this is not shown to be incorrect. Mr Tripathi says that at page 19 of the Affidavit in Rejoinder, the admission by the Plaintiffs is that a much lesser amount is due under the invoices. But that is also incorrect, because that is in response to the unfocussed allegation in the Affidavit in Reply, and does not answer the dishonour of the cheques.

5. If the Defendants say that payment had been made against the 10 invoices mentioned in paragraph 3 of the Plaint then it is for the Defendants to show this affirmatively and not to leave it to the conjecture of the Court. There is no covering letter directing that any payment by the Defendants be appropriated towards any particular invoice. This is not something that any Court can presume. More pertinently, there is simply no explanation for the dishonour for insufficiency of funds of any of these three cheques.

6. In my view, there is absolutely no defence to the summary suit. The defence put up is complete moonshine. It is not plausible or probable in the least.

7. In my view, the Summons for Judgment deserves to be made absolute and the Plaintiff is entitled to a decree forthwith.

8. The Summons for Judgment is made absolute.

9. There will be a decree in the suit in the amount of Rs.1,40,28,978/- with further interest on the amount of Rs.1,20,28,978 (the date of the first cheque) from its date of dishonour on 4th July 2015 and from 17th July 2015 on the other two cheques for Rs.10 lakhs each, at the rate of 18% per annum until payment or realisation.

10. There remains the question of costs since this is a suit filed in the Commercial Division of the High Court and Section 35 of the amended CPC requires that costs are to be awarded to the successful party. The Plaintiff has paid Court fees of Rs.2,07,290/-. The Plaintiff is entitled to a refund in accordance with the Rules. The amount not refunded is the first component of costs awarded. In addition there will be costs that I estimate to be reasonable at Rs.1.50 lakhs. The award of costs will be without interest.

11. Decree to be drawn expeditiously.

12. The Plaintiff is at liberty to move in execution without awaiting sealing of the decree.

13. The Summons for Judgment and the Commercial Summary Suit are disposed of in these terms.

(G. S. PATEL, J)