LAXMIKANT GOPAL CHANDAN
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

SUMMONS FOR JUDGMENT NO.10 OF 2021
IN
COMMERCIAL SUMMARY SUIT NO.10 OF 2021

Gopal Omprakash Ruia
Karta of Gopal Ruia HUF,
carrying on business as
Sole Proprietor of M/s. Priti International : Applicant (Org.Plaintiff)

In the matter of

Gopal Omprakash Ruia
Karta of Gopal Ruia HUF,
carrying on business as
Sole Proprietor of M/s. Priti International : Org.Plaintiff
versus
M/s. Singh & Sons : Defendant.

Mr. Rohaan Cama a/w Advocate Ayushi Anandpara and Advocate Krushang Kedia i/by Mr. Girish Kedia for the Applicant/Plaintiff.
Mr. Amarendra Mishra for the Defendant.

CORAM : ARIF S. DOCTOR, J.
Reserved on : 8th March 2023
Pronounced on : 6th April 2023

JUDGMENT :

1. The present Commercial Summary Suit has been filed for a decree in the sum of Rs.1,07,06,786/- as more particularly set out in the Particulars of Claim being Exhibit G to the Plaint. The Suit is based on 20 invoices issued by the Plaintiff to the Defendant read with the balance of confirmation of the Plaintiffs ledger as maintained by the Defendant.

***Brief facts of the case are as follows*: -**

2. The Plaintiff carries on business of trading and supply of various kinds of steel material/products. The Plaintiff purchases the steel material/products from various manufacturers, and as per orders received from various customers, the Plaintiff supplies the same either to the customers or then, to the customers warehouses. The Defendant is one such customer of the Plaintiff as was another entity of the Defendant called Shakti Enterprises. It is the Plaintiff's case that the Plaintiff had sold and supplied the steel material/products to the Defendant for which the Plaintiff had issued 20 invoices ("the suit invoices"). The suit invoices were all issued during the period December 2018 to December 2019. The first invoice was dated 13th February 2018 and the last one 6th December 2019. The material terms for payment

under the suit invoices were (i) that the Defendant was required to make payment of the invoice amount within 60 days from the receipt of the said invoice and (ii) in the event payment was delayed beyond 60 days, the Defendant was bound and liable to pay interest @ 24% p.a. for delayed period.

3. In December 2019, the Defendant issued to the Plaintiff an extract of Plaintiff's ledger maintained by the Defendant by which the Defendant has acknowledged and confirmed that an amount of Rs.1,12,22,147.80 was due and payable by the Defendant to the Plaintiff. Thereafter the Defendant made a payment of Rs.18,09,545/- to Plaintiff leaving a balance amount of Rs.94,12,652/-. In March 2020 the Defendant issued following three cheques to the Plaintiff: -

Sr. No.	Date	Cheque No.	Amount (Rs.)
1.	23.03.2020	101462	4,74,852/-
2.	26.03.2020	101463	1,75,962/-
3.	29.03.2020	101464	5,09,854/-

All the said cheques were however returned dishonored. It was thus that the Plaintiff issued an Advocate's notice dated 3rd June 2020 calling upon the

Defendant to make payment of the amount due and payable under the said invoices. By an e-mail dated 19th June 2020 the Defendant informed the Plaintiff that on account of the Covid-19 Pandemic the Defendant's office was closed, and they would revert shortly. However, the Defendant did not make the balance payment nor did the Defendant reply to the Advocate's notice. It is thus that the present Commercial Suit has been filed.

Submissions of Mr. Cama, on behalf of the Plaintiff.

4. At the outset Mr. Cama Learned Counsel for the Plaintiff submitted that the Defendant had duly accepted each of the said suit invoices without any demur or protest. He submitted that the Defendant's contention that the said invoices were not genuine and/or fraudulent was raised only for the first time in the Affidavit in Reply to the Summons for Judgment. He submitted that the said contention was *ex facie* untenable and only a rouse to avoid making payment of admitted amounts since the Defendant had (a) duly accepted the said steel material/products sold and delivered in terms of the respective invoices; (b) consumed the steel material/products sold ; and (c) made part payment in respect thereof. He submitted that delivery and receipt of the said material/product sold by the Plaintiffs under the respective invoices was duly supported with the respective e-way challans, delivery challans, test certificates,

weighbridge slips etc. He thus submitted that there was therefore no question of the Defendant contending that the said steel material/products had not been received or that the said invoices were bogus and/or fraudulent. He submitted that the purported fraud alleged by the Defendant was between Defendant's ex-CEO and other employees in collusion with the Plaintiff. He however submitted that the evidence of delivery of the said material/product was borne out by various third-party documents, none of whom were even alleged by the Defendant to be a party to the alleged fraud.

