

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

SUMMONS FOR JUDGMENT NO.90 OF 2012

IN

COMMERCIAL SUMMARY SUIT NO.49 OF 2011

The State Trading Corporation of
India Ltd.

.. Plaintiff

v/s.

Masumi Overseas Pvt. Ltd. & Ors.

.. Defendants

WITH

NOTICE OF MOTION NO.84 OF 2020

COMMERCIAL APPEAL (L) NO.2265 OF 2022

INTERIM APPLICATION (L) NO.6681 OF 2021

IN

SUMMONS FOR JUDGMENT NO.90 OF 2012

Ms. Laxmi Maria Jenkins for the plaintiff.

Mr. Dhairyasheel Sutar a/w Kruti Garg and Nirmal Pagaria for the
defendants.

CORAM : A. K. MENON, J.

DATED : 27TH APRIL, 2022.

P.C. :

1. The Suit is filed by the plaintiff on the basis of pending export bills
as described in the particulars of claim. Interest accrued till April

2011 is computed at 15% p.a. The learned counsel for the plaintiff submits that these invoices have been raised pursuant to an agreement in writing dated 15th December, 2006 between the plaintiffs and the 1st defendant company.

2. The 2nd and 3rd defendants are said to be Directors but are sought to personally made liable by virtue of the guarantees. Copies of the personal guarantees are also annexed. A decree is sought in a sum of Rs.87,24,63,640/- equivalent to USD 18966.601 at and then exchange rate. Interest is sought from the date of suit till payment. The invoices are said to be annexed to the plaint at Exhibit 'B-1' to 'B-13' and the details of these outstanding bills are said to be furnished in Exhibit 'C'.
3. Perusal of the invoices indicate that the exporter is shown as the Plaintiffs' but the assignee and buyers are third parties. In effect these invoices are not addressed to the defendant. Exhibit 'E' to the plaint is further set of identical invoices. The frame of suit clearly indicates that it is based on Pending export bills. The particulars of claim do not reveal how it can be related to the invoices in question all of which are not addressed to the 1st defendant. Clearly triable issues arise. Hence, leave will have to be granted to defend the suit. Hence, the following order;

- (i) Defendants are granted unconditional leave to defend the suit.
- (ii) Written statement to be filed within eight weeks from today.
- (iii) If written statement is not filed, list for exparte decree.
- (iv) Summons for Judgment is disposed in the above terms.

(A. K. MENON, J.)