

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

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**SUMMONS FOR JUDGMENT NO. 34 OF 2020
IN
COMM SUMMARY SUIT NO. 158 OF 2020**

Zen Estates Private Limited ...Applicant

In the matter between

Zen Estates Private Limited ...Plaintiff

Versus

Mr. Premchand Mittal
(Sole Proprietor of M/s. Maruti Exports) ...Defendant

Ms. Samiksha Manek, i/b M. M. Legal Asso., for the Applicant
/Plaintiff.

None for the Defendant.

CORAM: N. J. JAMADAR, J.

DATED : 22nd AUGUST, 2022

ORDER:-

1. This commercial division summary suit is instituted for recovery of a sum of Rs.1,01,32,489/- comprising of the principal sum of Rs.81,16,342/- being the price of the goods sold and delivered and interest thereon at the rate of 18% p.a.

2. The plaintiff is a Private Limited Company registered under the Companies Act, 1956. It is engaged in the business of, *inter alia*, imported fabrics and cloth materials. The defendant is the proprietor of M/s. Maruti Export, which also deals in the business of cloth materials.

3. Pursuant to orders placed by the defendant, the plaintiff had sold and delivered cloth materials by raising 13 invoices during the period 25th July, 2018 to 20th September, 2018. The defendant accepted the goods without raising any dispute about the quantity, quality and description of the goods. Delivery of the goods is evidenced by e-way bills and delivery challans.

4. In accordance with the terms of the contract, the plaintiff avers, the defendant was to pay for the price of the goods on delivery. In the event of default, the defendant was to pay interest at the rate of 18% p.a. for the delayed period. Despite repeated demands, the defendant avoided to make payment of the price of the goods on one or the other pretext. Hence, the plaintiff was constrained to address a legal notice on 17th August, 2019, calling upon the defendant to pay the unpaid price of goods i.e. Rs.81,16,342/- along with interest at the rate of 18% p.a. The defendant avoided to accept the service of the legal notice. However, the notice addressed to another propriety concern of the defendant namely M/s. Tirumala Enterprises was duly served on the defendant. The latter neither complied with the demand nor gave reply to the notice. Hence, this suit for recovery of the unpaid price of the goods along with interest.

5. Upon service of writ of summons, the defendant entered appearance. Thereupon the plaintiff took out the summons for judgment. Despite service of the summons for judgment, the defendant has not filed an affidavit seeking leave to defend the suit.

6. On 25th March, 2022, when the summons for judgment was listed before the Court, with a view to provide an opportunity to the defendant, the plaintiff was directed to give notice to the learned Counsel for the defendant, who had entered appearance on behalf of the defendant. Accordingly, an affidavit of service came to be filed affirming that such a notice was duly served on the defendant as well as the learned Counsel for the defendant. Thus, the summons for judgment came to be posted for hearing.

7. The plaintiff has filed a compilation of documents and an affidavit of documents.

8. I have heard Ms. Manek, the learned Counsel for the plaintiff. With the assistance of the learned Counsel for the plaintiff, I have perused the averments in the plaint and documents tendered along with the compilation of the documents.

9. Instant suit is for recovery of unpaid price of the goods sold and delivered by the defendant. The sale of goods is evidenced by the following 13 invoices raised by the plaintiff:

Sr. No.	Invoice No.	Invoice Date	Invoice Amount
1	ZEPL/18-19/291	25 th July, 2018	Rs.1,84,749.00
2	ZEPL/18-19/290	25 th July, 2018	Rs.8,71,769.00
3	ZEPL/18-19/299	27 th July, 2018	Rs.1,05,252.00
4	ZEPL/18-19/316	31 st July, 2018	Rs.7,65,341.00
5	ZEPL/18-19/318	1 st August, 2018	Rs.1,64,404.00
6	ZEPL/18-19/326	3 rd August, 2018	Rs.15,16,806.00
7	ZEPL/18-19/345	10 th August, 2018	Rs.17,79,876.00
8	ZEPL/18-19/373	21 st August, 2018	Rs.11,94,346.00
9	ZEPL/18-19/374	21 st August, 2018	Rs.1,14,912.00
10	ZEPL/18-19/472	19 th September, 2018	Rs.1,66,667.00
11	ZEPL/18-19/474	19 th September, 2018	Rs.5,33,484.00
12	ZEPL/18-19/476	20 th September, 2018	Rs.5,83,538.00
13	ZEPL/18-19/477	20 th September, 2018	Rs.1,35,198.00

10. The delivery of the goods, in turn, is evidenced by the delivery challans corresponding to the aforesaid invoices raised by the plaintiff. In addition, there are carrier's certificates which vouch for the delivery of the goods. In some cases, the delivery is also evidenced by e-way bills. Evidently, there is adequate material in proof of sale and delivery of the goods pursuant to the orders placed by the defendant.