5. Learned Counsel then pointed out that the Defendant had in December 2019 issued to the Plaintiff the ledger of the Plaintiffs account as maintained by the Defendant by which the Defendant had acknowledged and confirmed that an amount of Rs. 1,12,22,147.80/-- was due and payable by the Defendant to the Plaintiff. Learned Counsel placed reliance upon a judgment of this Court in the case of ***Kaulchand H. Jogani vs M/s. Shree Vardhan Investment & ors.***[1] to submit that a Summary Suit was maintainable on a confirmation of accounts, viz.

> *"42. The edifice of the defence of suit being barred by limitation was sought to be built on the alleged inconsistency in the case of the plaintiff. I find it superfluous to delve deep into this issue for the simple reason that the execution of the*

1 Order dated 10/11/2022 in Summons for Judgment No.28 of 2022

balance confirmations has been specifically admitted in the affidavit-in-reply. It is trite that a balance confirmation furnishes a sustainable foundation for institution of a summary suit.

43. A profitable reference in this context can be made to a Full Bench judgment of this Court in the case of ***Jyotsna K. Valia vs. T. S. Parekh & Co.,*** *wherein it was enunciated that a suit based on duly confirmed accounts by the defendant is tenable as a summary suit. Paragraph 29 of the said judgment reads as under:*

> *"29. In so far as the 'settled account is concerned,' it is no doubt true as noticed by the learned single Judge, that the various judgments adverted to, for holding that the summary suit would lie on a settled account, either of the Privy Council or of the Supreme Court did not arise from suits filed as summary suits. However, after the judgment of the Privy Council (Elvira L. Rodrigues) Sequeira (supra) which has been considered by the Supreme Court in Hiralal & Ors. (supra), a summary suit on a settled account, duly confirmed by the Defendant is maintainable as it is an acknowledgement by the Defendant in the ledger in which mutual accounts have been entered and the accounts settled between them. Such settling of accounts gives rise to a written contract on a fresh cause*

> *of action, with an implied promise to pay the amount settled. A summary suit would therefore lie on 'Settled accounts duly confirmed by the defendants. Issue (1) is answered accordingly."*

44. *Dr. Saraf was justified in placing reliance on a judgment of a learned Single Judge of this Court in the case of* ***Sun and Sand Hotel Limited vs. M/s. V. V. Kamat, HUF*** *wherein in paragraph 27, it was enunciated as under:*

> *"27. In Khan Chand v. Dayaram, AIR 1929 Lahore, 263, affirmed by the Supreme Court in the above case) the Division Bench held that even a balance struck and accepted implies a promise to pay.*
>
> *In Gordon Woodroffe & Co. v. Sk. M.A. Majid & Co., the Supreme Court held :*
>
> > *"The legal position is that the accounts are settled or stated if they are submitted and accepted as correct by the other side to whom the accounts have been rendered. Such a statement of accounts need not be in writing, nor is it necessary, that before the accounts are settled, they should be gone into by the parties and scrutinized and supported by vouchers. It is sufficient if the accounts are accepted and such acceptance may be inferred by*

conduct of parties."

Thus, the balance confirmation letters furnish the plaintiff a cause of action on which the suit is maintainable."

