Sharayu Khot.

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

COMMERCIAL SUMMARY SUIT NO. 77 OF 2019

Rushabh Mehta
Propritor of Rikhav Polychem
1902/Heena Elegance,
Opp Bhatia School,
Saibaba Nagar,
Borivali (W) Mumbai – 92 …Plaintiff

Versus

Panama Poly Products Pvt.Ltd.
Through its Director Mr.
Having his office at
B-8, UPSIDC, Industrial Area,
Site – 1, B.S. Road, Gaziabad.
and
F-3/19, Model Town-II Delhi North,
Delhi- 110 009
and
F-208, Rashmi Apartment,
Harsh Vihar, Pitampura
Delhi – 110 034 …Defendant

Mr. Jay Vakil, i/by Mr. Chintan Shah, for the Plaintiff.

CORAM : R.I. CHAGLA J.
DATE : 16 September 2019

ORAL JUDGMENT :

1. The Suit is placed for exparte decree. The Defendant has

not deposited the amount claimed as directed by this Court vide order dated 15th April 2019 as and by way of conditional leave to defend.

2. The Commercial Summary Suit is for claim of an amount of Rs. 2,79,82,639.15 payable by the Defendant to the Plaintiff with interest thereon at 21 percent per annum from the date of the Suit till payment thereof as mentioned in the particulars of claim at Exh.G to the Plaint.

3. Rikhav Polychem, a sole proprietorship through its sole proprietor the Plaintiff, Rushabh Mehta was involved in the business of trading chemical products. The Plaintiff had supplied to the Defendant-Company the chemical products which were required by the Defendant in his business of manufacturing Styrofoam mattresses. The Plaintiff would procure the chemicals required by the Defendant and prepare the tax invoices for the same. The business relations between the Plaintiff and the Defendant were initially cordial. The Plaintiff had sold chemical products to the Defendant between September 2015 and January 2016, which is the period of dispute as there was non-payment for the products supplied by the

Plaintiff to the Defendant. The Defendant had accepted delivery of the products supplied by the Plaintiff and utilised the same without raising any dispute as to the quality and quantity of the products supplied. The tax invoices had been raised in respect of the products supplied by the Plaintiff upon the orders placed by the Defendant. The invoices contain description of the goods supplied, quantity thereof, rate at which the goods supplied, amount due and payable for the goods supplied to the Defendant. Hence, the Plaintiff prays for a monetary decree against the Defendant.

4. It is noted that none appears for the Defendant, despite the summons of the Commercial Summary Suit having been served on the Defendant. on 30th August 2019 an Advocate had appeared for the Defendant, but had sought to withdraw her appearance, as instructions had not been received from the Defendant. It is further noted that the Plaintiff has served the Affidavit of evidence and compilation of documents on the Defendant by e-mail and despite which the Defendant have not complied with the order granting conditional leave to defend nor have they appeared.

5. The learned Counsel for the Plaintiff undertakes to file

Affidavit of service evidencing service of the Affidavit of evidence as well as compilation of document upon the Defendant. Statement is accepted. The Affidavit of service shall be filed within a period of one week from the date of uploading of this judgment and decree.

6. The Plaintiff himself (PW.1) as witness in support of his case has given evidence by filing Affidavit of examination in chief dated 29th August 2019. He is present in Court and affirms his Affidavit. He has identified his signature at the bottom of the said Affidavit. The said Affidavit is taken on record and marked as ***Exh.P1***.

7. The tax invoices have been produced by the Plaintiff, who is the Proprietor of the sole partnership firm. Further, the lorry receipts in respect of the goods supplied against the tax invoices are also produced by the Plaintiff. The tax invoices and lorry receipts are taken on record and marked as ***Exh.P2 colly***. and ***Exh.P3 colly***. respectively.

8. There are also excise invoices which have been produced by the Plaintiff and which have been taken on record and marked as ***Exh.P4 colly***.

9. The Plaintiff has also produced the E-Way bills for the goods supplied under the tax invoices which had taken on record and marked as ***Exh.P5 colly***. One of the E-Way bills dated 29th October 2015 has not been traced by the Plaintiff. However, the invoices which are on record disclose the E-Way bills having been delivered to the Defendant and the Defendant has accepted the same. This is also evident from the lorry receipts in respect of the tax invoices.

10. "C" Form Certificates have been provided by the Defendant to the Plaintiff which have been issued by the Central Excise Department. The "C" Form Certificates are taken on record and marked as ***Exh.P6 colly***. The "C" Form Certificates prove conclusively that the Defendant had taken delivery of the goods supplied by the Plaintiff and the Plaintiff had received the excise credit therefrom. The endorsement has been made on the "C" Form Certificate by the Defendant's representative.

11. Since the Defendant did not comply with the request of the Plaintiff to make payment in respect of the goods sold, supplied and delivered, the Plaintiff addressed on e-mail dated 14th May 2018 to the Defendant which is produced by the Plaintiff and is

taken on record and marked as ***Exh.P7***.

12. The Defendant had made part payment of a sum of Rs. 6,77,760/- against the first tax invoice which invoice has been taken on record and forms part of ***Exh.P8 colly***.

13. The Defendant thereafter, failed and neglected to pay the balance consideration in respect of the first invoice as well as make payment against the other invoices. The Plaintiff has obtained a no-dues certificate dated 6th July 2019 from the Department as per the order dated 15th April 2019 passed by this Court granting the Defendant conditional leave to defend subject to depositing the entire amount claimed by the Plaintiff. The original no dues certificate dated 6th July 2019 is taken on record and marked as ***Exh.P9***.

14. Thus, on the date of filing of the Suit, there is an amount of Rs. 2,79,82,639.15 payable by the Defendant to the Plaintiff.

15. There is no correspondence addressed by the

Defendant disclosing any defence to the claim made in the Plaint. Considering that part payment was made by the Defendant in respect of the first invoice, and thereafter, the Defendant did not make any payment in respect of the other invoices, the Plaintiff is entitled to an order and decree in his favour in respect of the unpaid amount of the chemical products which had been sold, supplied and delivered by the Plaintiff to the Defendant and which is apparent from the documents on record including the "C" Form Certificates issued by the Central Excise Department which proves conclusively that the Defendant had taken delivery of the goods supplied by the Plaintiff and the Plaintiff had received excise credit therefrom.

16. There can be no defence to such a claim. Accordingly, an *exparte* decree is passed in favour of the Plaintiff and the Commercial Summary Suit is decreed in terms of the prayer clause (a).

17. The decree shall be drawn up and liberty to the Plaintiff to move in execution without awaiting for the sealing of the decree.

18. The Plaintiff is also entitled to the refund of the Court fees in accordance with the rules.

19. The Commercial Summary Suit is accordingly, disposed of without any order as to costs.

20. The Plaintiff has sought permission to withdraw the original documents which is part of the Court's record. Accordingly, the office is directed to handover the compilation of original documents to the Plaintiff within a period of four weeks from the date of uploading of this judgment and order.

[R.I. CHAGLA J.]