

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

IN ITS COMMERCIAL DIVISION

COMMERCIAL SUMMARY SUIT NO. 1477 OF 2018

MAHINDRA AGRI SOLUTIONS LIMITED	]	
(formerly known as Mahindra & Mahindra	]	
Limited - Agri business)	]	
Having registered office at Mahindra Towers,	]	
Dr. G.M. Bhosale Marg, P.K. Kurne Chowk	]	
Worli, Mumbai – 400 101	]	
Through Mr. Shyam Vembar,	]	
Constituted Attorney	]	Plaintiff
Vs.		
RAM PAVANKUMAR BIYANI	]	
(Proprietor of M/s. Ram Pavankumar Biyani	]	
Having address at Shop No. 6,	]	
New Mondha, Udgir,	]	
Maharashtra – 413 517.	]	Defendant

Ms.Pooja Singh a/w. Ms. Deepika Prabhala for plaintiff.

None for defendant.

CORAM : N.J. JAMADAR, J.

DATE : 14TH FEBRUARY 2020

ORAL JUDGMENT :

1. This commercial division summary suit is instituted for recovery of a sum of Rs.1,07,08,713/- along with interest @ 18% per annum from the date of the suit till realization, based on the sale and delivery of the goods evidenced by the contract of sale, invoices and delivery receipts.

2. The material averments in the plaint reads as under :-

(A) The plaintiff is a company registered under the Companies Act, 1956. It deals in the business of procurement and sale of pulses, peas and other edible goods. The defendant is the proprietor of M/s.Ram Pavankumar Biyani, a proprietorship concern. The defendant is also engaged in the business of purchase and sale of edible goods, on retail basis. The defendant had approached the plaintiff to supply the yellow peas and chick peas. The contracts for sale were executed on 18-07-2017, 16-08-2017 and 21-08-2017 (Exh.'B' to the plaint) containing the description of the goods to be sold, price thereof, terms of payment, the terms of delivery and the special terms as to payment of interest in the event of default and jurisdiction in the event of dispute. It was, *inter-alia*, agreed that the defendant would pay 10% of the price of the goods by way of advance, and 90% at the time of acceptance of the delivery of the goods.

[B] In pursuance of the aforesaid contract and the

promise of the defendant to pay the price of the goods, the plaintiff sold and delivered the goods over a period of time by raising 27 invoices from 18-01-2018 to 10-02-2018 for a total price of Rs.1,07,03,435/-. The invoices (Exh.'C' Colly.) also contain the material terms of the contract; *inter-alia*, the specifications of the goods, the price thereof, the terms of delivery etc. The delivery of goods to the defendant was evidenced by the lorry receipts. The defendant did not raise any dispute about the delivery or quality of the goods. The plaintiff has mentioned ledger account of the defendant. A sum of Rs.1,07,03,435/- remained outstanding.

[C] The plaintiff repeatedly called upon the defendant to pay the outstanding amount, but to no avail. Hence, the plaintiff addressed a demand notice on 09-04-2018 calling upon the defendant to pay a sum of Rs. 1,07,03,435/- along with interest @ 18% per annum. The notice was duly served on the defendant on 16-04-2018. The defendant failed to comply with the demand. Hence the suit.

[D] The writ of summons was served on the defendant on 17-01-2019. An affidavit of service came to be filed by Mr. Rajkumar J. Tiwari, Bailiff Clerk in the office of Sheriff on 20-02-2019. The service of the writ of summons is vouched for by the affidavit of service.

[E] By an order dated 03-06-2019, this Court recorded that the writ of summons was duly served on the defendant and yet, the defendant did not enter appearance. The plaintiff was directed to file the original documents and the matter was directed to be listed for passing ex-parte decree.

3. The plaintiff has, thus, tendered the original documents. Perused, the original documents. Heard Ms. Pooja Singh, the learned counsel for the plaintiff.

4. The claim of the plaintiff that the had sold and delivered yellow peas and chick peas in pursuance of the contract of sale entered into between the parties finds necessary support in the sales contract (Exh.'B' Colly). The contract contains necessary particulars like the

description of the goods, the price thereof, the terms of payments, delivery etc. The further claim of the plaintiff that the plaintiff, in pursuance of the sales contract, had supplied the goods to the order of the defendant by raising various invoices finds requisite support in the 27 invoices raised from 18-01-2018 to 10-2-2008. The terms of the contract are also reflected with sufficient particulars in the said invoices. The delivery of the goods is evidenced by the lorry receipts placed on record. The material on record, thus, substantiates the claim of the plaintiff of the sale and delivery of the goods.

5. In view of the provisions contained in Order 37 Rule 2(3) of the Code of Civil Procedure, 1908 ('the Code') on account of the failure of the defendant to enter appearance, consequent to the service of writ of summons, the defendant is deemed to have admitted the averments in the plaint, the plaintiff becomes entitled to the decree. Nonetheless, this Court has considered the material on record so as to ascertain whether the claim falls within the ambit of Order 37 of the Code.

6. In view of the material on record, adverted to above, which establishes the factum of sale and delivery of the goods and the

contract to pay price thereof beyond the pale of controversy, there is no other go but to decree the suit.

7. Hence, the following order :-

O R D E R

- (i) The suit stands decreed.
- (ii) The defendant do pay a sum of Rs.1,07,03,435/- along with interest @ 18% per annum 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.]