45. *As noted above, in the balance confirmations, for four years preceding the institution of the suit, the outstanding amount stood freezed at Rs.7,95,81,250/-. The plaintiff endeavoured to impress upon the Court that it was so freezed so as to relive the defendants of the burden to deduct the tax at source. The defendants, in contrast, contend that the parties had agreed that no interest would be chargeable and, in fact, there was a mutual agreement between the parties in the month of July-2021 that the defendant would repay the principal amount of Rs.7,00,00,000/- only by 31st December, 2023. This stand of the defendants is manifested in the communications dated 28th September, 2021 and 30th October, 2021."*

Placing reliance on the above, he submitted that the present Suit was maintainable and that it was now not open to the Defendant to raise any dispute in respect of the said invoices since the Defendant had issued a conformation of the ledger in respect of the very same invoices. He submitted that the Defendant had in fact accepted the said invoices by making part payment of a sum of Rs. 18,09,545/-- towards the said invoices. He therefore submitted that any contention now taken by the Defendant was purely in the nature of an afterthought only with the *malafide* intention of not making payment of an admitted liability.

6. Learned Counsel then submitted that the Defendant had infact even claimed the benefit of GST based on the suit invoices thus establishing beyond doubt that the Defendant had infact not only received the said steel material/goods but had also consumed the same. He therefore submitted that the Defendant was therefore precluded from now contending that the same were bogus. He submitted that the contentions of fraud, collusion and bogus invoices were raised for the first time only in the Affidavit in Reply and did find mention in any correspondence between the Parties prior to the filing of the present Suit. He submitted that the purported complaint filed by the Defendant with EOW was only a counterblast to the Writ of Summons which had been served by the Plaintiff upon Shakti Enterprises.

7. Mr. Cama then submitted that the Defendant had in fact pleaded a false case in the Affidavit in Reply. He invited my attention to paragraph 7 of the Reply in which the Defendant had pleaded as follows, viz.

> *"7 I say that in reference to the disputed invoice bills referred in the Plaint, the defendant firm had addressed several emails to the Plaintiff firm to provide corresponding*

> *documents in nature of TC Certificate, e-way bills, weight receipts, lorry receipts and transport bills. The Plaintiff has failed to provide such documents and in Internal Forensic Audit conducted by the Defendant firm, it was learnt that the said transactions are bogus transaction, to take advantage of long standing business relationship between the parties herein. When the Defendant firm learnt about the said fraud, they addressed email to the Plaintiff, not to deposit the alleged cheques mentioned in para 8 of the Plaint. The Plaintiff mischievously adopted policy of chose and pick, in narrating the facts before this Hon'ble Court and had suppressed various material facts which prima-facie establish that the transaction is grossly disputed and appears to be case of fake invoicing. In order to subvert the process of law and to avoid proving his case by leading evidence, the Plaintiff is seeking Summary adjudication of the present dispute, solely to harass the Defendant and to pressurize them from taking any legal action against him."*

From the above he pointed out that the Defendant had in the Affidavit in Reply stated that the Defendant had called upon the Plaintiff not to deposit the said cheques was because the Defendant learnt about the "fraud". He then invited my attention to the e-mail correspondence between the Parties and pointed out therefrom that the Defendant had stated therein the Plaintiff was called upon not to deposit the said cheques on account of "*funds problem*" and not for the reasons set out in paragraph 7 of the Affidavit in Reply. He thus submitted that it was clear that the entire defense of the Defendant was a dishonest one and purely in the nature an afterthought.

8. Learned Counsel then invited my attention to the correspondence annexed to the Affidavit in Reply and pointed out therefrom that the same did not make any mention of any purported fraud, collusion and/or bogus invoices but merely sought documents from the Plaintiff. He submitted that all the said e-mails and been responded to and the documents requested had been furnished by the Plaintiff. He submitted that the Defendant had suppressed these facts as also the replies of the Plaintiff to the said emails from the Affidavit in Reply. He, therefore, submitted that the suppression, was by the Defendant and not by the Plaintiff. He invited my attention to the Rejoinder filed by the Plaintiff read with the compilation of documents filed by the Plaintiff pursuant to the liberty granted by this Court from which the Defendant's contentions of collusion, fraud and short delivery were amply negated. He then submitted that the Defendant's contention that vehicle number mentioned did not pertain to vehicles which could transport the steel material/product was entirely without basis and/or substance. He invited my attention to copies of several e-mails addressed by the Plaintiff to the Defendant each of which contained details of the invoice number along with respective e-way challans, delivery challans, test certificates, weigh-bridge slips and RTO certificates. He therefore submitted

that the Plaintiff's contention that the vehicles used to effect delivery were motorcycles etc and thus not capable of effecting delivery of steel material/products was ex-facie untenable. In support of his contention, he placed reliance upon RTO certificates which were downloaded from Parivahan site which negated the Defendants contentions re the vehicles used to deliver the said steel materials/products .

