

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

SUMMONS FOR JUDGMENT NO.17 OF 2020

IN

COMMERCIAL SUMMARY SUIT NO.602 OF 2018

Hazel Mercantile Ltd.

.. Applicant-Plaintiff

Vs.

Interglobe Trading FZE

.. Defendant

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

Ms. Suvarna Joshi for the Defendant.

CORAM : A. K. MENON, J.

DATE : 23RD JUNE, 2022.

P.C. :

1. The plaintiff seeks a decree in a sum of Rs.1,60,13,540.07 towards the amount of brokerage due from the defendant pursuant to an agreement in writing between the parties, copy of which is annexed at Exhibit-B to the plaint. The agreement is titled as "Non-Exclusive Broker Agreement" dated 31st May 2012.

2. It is contended by the plaintiff's counsel that the plaintiff is entitled to brokerage pursuant to numerous transactions under which the plaintiff facilitated purchase of various quantities of chemicals manufactured by the parties in Iran and that these products having been supplied to the defendant, the plaintiff was entitled to claim brokerage based on the provisions of the said agreement. The plaint proceeds

on the basis that after making up of accounts, the defendant confirmed that a balance sum of USD 1,611,03.77 is due towards brokerage. The defendant has acknowledged liability in a letter dated 19th June 2017 addressed to the plaintiff, copy of which is at Exhibit-E to the plaint. Having confirmed the balance sum due, Mr. Kantawala states that the plaintiff is entitled to a decree in the aforesaid sum.

3. In the course of submissions, Mr. Kantawala states that there is a need for amending particulars of claim since the average rate of the U.S. Dollar prevalent at the time of execution of the balance confirmation letter was slightly lower and accordingly, the suit claim stands revised to Rs.1,03,70,249.67. He seeks leave to amend the prayer clause in the plaint and carry out consequential amendments in the body of the plaint to incorporate the revised figure.

4. On behalf of the defendant, Summons for Judgment is opposed by learned Advocate by relying upon an affidavit-in-reply dated 12th March 2020 of one Karan Singh Karki, who has contended that the contents of the plaint are false. He however admits that the defendant used to procure material from Iran through the plaintiff in accordance with the agreements between the parties. He admits that the plaintiff facilitated purchase of material under the brokerage agreement. The deponent has also disclosed names of various suppliers. The brokerage agreement is admitted however it is contended that 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 Nepal”*.

5. Surprisingly, the affidavit does not disclose authority of the deponent or his address in Nepal and how affidavit came to be signed in Mumbai. Considering the nature of the defence and the unconditional admission of liability in Exhibit-E to the plaint, I have no hesitation in holding that the defendant has not disclosed any bonafide defence that would entitle him to unconditional leave. However, one opportunity can be granted if the defendant complies with the condition that I propose to impose. In view thereof, I pass the following order :-

- (i) Leave to amend to correct the revised figure of the suit claim, being Rs.1,03,70,249.67, 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.1,03,70,249.67 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.)