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

SUMMONS FOR JUDGMENT NO.16 OF 2020
IN
COMMERCIAL SUMMARY SUIT NO.644 OF 2018

Hazel Mercantile Ltd. .. Applicant-Plaintiff
Vs.
Venture Cross Trade FZE .. Defendant

Mr. Vivek Kantawala, with Mr. Amey Patil and Mr. Shanay Bafna, i/by Vivek Kantawala & Co., for the Applicant-Original Plaintiff.
Ms. Suvarna Joshi for the Defendant.

CORAM : A. K. MENON, J.
DATE : 23RD JUNE, 2022.

P.C. :

1. The Suit proceeds on the basis of unpaid amounts in respect of purchases made by the plaintiff for the purposes of sale to the defendant of chemicals, polymers and software products. According to the plaintiff, after making up of accounts, three distinct sums are due to the plaintiff, particulars of which are as set out in Exhibit-O to the plaint. Exhibit-O to the plaint consists of a letter dated 12th June 2017 and a letter dated 14th June 2017. By these letters, the defendant has confirmed the balance amount due as of close of Books of Accounts for the years 2016-17. The amounts admittedly due as on those dates are as follows :-

USD 176,447.60 towards Software Shipments
USD 10,692,000 towards Chemical Shipments
USD 182,860.63 towards Brokerage

2. These amounts are collectively computed in terms of Indian rupees @ Rs.71,67,35,422.38 in the particulars of claim at Exhibit-P to the plaint. Mr. Kantawala appearing in support of this Summons for Judgment has pointed out that upon these admissions, the Summary Suit is maintainable and that the plaintiff is entitled to a decree in the aforesaid sum. He also claimed interest @ 18% p.a.; however, he fairly states that there is no specific agreement in writing to pay interest @ 18% p.a. He therefore submits that the defendant is not entitled to defend the suit and prays that a decree be granted.

3. At the hearing today, Mr. Kantawala, on instructions, has sought to revise the Indian rupee equivalent after verifying the correct amount and the average rate per U.S. Dollar as prevalent on 12th June 2017 and 14th June 2017. As a result of this exercise, the claim stands reduced to Rs.71,10,35,685.69. He seeks leave to amend the prayer clause in the plaint and consequential amendment in the body of the plaint to incorporate the revised figure and seeks a decree in the aforesaid sum and interest thereon.

4. The affidavit-in-reply that has been tendered in court today sets out the defence of the defendant. The affidavit is affirmed by one Rajesh Harlalka, whose authority to sign the affidavit on behalf of the defendant is not disclosed. However, proceeding on the basis that he was authorized to sign the affidavit, the defence set out is to the effect that the defendant used to sell the cargos procured from Iran through the plaintiff to various buyers across the world and the defendant would pay the amounts to the suppliers after the monies were received from the buyers. The

defendant and the plaintiff entered into brokerage agreements from time to time after considering market dynamics and would make payments accordingly to the plaintiff apart from the regular business of supply.

5. In the second half of 2015, there was major turbulence in crude oil and economies worldwide had crashed, due to which buyers had defaulted in their obligations and it became difficult to recover monies from those purchasers. As a result, a chain reaction followed and the defendant could not fulfill its obligations to make payments to its Iranian suppliers as well as the plaintiff. The defendant claims that *"they had no option but to leave everything in Dubai and come back to India"*. Surprisingly, the deponent does not disclose his identity or constitution of the defendant. The defendant is described as *"Venture Cross Trade FZE"*. There is noting to indicate whether it is a proprietary concern of Rajesh Harlalka or whether it is a partnership. It also does not indicate nature of the defendant's business structure. All that affidavit states is that the defendant is entitled to unconditional leave for the reasons set out, namely, inability to collect monies from the purchasers. It is also contended that the quantum of brokerage is disputed. However that defence has no merit since Exhibit-O is not in dispute and it clearly evidences admission of liability.

6. In these circumstances, I am of the view that the defendant cannot be permitted to defend the Suit unconditionally, but shall be put to terms. Accordingly, I pass the following order :-

(i) Leave to amend to correct the revised figure of the suit claim, being Rs.71,10,35,685.69, in the body of the plaint, prayer clause and in particulars of claim. Amendment to be carried out during the course of the day today. Re-verification is dispensed with.

(ii) Subject to deposit of a sum of Rs.71,10,35,685.69 in this court within a period of eight weeks from today, defendant is permitted to file its written statement.

(iii) If the amount is deposited within the stipulated time and the written statement is filed, list the Suit for framing issues forthwith thereafter.

(iv) If the amount is deposited, the Prothonotary and Senior Master to invest the said amount in a fixed deposit in a nationalized bank, initially for a period of one year, to be renewed thereafter from year to year till further orders.

(v) In the event of failure to deposit the aforesaid amount within the stipulated time, liberty is granted to the plaintiff to apply for a decree after obtaining a certificate of non-deposit.

(vi) In the meanwhile, considering the fact that the deponent of the affidavit has not disclosed either his address or his authority to sign the affidavit, the learned counsel for the defendant shall provide all known addresses of the deponent to the plaintiff's Advocate within one week from today.

(vii) Summons for Judgment is disposed in the above terms.

(A.K. MENON, J.)