9. Mr. Cama then without prejudice submitted that the request for test certificates was a complete bogey. He pointed out that the said test certificates had been requested for after the Defendant had duly accepted and consumed/used the said steel material/products. He submitted that in certain cases the quantity mentioned in the Test Certificates would vary from the quantity of steel material/products mentioned in the invoices since the Plaintiff would by steel in bulk/large quantities and then supply the same in smaller lots to different customers. He therefore submitted that in all these cases the test certificate would mention that quantity purchased by the Plaintiff and not the quantity sold to different customers. He submitted that this fact, with therefore, not mean that the test certificates were not genuine oh that there was a discrepancy in the quantity of steel material/products supplied under the invoices. He reiterated that due delivery was evidenced by e-way bills, lorry receipts etc. He, therefore, submitted that there was no merit in the Defendant's

contention that there were discrepancies in the quantity of steel products sold under the said test certificates from those delivered to the Defendant.

10. Learned Counsel, then submitted that the Defendant's contention that this Court did not have jurisdiction was untenable for two reasons (i) that Plaintiff had obtained leave under Clause XII of the Letters Patent; and (ii) the invoices themselves specifically provided that the same would be subject to Mumbai jurisdiction. He, therefore, submitted that it was not now open to the Defendant to contend to the contrary.

11. Basis the above, he submitted that the defense of the Defendant was a complete moonshine and of no substance.

Submissions of Mr. Mishra on behalf of the Defendant

12. *Per contra*, Mr. Mishra, Learned Counsel appearing on behalf of the Defendant at the outset submitted that the invoices and underlying transactions were bogus and were the result of a fraud played upon the Defendant by the ex-CEO of the Defendant in collusion with the Plaintiff and employees of the Defendant. He said that the steel products/goods purportedly sold under the said invoices, were never received by the Defendant. He

submitted that the Defendant had on becoming aware of the fraud played on it has instituted an internal forensic audit and based thereon filed a criminal complaint *inter alia* against the Defendants ex-CEO. He submitted that the same was under investigation and that pending such investigation, no order ought to be passed in the present case.

13. Learned Counsel then submitted that the Plaintiff had suppressed the relevant correspondence from the Plaint by which the Defendant had sought details from the Plaintiffs *inter alia* re the test certificates etc. He submitted that by doing so, the Plaintiff had suppressed material facts from the record of this Court and on this ground alone the Defendant was entitled to unconditional leave to defend the present suit. Learned Counsel pointed out from the documents relied upon by the Plaintiff that several of the registration numbers of some of the vehicles mentioned therein were also bogus. He submitted some of the registration numbers pertained to motorcycles etc. and thus could never have been used to delivery large quantities of steel materials/products.

14. Learned Counsel then submitted that the balance confirmation of the Plaintiff's ledger account could not be changed since there was a pending criminal investigation going on. He, therefore, submitted that the Plaintiff's

reliance upon the same must be viewed in this context and the same did not amount to an admission of liability by the Defendant. He pointed out that the present Suit had only been filed as a counterblast after the Defendant had called upon the Plaintiff not to deposit the said cheques. He then invited my attention to complaint dated 17th December 2020 to submit that the case of the Defendant had been more particularly set out therein. He, therefore submitted that pending such outcome/determination of the criminal proceedings, no further steps ought to be taken in the present Suit.

15. Learned Counsel also invited my attention to the Audit Report of the Defendant under Section 44AB of the Income Tax Act, 1961 filed in Form 3CB wherein it was set out inter-alia that "no proper stock report is maintained" and that there were serious discrepancies in the physical stock of the Defendant firm. He submitted that this Audit Report established that there was mismatch of stock and the actual stock of raw material was not maintained. Learned Counsel therefore submitted that it was thus beyond reasonable doubt that past stock available with the Defendant firm was used to manufacture product in the said period and on the basis of which the benefit of GST had been claimed. In view thereof, he submitted that the Plaintiff had not made out any case for grant of any relief.

