

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

IN ITS COMMERCIAL DIVISION

COMMERCIAL SUMMARY SUIT NO. 476 OF 2016

Panasonic Life Solutions India	]
Private Limited (Formerly known as	]
Anchor Electricals Private Limited)	]
A Company incorporated under the	]
Companies Act, 1956, having his	]
registered office at :	]
I-Think Techno Campus, B-Wing,	]
3 rd floor, Pokhran Road No.2,	]
Thane (West), Thane – 400 607.	].. Plaintiff

Vs.

Shiv Shakti Enterprises	]
(a proprietary concern of	]
Mr. Vinod Mohandas Ram Singhani)	]
having his address at	]
Shop No. 4, Shreeji Complex,	]
Opposite Pada Pole-Union Bank,	]
Gandhi Road, Ahmedabad, Gujarat,	]
India 380 001, also having address at	]
141, Mohavati Society, Opposite	]
Hanuman Temple, Sakar Nagar,	]
Ahmedabad, Gujarat, India.	].. Defendant

Mr.Akshay Puranik a/w. Ms. Yasmin Godrej i/b Crawford Bayley and Co. for plaintiff.

None for defendant.

CORAM : N.J. JAMADAR, J.

DATE : 22ND JANUARY 2020

ORAL JUDGMENT :

1. This commercial division summary suit is instituted for recovery

of a sum of Rs.1,26,98,891.87 along with further interest @ 24% per annum on the basis of the invoices and the debit memos.

2. The material averments in the plaint can be summarized as under :

[A] The plaintiff deals in the business of manufacture and sale of electrical goods. The defendant is also engaged in the business of marketing and sale of the electrical goods. The defendant had placed order with the plaintiff for supply of electrical goods. The plaintiff had sold and delivered goods under the 39 invoices over a period of time from 29th November 2014 to 8th January 2015. The delivery of the goods is evidenced by the lorry receipts. The invoices, *inter-alia*, contain the terms of sale, including the payment of interest on the delayed payment of the price of the goods, the liability of purchaser to inspect and notify the defect in the goods and the Court which would have jurisdiction, in the event of any dispute. Under the invoices, the defendant

has to pay a sum of Rs.1,05,05,467.87 to the plaintiff. The defendant had acknowledged the said liability by executing a writing in favour of the plaintiff.

[B] The defendant had drawn a cheque bearing No. 880808 for a sum of Rs.5 lakhs on 31st January 2014 towards the part payment of the price of the goods sold and delivered and the debit note drawn by the plaintiff. However, the cheque was returned unencashed on presentment. The plaintiff was constrained to issue a demand notice on failure of the defendant to pay the amount covered by the cheque. The plaintiff lodged a complaint under section 138 of the Negotiable Instruments Act, 1881 in the Court of the learned Metropolitan Magistrate, 33rd Court at Ballard Pier, Mumbai, bearing No. 1802/SS/2015.

[C] Another cheque drawn for the sum of Rs.55,04,000/- payable on 9th September 2015 was

also returned unencashed on presentment. The plaintiff has lodged another complaint in respect of the said cheque. The plaintiff was, thus, constrained to institute this suit for recovery of the said amount along with further interest.

[D] The defendant entered appearance in response to the writ of summons.

[E] Thereupon, the plaintiff took out a summons for judgment. This Court, by a judgment and order dated 23rd November 2017 observed *inter-alia* that the defence raised by the defendant was highly improbable. However, with a view to provide an opportunity to the defendant to raise all the contentions, this Court granted a conditional leave to the defendant to deposit a sum of Rs.1.01 crore in this Court within a period of 12 weeks therefrom. The said order was carried in appeal by the defendant being Commercial Appeal (Lodg.) No. 105 of 2017. By an order dated 2nd April 2018, the appeal came to be dismissed.

[F] The defendant has not complied with the

condition of deposit of the amount, subject to which the leave to defend was granted by this Court by an order dated 23rd November 2017. A certificate to that effect is issued by the Prothonotary and Senior Master. By an order dated 13th April 2018, after noting the non-compliance on the part of the defendant, and the conditional order passed by this Court, the suit was directed to be listed for ex-parte decree.

3. Heard Shri Akshay Puranik, the learned counsel for the plaintiff. Perused the material and the documents tendered on behalf of the plaintiff.

4. From the averments in the plaint, it becomes evident that the suit claim is based on the sale and delivery of the goods, plain and simple. The claim of the plaintiff finds requisite in support the invoices at Exh.'B' and the lorry receipts at Exh.'D'. There is material which indicates that the defendant had not only acknowledged the liability by executing the writing, dated 29th December 2014 (Exh.'E'), but had also drawn cheques for the amount of Rs.5,00,000/- dated

31st December 2014 (Exh.'F'), Rs.50,00,000/- dated 23rd January 2015 (Exh.'K') and Rs.55,04,000/- dated 9th September 2015 (Exh.'O'), respectively. The said cheques were dishonoured on presentment leading to lodging of the complaints for the offence punishable under section 138 of the Negotiable Instruments Act, 1881,

5. The invoices contain the clauses which indicate with sufficient clarity the terms of the contract of sale and delivery. The lorry receipts lend unflinching support to the plaintiff's claim of sale and delivery of the goods. Issuance of cheques, which were eventually dishonoured, towards the payment of the unpaid price of the goods, constitutes an admission of liability.

6. In the aforesaid view of the matter, the claim of the plaintiff which has gone uncontroverted, deserves to be decreed.

7. Hence, the following order:-

- (i) The suit stands decreed.
- (ii) The defendant do pay a sum of Rs.1,26,98,891.87/- to the plaintiff as per the particulars of claim (Exhibit-Q appended to the plaint),

along with interest at the rate of 24% p.a. on the principal sum of Rs. 1,05,05,467.87/- from the date of the suit till realization.

(iii) The defendant do pay costs of Rs.2,50,000/-, to the plaintiff, quantified under Section 35 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015.

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

(v) The decree be drawn up and sealed expeditiously.

(vi) The Commercial Suit stands disposed of in above terms.

[N.J. JAMADAR, J.]