

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM. SUMMARY SUIT NO. 20 OF 2017**

Skyway RMC Plants Pvt. Ltd.

A company registered under the Companies Act, 1956, and having its registered office at 217, Kartik Complex, New Link Road, Andheri (West), Mumbai 400 053

...Plaintiff

Versus

Farooq Thim,

Of Mumbai, Indian Inhabitant, carrying on business as Sole Proprietor in the firm name and style of Messers Faith India Construction Company, having address at 25, Dharm Bandhan Building, S. V. Road, Santacruz (West), Mumbai – 400 054.

...Defendant

Mr. J. D'Souza, i/b Chirag Sancheti, for the Plaintiff.

CORAM : N. J. JAMADAR, J.

RESERVED ON : 26th NOVEMBER, 2019

PRONOUNCED ON : 29th NOVEMBER, 2019

JUDGEMENT:

1. This commercial division summary suit is instituted for recovery of an amount of Rs.1,32,11,053/- alongwith interest on the principal amount of Rs.98,12,721/-, at the rate of 24% p.a., on the basis of the invoices raised by the plaintiff against the defendant.

2. Brief facts of the case are as under:

(a) It is the case of the plaintiff that the plaintiff deals in the business of manufacturing and selling the ready-mix

concrete. The defendant carries on the business as a developer. The defendant had placed orders for supply of ready-mix concrete between July 2014 and May 2015. The plaintiff had sold and delivered ready-mix concrete worth Rs.2,79,86,263/- to the defendant and raised the invoices to evidence the sale and delivery, which was duly accepted by the defendant. The invoices contain the terms of sale and delivery, payment and charge of interest on delayed payment. The defendant made a part payment of Rs.1,81,73,542/-. Thus, an amount of Rs.98,12,721/- remained outstanding. The plaintiff called upon the defendant by the letter dated 13th October, 2016 to make payment of the balance amount alongwith the interest at the agreed rate of 24% p.a. An envelope containing the said letter, sent by Registered Post, was returned undelivered with the remarks "unclaimed". Hence, this suit for recovery of the outstanding amount alongwith interest thereon.

(b) The writ of summons was issued on 26th July, 2017. It was personally served on the defendant on 1st August, 2017. An affidavit of service alongwith the original summons, with the bailiff report annexed thereto, came to be filed on 10th August, 2017. Despite the personal service of the writ of summons, the defendant did not tender appearance within the period

stipulated by order XXXVII Rule 3(1) or any time thereafter till date.

3. It is indisputable that the writ of summons has been duly served upon the defendant as evidenced by the Bailiff report dated 1st August, 2017. In view of the default on the part of the defendant in entering appearance, the Court has to proceed on the premise that the allegations in the plaint are deemed to be admitted, as provided in Sub-rule (3) of Rule 2 of Order XXXVII.

4. Nonetheless, to ascertain as to whether the instant suit falls within the purview of any of the clauses of Sub-rule (2) of Rule 1 of Order XXXVII, I have examined the material on record. As indicted above, the suit is based on the invoices raised by the plaintiff against the defendant to evidence sale and delivery of the ready-mix concrete. The copies of the invoices are placed at 'Exhibit - B1' to 'Exhibit - B55'. 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, the rate per unit, the total price, including taxes and other dues, the terms of delivery, the period for payment and the stipulation of payment of interest on delayed payment at the rate of 24% p.a.

5. 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. Furthermore, the fact that the defendant had made part payment towards the price of the goods for which the invoices were raised itself constitutes an admission of liability.

6. In view of the above, there is no other go but to allow the claim. The suit thus stands decreed as under:

- (i) The defendant do pay a sum of Rs.1,32,11,053/- to the plaintiff as per the particulars of claim (Exhibit-A appended to the plaint), alongwith the interest at the rate of 12% p.a. on the sum of Rs.98,12,721/- from 1st October, 2016 till realization.
- (ii) The defendant do pay costs of Rs.3,00,000/-, 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.

7. The decree be drawn up and sealed expeditiously.

8. The Commercial Suit stands disposed of in above terms.

[N. J. JAMADAR, J.]