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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 131 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 1505 OF 2018

Mavaram Motaji Patel ...Plaintiff
Versus
AB Infrabuild Pvt Ltd ...Defendant

Mr Ali Abbas Delhiwalla, *i/b Chirag Sancheti, for the Plaintiff.*
Mr Sanjeev Mishra, *for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 12th February 2019

PC:-

1. Heard. The Plaintiff filed this suit under Order XXXVII of the Code of Civil Procedure 1908 ("**CPC**"). The amount claimed is Rs. 3,02,83,972.76/- and this is an amount alleged to be due under 98 unpaid invoices set out in a table at pages 4 to 6 of the Plaint. The invoices range in date from 15th February 2015 to 30th June 2016. Those from serial Nos. 1 to 68 are all prior to 25th October 2015, when the suit was instituted. These invoices from serial Nos. 1 to 68 are, *prima facie*, time-barred. There is no averment about how the bar of limitation is saved. There is no averment about part payment. There is no averment about the acknowledgement of liability.

2. In itself, this would be enough to support an order for unconditional leave to defend but what the Plaintiff now attempts is something more ambitious. There is an Affidavit in Reply to the Summons for Judgment, one that was filed after the Defendant entered appearance on service of the Writ of Summons to the suit. The Reply says that while the Plaintiff was supplying goods as required by the Defendant initially, it was found from 2013-2014 that the Plaintiff was raising false and fraudulent bills and invoices in respect of the goods never supplied. The Defendant claims that it carried out an investigation and found that the Plaintiff was in collusion with the Defendant's own employees. Those employees are named in the Affidavit in Reply and the amount said to have been siphoned or defalcated is in excess of Rs. 2.38 crores. The Defendant then says that it summoned the Plaintiff, a sole proprietor, to its office. The Defendant confronted the Plaintiff with this material. The Plaintiff sought forgiveness and the Defendant, perhaps now in retrospect ill-advisedly, excused this conduct but severed all business relations with the Plaintiff, and the Plaintiff apparently executed a writing promising to return this amount. This is what the averment in paragraph 4 of the Affidavit in Reply says. The so-called writing is not annexed. There is an Affidavit in Rejoinder in which, responding to this paragraph, the Plaintiff says that the reply by the Defendant is concocted and there is no such document.

3. In paragraph 5 of the Affidavit in Reply, the Defendant references various letters said to have been written to the Plaintiff. Some are annexed at Exhibit "A" to the Affidavit. They refer to discussions and over-billing and requests for re-issuance of the invoices. In response, the Plaintiff says that these are fraudulent and forged documents. Instead, the Plaintiff seeks to rely on a statement of account of the Plaintiff said to have been maintained by the Defendant in its books, said to be Exhibit "B" (though of course practitioners on the Original Side of this Court do not think it is necessary any longer to do any Court the minimal courtesy of providing either page numbering or proper exhibit numbering). The submission of the Plaintiff is that this ledger contains an admission of indebtedness and is contrary to the assertion in the Reply where the Defendant says that there were no business transactions for this period. That is not a conclusion that can be summarily drawn from a reading of this document. The endorsement at page 43 of the Affidavit in Reply in this ledger statement is one by which the Defendant says that the Plaintiff has not reversed the over-rating amount of the tax charged in the invoices. It says that this amount is treated towards the discount and considered as income. The amount is over Rs. 1.94 crores. It is not open to the Plaintiff to pick and choose selective words from a statement. If it accepts that this constitutes a continuing business transaction and dealings, then it must accept that there was indeed a requirement for reversal because its invoices were in excess and contained rates that were over and above those that were legitimately due. The other defences canvassed by the Plaintiff are entirely without merit, and I do not think, despite the persistence of counsel for the Plaintiff, that I have to note every submission, no matter how ill-founded. If the Plaintiff cannot succeed on the primary case, it is certainly not going to succeed on some submission of an alleged inconsistency between the advocates' notice before the suit and the Affidavit in Reply. This is a summary proceeding, and to succeed the case of the Plaintiff must be stark, clear and admit of absolutely no dispute.

4. There is no doubt that triable issues arise. This is not a kind of matter that lends itself to a summary decision. The submission based on *IDBI Trusteeship Services Ltd v Hubtown Ltd*.[1] that there is an 'admitted amount' is also incorrect. There is no such admission.

5. The Summons for Judgment is dismissed. Unconditional leave to defend is granted to the Defendant.

6. This being a commercial suit, the Plaintiff would be liable to pay the costs of this Summons for Judgment to the Defendant. However, I decline to award costs simply because of the slipshod manner in which the Defendant has chosen to arrange and present its filings. The Defendant will complete the correct paging and numbering of its Affidavit in Reply in Court immediately.

(G. S. PATEL, J)

1 (2017) 1 SCC 568 : AIR 2016 SC 5321.