16. Learned Counsel submitted that the Defendant had no choice but to claim the benefit GST within the statutory period and had hence done so. He therefore submitted that this could not be a factor upon which leave to defend the Suit could be denied to the Defendant.

Reasons and Conclusion: -

17. I have heard the Learned Counsel considered the rival contentions as also the documents on record. The Hon'ble Supreme Court has in the case of ***IDBI Trusteeship Services Limited vs Hubtown Limited***[2] has laid down the principle to be considered when deciding an application for leave to defend. In the facts of the present case and considering the defenses raised I find that the Defendant has not made out a case for grant of leave to the Defendant either conditionally or unconditionally for the following reasons :-

a. The Defendant's entire case is predicated upon the Internal Forensic Audit Report . In this regard the Defendant in paragraph (h) of the Affidavit in Reply has pleaded as under :-

> *"(h) I say that pursuant to which, the Defendant firm hired a team of professional CA to conduct Internal Forensic Audit in respect of*

2 (2017) 1 SCC 568

> *the transactions between the Defendant's said 2 firms and Plaintiff's 3 entities. The said team of Auditors carefully examined and audited the records between the parties and they prepared exhaustive report dt. 26/09/2020 supported by documentary evidence that the Plaintiff in collusion with our said CEO, lab in-charge, store in-charge and accountant of the Defendant firm were indulged in fake invoicing and had created fake delivery challan, lorry receipts and TC. In most of the cases, TC receipts of other transactions were relied upon in support of the disputed transaction herein."*

Thus the entire defense of the Defendant is predicated upon this Internal Forensic Audit Report, yet the Defendant has not annexed a copy of this Internal Forensic Audit Report to the Reply nor has the same been shown to the Court. Additionally, the Defendant has even failed to disclose the details/name of the "professional CA" who is said to have carried out this Internal Forensic Audit. It is therefore indeed incredulous that the Defendant has premised its entire defense upon this Internal Forensic Audit Report but has chosen not to produce the same. Thus the entire case of fraud and/or collusion is based only upon the *ipse dixit* of the Defendant and nothing more. This coupled with the fact that the Defendant had at no point of time prior to the filing of the present Suit alleged either fraud or collusion in my view makes evident that the defense taken in the Affidavit in Reply is nothing more than an afterthought. From the Defendant's own showing this Internal Forensic Audit Report is dated 26th September 2020, however, the same finds no mention in the correspondence addressed by the Defendant at any point of time.

b. The Defendant has admittedly claimed the benefit of input credit tax based on the said invoices. The Defendant has admittedly not taken any steps to reverse the said tax benefit availed of by the Defendant based on the suit invoices. The Plaintiff has relied upon a statement to show that the GST benefits have been claimed based on the suit invoices and therefore are not inrspect of past supplies as contended by the Defendant. Thus, there can be no dispute that the Defendant has infact received and consumed the same steel materials/products. The Defendant thus having claimed the benefit of GST on the said suit invoices cannot now contend that the same are bogus and/or have been issued fraudulently etc. It would, be wholly malafide and inequitable for the Defendant to on the one hand claim the benefit of GST on the suit invoices and yet on the other challenge, the same as being bogus and/or fraudulently issued. The Defendants contention that the defendant was required to claim the benefit of input tax credit within 30 days from the date of the invoice is also untenable the Defendant has made this claim even after the purported fraud and/or collusion was discovered by the Defendant. The defendant having claimed the benefit of input tax credit cannot now be heard to raise any doubt/dispute as to the validity of the said invoices.

c. The Defendant, in paragraph 7 of the Affidavit in Reply has specifically pleaded that the Defendant had called upon the Plaintiff not to deposit the said cheques because the Defendant learnt about the said fraud. The Defendant has not placed on record a single communication which bears this contention out. In fact the Defendant has not placed on record a single communication prior to the Suit which make a reference to the alleged fraud and/or collusion. Infact, from the correspondence on record, the reason for calling upon the Plaintiff not to deposit the said cheques dated 23rd, 26th and 29th March 2020 was only stated to be on account of "funds problem" and nothing more. Thus, clearly the Defendant has in paragraph 7 pleaded a false case and one which is infact contrary to the material on record. The consequence of pleaded a false case is only too well settled and would therefore disentitle the Defendant to any relief.

