

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 107 OF 2018

IN

COMMERCIAL SUMMARY SUIT NO.687 OF 2018

PRIYA
RAJESH
SOPARKAR

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PRIYA RAJESH
SOPARKAR
Date: 2022.03.08
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Indian Potash Limited ... Applicant/Plaintiff

vs.

Shri Balaji Agri Chem (I) Private Limited ... Defendant

Mr.Pravin D.Kadam for the Applicant/Plaintiff.

Mr.Lokesh Zade and Mr.Shyam M. Kalyankar for the Defendant.

CORAM : A. K. MENON, J.

DATED : 2nd MARCH, 2022.

P.C. :

1. By this Summons for Judgment the plaintiff seeks a decree against the defendant in a sum of Rs.9,55,05,393.24 with interest of Rs.6,80,40,878.60.

The claim is based on an agreement contained in Invoices and Delivery Challans. The plaintiff has relied on the documents incorporating terms and conditions agreed between the parties.

2. The case of the plaintiff as canvassed before me today is that pursuant to the orders placed by the defendant, the plaintiff has sold and delivered chemicals DI Ammonium phosphate and Muriate of potash of diverse quantities totalling to a value of Rs.8,74,04,534.50. Part payments to the

extent of Rs.1,77,63,664.90 were made leaving balance of Rs.6,96,40,878.60.

3. Pursuant to the supplies the plaintiff has demanded the price of the goods sold and delivered to the defendant and the defendant has said to have paid the sum of Rs.16 lakhs as part payment on or about 30th December, 2017. This payment was made after confirming a balance of Rs.6,96,40,878.60 by issuing a confirmation of balance dated 1st December, 2017, copy of which appears at Ex.A to the plaint.

4. Mr. Kadam has submitted that there is no defence whatsoever to the claim. The balance due has been confirmed. That represents the principal sum. Interest is also claimed at 18%. The defendant has issued a cheque for entire sum of Rs.6,80,40,878.60 but the cheque was dishonoured when presented for payment, cheque is dated 7th February, 2018. My attention is invited to the cheque dishonour memo at Ex.C which records that cheque was dishonoured since funds were insufficient. Thereafter, a demand notice is seen to have been sent on 17th February, 2018 demanding payment. The demand notice was also to be construed as notice under Section 138 of the Negotiable Instruments Act.

5. On behalf of the defendant, learned counsel has firstly contended that no goods were supplied. He relies on the affidavit-in-reply of one R Jay Narayan. Authorized representative and Chief Executive Officer of the defendant. The deponent has contended that the plaintiff's case is false. It is contended that the entire case of the plaintiff is based on the written contract

is incorrect. Learned counsel for the defendant further submits that the plaintiff had initially not produced any invoices on record and there is no evidence of goods having been supplied. Furthermore it is contended that there is no agreement between the parties. He has disputed liability. He has also disputed having executed the confirmation and the balance. The contention of the deponent is that signatures of the so called witness is not of the defendant nor any of its authorized signatories.

6. The dishonour of the cheque however is not disputed. In these circumstances, I am of the view that there is no defence to the claim. The suit is based on a written agreement between the parties. Confirmation of balance is on record supported by a cheque issuance of which is not disputed. Assuming the confirmation of the balance is fabricated, the defendant need not have issued a cheque but the cheque was admittedly issued and dishonoured for insufficient funds. In these circumstances, there is no bonafide defence revealed and I pass the following order.

- i. Defendant shall deposit in a court the total sum of Rs.9,55,05,393.24 within a period of eight weeks from today.
- ii. If the deposit is made, written statement shall be filed within a period of four weeks.
- iii. The amount if so deposited shall be invested by the

Prothonotary and Senior Master in a fixed deposit in a nationalized bank initially for a period of one year to be renewed from time to time thereafter.

iv. If the deposit not made, liberty is granted to applied for a decree after filing of original documents.

v. Original documents shall be kept ready within a period of twelve weeks from today.

vi. Summons for Judgment is disposed in the above terms.

(A.K. MENON, J.)