

Sayali Upasani

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

**SUMMONS FOR JUDGMENT NO. 76 OF 2021
IN
COMM. SUMMARY SUIT NO. 113 OF 2021**

Ravi Steel Industries ...Plaintiff

Versus

Anilkumar Shyamsunder Goyal
Sole proprietor of G.A. Industries ... Defendant

Mr. Girish Kedia, for the Plaintiff.
None for the Defendant

CORAM: N. J. JAMADAR, J.

DATED : 3rd August, 2022

ORDER:-

1. This Commercial Division summary suit is instituted for recovery of a sum of Rs.1,09,95,471/- along with further interest on the principal amount of Rs.75,82,444/- at the rate of 18% per annum from the date of the suit till payment and/or realization.

2. The material averments in the plaint can be summarized as under:

(a) The plaintiff is a registered partnership firm. It deals in the business of trade of Galvanised sheets and other ancillary products. The defendant also deals in the business of manufacturing and trading in Iron and Steel products under the

name and style of G. A Industries, a proprietary firm. In the regular course of business, the plaintiff used to supply the goods upon orders being placed by the defendant.

(b) Pursuant to the telephonic order placed by the defendant, the plaintiff sold and delivered the goods under four invoices; dated 22nd February, 2019, 1st March, 2019 and 8th March, 2019, aggregating to a sum of Rs.75,82,444/-. The defendant accepted the delivery of goods without any dispute as to price, quality and quantity thereof.

(c) Under the terms of the invoices, in the event of non payment of the price of the goods on the due date, interest at the rate of 36% per annum was chargeable. The defendant committed default in payment of the price of the goods sold and delivered under the aforesaid invoices. After a lot of persuasion, the defendant had drawn a cheque bearing No.745028 for a sum of Rs.75,82,444/- payable on 7th September, 2021 on Indian Overseas Bank, Pokhran Road, Thane (W) Branch, towards the discharge of the liability. The accused had assured to pay interest on the due amount at a later date. However, upon presentment, the cheque was returned unencashed, as the operations in the account on which the said cheque was drawn, were stopped pursuant to an attachment order. The plaintiff called upon the

defendant to pay the amount covered by the cheque along with interest accrued on the due amount, by notice dated 9th September, 2021. Despite the service of notice, the defendant committed default in payment. Hence, the suit for recovery of the amount covered by the dishonored cheque under Order XXXVII of the Code of Civil Procedure, 1908 ("the Code").

3. Upon service of the writ of summons, the defendant appeared. Thereupon the plaintiff took out a summons for judgment. It was duly served on the defendant. Though time was sought on behalf of the defendant, yet an affidavit-in-reply seeking leave to defend has not been filed. Thus, by an order dated 28th June, 2022, this Court directed that the summons for judgment be listed for hearing and final disposal, on 5th July, 2022.

4. On 28th July, 2022, Mr. Shivam, the learned Counsel for the defendant, instructed by APS Law associates, informed the Court that he has no instructions from the defendants. Thereupon, since leave to defend was not sought, the Court directed that the summons for judgment be listed for hearing under Order XXXVII Rule 3(6) of the Code.

5. The plaintiff has filed an affidavit of evidence and compilation of documents in support of its claim.

6. I have heard Mr. Kedia, the learned Counsel for the plaintiff.

I have also perused the averments in the plaint, affidavit of evidence and the original documents tendered for the perusal of the Court.

7. Evidently the suit is instituted for recovery of the unpaid price of the goods sold and delivered by the plaintiff to the defendant. The plaintiff asserts, towards repayment of the price of the goods sold and delivered, the defendant had drawn a cheque bearing No.745028 for a sum of Rs.75,82,444/- on Indian Overseas bank, Pokhran Road, Thane (W) Branch, on 7th September, 2021. The amount covered by the said cheque, according to the plaintiff, represents the amount for which the invoices (Exhibits 1 to 4) were raised. The said cheque was dishonoured on presentment. Thus, the suit falls within the ambit of Order XXXVII Rule (1)(2)(a) of the Code.

8. The claim of the plaintiff that it had sold and delivered the Galvanised Sheets finds support in the invoices dated 22nd February, 2019 (Exhibit-1), 1st March, 2019 (Exhibit-2) and 8th March, 2019 (Exhibits-3 and 4). The delivery of goods is evidenced by E-Way Bills. The invoices, *inter alia*, provide that the term of payment was immediate, and if amount of the bill was not paid within due date, interest shall be chargeable at 36% per annum.

9. The further claim of the plaintiff that to discharge the liability the defendant had drawn the cheque finds support in the true copy of the cheque (Exhibit-5). The dishonour of the cheque is evidenced by the cheque return-memo, dated 8th September, 2021 (Exhibit-5). It seems the plaintiff addressed a demand notice on 9th September, 2021 (Exh.6). The postal acknowledgments evidence the service of the demand notice. It further appears that, post institution of the suit, the plaintiff was served with a reply to the demand notice wherein the liability was flatly denied.

10. In the backdrop of the aforesaid material, the sale and delivery of the goods can said to have been established beyond the pale of controversy. As indicated above, invoices have been raised and delivery of the goods is evidenced by E-Way Bills. There are documents which evidence issue and dishonour of cheque. The presumption contained in Section 118 of the Negotiable Instruments Act, 1881 further fortifies the existence of underlying consideration.

11. In view of the provisions contained in Sub Rule (6) of Rule 3 of Order XXXVII of the Code, if the defendant has not applied for leave to defend, the plaintiff becomes entitled to judgment forthwith. In the case at hand, despite entering appearance, the defendant chose not to seek leave to defend. Even otherwise, the

claim of the plaintiff seems to be substantiated by documents of unimpeachable character.

12. Thus, I am impelled to pass a decree. Hence, the following order:

ORDER

- (i) The summons for judgment stands allowed.
- (ii) The defendant do pay a sum of Rs.1,09,95,471/- along with interest on the principal amount of Rs.75,82,444/- at the rate of 12% per annum from the date of the suit till payment or realization.
- (iii) The plaintiff is also entitled to costs of the suit.
- (iv) The plaintiff is entitled to refund of Court fee, if any, in accordance with rules.
- (v) Decree be drawn and sealed expeditiously.

[N. J. JAMADAR, J.]