d. Even the reliance of the Defendant upon the Audit Report filed by the Defendant under Section 44AB of the Income Tax Act is of no avail because the same merely bears out that the Defendant's house keeping was not in order and that "no proper stock report was maintained". This only militates to show that the Defendant had not maintained its stock properly and cannot be construed to mean even remotely that there was collusion between the Plaintiff and the Defendant's CEO in this regard. The Defendant in paragraph 8 of its Affidavit in Reply has itself pleaded as follows :-

> *"8 I say that the Plaintiff and the Ex-CEO of the Defendant firm took undue advantage of the fact that late Satyanand Singh was suffering from caner and was under hospitalization or bedridden since year 2015-16 and he was unable to manage the affairs of the Defendant firm. The said late Satyanand Sing reposed faith and trust in his said Ex-CEO under presumption that he will diligently handle the affair of the Defendant firm. Unfortunately, the late Satyanand Singh expired on 28/09/2021 due to the complications of cancer. It is only in the year 2020-21 that the wife and the sons of late Satyanand Singhlearnt about the bogus claim of the Plaintiff and when they conducted the forensic audit report of the Defendant firm, they learnt that bogus invoice bills are raised, which were completely mismatching to the quantum of raw material purchased or available with the Defendant firm. On further examination, it was learnt that the connecting documents such as TC receipts, delivery challans, E way bills, weight bridge slips and other documents produced by the Plaintiff are bogus. There was completely mismatch and discrepancies in those documents which is highlighted in paragraph 8(1) of my Affidavit in Reply."*

The Plaintiff has in its Affidavit in Rejoinder and Additional Compilation brought on record the overwhelming evidence/proof of the fact that (a) the said materials/products were delivered to the efendant and supporting documents in respect thereof; and (b) these supporting documents were issued by third parties against whom no allegations of collusion have even been made. Given this I find that the Defendant even assuming such mismatch is seeking incorrectly lay the blame upon the Plaintiff.

e. Additionally, the Defendant has admittedly (a) issued a balance confirmation of accounts (b) made part payment towards the invoices (c) issued cheques towards further part payment and (d) claimed benefits of GST based on the suit invoices. There is no denial to any of these facts nor any retraction of the balance confirmation. The law that a summary Suit can be maintained based upon a balance confirmation of accounts is now only too well settled. Also, it is equally well settled that fraud must be pleaded giving details. In the present case, I find the Plaint is bereft of the necessary details. As I have also found, the very internal forensic report which would presumably have the necessary details has been held back from the Court, thus there is nothing on record to support the Plaintiffs allegation of fraud apart from the Plaintiffs mere ipse dixit . Another factor on this aspect is that while the Defendant has pleaded that the fraud and/or collusion was at the hands of the Defendants ex CEO and the Plaintiffs, the Plaintiff has relied upon and produced e-way challans, delivery challans, test certificates, weigh-bridge slips. All these have been issued by third parties and evidence due delivery of the said steel materials/products sold under the suit invoices to the Plaintiff. It is not even the Plaintiffs case that these third parties are party to the alleged fraud and/or have acted in collusion. The Plaintiff has relied on the official RTO records to disprove the Plaintiffs allegation that the vehicles by which the said steel material/products were delivered were motorcycles etc.

18. In view of the aforesaid, I find that the Defendants defense can be termed only as vexatious and frivolous. I therefore have no hesitation in holding, in the facts of the present case, that the Defendant is not entitled to any leave to defend. Hence, I pass the following order: -

: ORDER:

(i) Summons for Judgment is allowed.

(ii) Suit stands decreed.

(iii) The Defendant to pay the Plaintiff the sum of Rs.1,07,06,786/- (Rupees One Crore Seven Lakhs Six Thousand Seven Hundred Eighty Six only) with interest on the principal amount of Rs.94,12,652/- at the rate of 9% p.a. from the date of filing of the Suit till payment and/or realization.

(iv) The Plaintiff is entitled to refund of Court Fees, if any, as per Rules.

(v) Decree be drawn up and sealed expeditiously.

(ARIF S. DOCTOR, J.)