11. The fact that there were transactions between the plaintiff and defendant is also substantiated by issue of a cheque for

a sum of Rs.5,55,000/- in favour of the plaintiff by the defendant towards part payment of the price of the goods, which came to be eventually dishonoured. This circumstance, in a sense, lends support to the claim of the plaintiff that the contract between the parties having given rise to the jural relationship of seller and buyer.

12. The situation which thus obtains is that, on the one hand, there is material to evidence the sale and delivery of the goods, in the form of invoices, corresponding delivery challans and the certificates of the carrier. On the other hand, on account of the default on the part of the defendant in applying for leave to defend, the plaintiff becomes entitled to judgment under Sub-rule (6) of Rule 3 of Order XXXVII of the Civil Procedure Code, 1908 ("the Code"). It is trite that a suit based on invoices containing the contract between the parties falls within the ambit of Order XXXVII of the Code. As the averments in the plaint and the material pressed into service by the plaintiff to substantiate those averments have gone uncontroverted, the claim of the plaintiff to recover the unpaid price of the goods deserves to be allowed unhesitatingly.

13. An issue which, in my view, however warrants consideration is the claim for interest. It is averred in the plaint

that it was agreed between the parties that in the event of delay in payment of the price of the goods supplied by the plaintiff to the defendant, the latter would pay interest at the rate of 18% p.a. An endeavour was made to show that under the terms of the invoices raised by the plaintiff, the defendant was liable to pay interest at the rate of 18% p.a. On a careful perusal of each of the invoices, I could not find a term of payment of interest on the price which remained unpaid on the due date. In fact, the invoices did not prescribe the mode/term of payment. To this extent, the averment in the plaint is not supported by documents on record.

14. It is well recognized that if there is no express stipulation for payment of interest, a party is not entitled to interest unless there is statutory right to recover interest, or interest is recoverable under the provisions of Interest Act, 1978 or there is a mercantile usage. Such mercantile usage must, however, be pleaded and proved.

15. The case at hand would be covered by the entitlement of the plaintiff to recover interest on the basis of the statutory right. Section 61 of the Sale of Goods Act, 1930 ("the Act, 1930") provides for payment of interest by way of damages and special damages. Sub-section (2) of Section 61 reads as under:

“Section 61 (1)

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price–

(a) to the seller in a suit by him for the amount of the price– from the date of the tender of the goods or from the date on which the price was payable;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller– from the date on which the payment was made.”

16. On a plain reading of Sub-section (2), extracted above, it becomes abundantly clear that it will come into play where there was no contract between the parties for payment of interest. Evidently, the aforesaid provision confers discretion on the Court to award interest as it thinks fit on the unpaid price from the date on which payment was to be made.

17. In the case at hand, the invoices do not indicate the date on which the price became due, as well. In the totality of the circumstances, in my view, it would be expedient to award interest on the aggregate unpaid price i.e. Rs.81,16,342/- at the rate of 12% p.a. from the date of the last invoice i.e. 20th September, 2018, till the date of the institution of the suit. Additionally, the plaintiff would be entitled to future interest at the rate of 12% p.a. from the date of the institution of the suit till payment and/or realization.

18. Hence, the following order:

: O R D E R :

(A) Summons for Judgment stands allowed in the following terms:

(i) The defendant do pay a sum of Rs.81,16,342/- along with interest at the rate of 12% p.a. on the said amount from 20th September, 2018 till the date of the institution of the suit and further interest at the same rate from the date of the institution of the suit till payment and/or realization.

(ii) The defendant do pay the costs of the suit to the plaintiff.

(iii) The plaintiff is entitled to refund of Court-fees, if any, in accordance with Rules.

(iv) The suit thus stands partly decreed in the aforesaid terms.

(v) Decree be drawn and sealed expeditiously.

The Suit as well as Summons for Judgment stand disposed.

[N. J. JAMADAR, J.]