

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

SUMMONS FOR JUDGMENT NO.5 OF 2019

IN

COMMERCIAL SUMMARY SUIT NO.1254 OF 2018

Mahindra Sanyo Special Steel Pvt. Ltd. .. Applicant-Plaintiff

Vs.

Prem Industries and Ors. .. Defendants

Ms. Kavita Pawar for the Applicant-Plaintiff.

Mr. Chintan Shah for the Defendants.

CORAM : A. K. MENON, J.

DATE : 20TH APRIL, 2022.

P.C. :

1. By this Summons for Judgment, the applicant-plaintiff seeks a decree in a sum of Rs.3,66,90,747/- comprising of principal sum of Rs.2,74,55,229/- and interest of Rs.92,35,518/-. The plaint proceeds on the basis of non payment of price of goods sold and delivered pursuant to written purchase orders, copies of which are annexed to the plaint at Exhibit-B collectively.

The issuance of purchase orders is not in dispute. Supply of goods is also not in dispute. After part payments were made, it is the contention of the applicant-plaintiff that a sum of Rs.2,74,55,229/- is remained due and payable. Interest is being claimed @ 15% p.a. on the basis of conditions of sale in the written agreement contained in the Purchase Orders and Invoices. My

attention has been drawn by the plaintiff's counsel to the invoices issued to defendant no.1-Firm, which in its terms and conditions clearly specifies that interest @ 15% p.a. will be payable on unpaid amounts of the invoices. To that extent, there is no dispute between the parties. However, on behalf of the defendants, learned counsel submits and as set out in the affidavit-in-reply, there were disputes as to the quality of the goods supplied. Secondly, it is contended that there is no agreement as to the interest payable on the unpaid invoice amounts. That is an aspect found to be incorrect in view of the fact that the invoices themselves provide for payment of interest @ 15% p.a.

2. One other defence taken up in the affidavit-in-reply is that the claim is barred by the law of limitation and that the documents "are unstamped or improperly stamped". No submissions have been advanced on that basis before the court today. Indeed, these are invoices based on the written purchase orders. There is no question of payment of stamp duty on the invoices. The main defence that has been pressed into service is that of inferior quality / sub standard quality of goods, as a result of which the defendant no.1 claims that it has lost business.

3. My attention has been invited to the e-mails exchanged between the parties. One of the emails pressed into service is dated 13th February 2019 viz. dated prior to the issuance of the first purchase order and hence cannot pertain to the supplies of goods under the suit purchase orders. My attention is also invited by learned counsel for the defendants to the emails exchanged

between the parties on 27th August 2015 and onwards upto 13th February 2019, in which, according to the learned counsel for the defendants, several issues of quality have been raised.

4. Having considered the material on record, the affidavit-in-reply and the documents annexed as also the affidavit-in-rejoinder and having heard learned counsel for the defendants, on a query from the court as to whether any of the goods have been returned on account of poor quality, the learned counsel for the defendants fairly states that nothing on record shows that the goods were returned. However, according to him, the quality of the goods not having met with the contracted quality, there is likelihood of the defendant no.1-Firm facing claims from its customers.

5. However, that is not the matter that will come in the way of disposal of this Summons for Judgment. There is no counter-claim. No suit is filed by the defendants against the plaintiff. There is no reply to the demand notice dated 28th March 2018. Furthermore, several cheques are seen to be issued by the defendant no.1-Firm in favour of the plaintiff, many of which are said to have been dishonoured; as a result of which proceedings under Section 138 of the Negotiable Instruments Act have been initiated. Those complaints are being prosecuted. This court is not concerned with the merits of the case before the Metropolitan Magistrate's Court. What is however relevant is that in the affidavit-in-rejoinder, the learned counsel for the plaintiff has pointed out that as late as on January 8, 2019, the defendants have addressed an email at

20:35 hrs. offering a settlement, to pay a sum of Rs.2,75,00,000/- in installments between January 2019 to July, 2020. Not only has the defendant no.1 offered to pay that amount, it has also offered to continue to purchase all the raw materials that it requires from the plaintiff, provided that the plaintiff agrees to supply raw material against 100% advance. This is clearly conduct which belies the defendants' contention that it had suffered losses at the hands of the defendant no.1. In my view, there appears no real defence to the claim. Accordingly, I pass the following order :-

- (i) Upon deposit of a sum of Rs.2,75,00,000/- within a period of two weeks from today, leave to defend is granted.
- (ii) If deposit is made within the time stipulated, Written Statement shall be filed within a period of four weeks from today.
- (iii) If deposit is not made with the specified time, liberty to apply for a decree.
- (iv) Summons for Judgment is disposed in the above terms.

(A.K. MENON, J.)