

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

COMMERCIAL SUMMARY SUITS NO. 813 OF 2018

Smt. Kanchan Vaswani
M/s. K. G. Marketing
v/s.
M/s. K. W. Engineering & Signs
Pvt. Ltd.

....Plaintiff

....Defendant

...

Mr. J. Mitra a/w. Ms. Anusha Pujary i/b. F. H. Ladha & Co. for the
Plaintiff

...

CORAM : KAMAL KHATA, J.

DATED : 31ST JULY 2023.

P.C. :

1. The Plaintiff has filed this Commercial Summary Suit seeking a decree against Defendant to pay a sum of ₹2,16,79,745/- (Rupees Two Crore Sixteen Lakhs Seventy Nine Thousand Seven Hundred and Forty Five Only) along with interest thereon at 12 % per annum from the date of the notice being 22nd December, 2016 till 22nd January 2018 being the date of filing of the suit aggregating to ₹ 28,18,366/- and further interest at such rate as this court deems fit and proper on the principal amount of Rs.1,48,88,036/- (Rupees One Crore Forty Eight Lakhs Eighty Eight Thousand and Thirty Six Only) till actual payment and realization.

2. The suit claim is based on goods sold and delivered evinced by the invoices and delivery challans. The Defendant has utilized the goods without any objection. No goods received under the invoices were returned by the Defendants on ground of poor quality. The Defendant failed to furnish 'C' Forms in respect of 34 invoices and caused the Plaintiff CST liability of ₹ 31,78,974 at 10.5% interest and penalty thereon. The Plaintiff also sent debit notes in the sum of ₹ 6,000/- for not furnishing 'C' forms to the Sales Tax Authorities. It is stated that the Defendant has used the goods and supplied the finished product to the Public Works Department (PWD) of Central Government who accept the goods only if the stringent specifications and requirements are met lest no payments would have been made to the Defendant.

3. The learned counsel for the Plaintiff submits that the Plaintiff by a letter dated 24th September 2016 sought balance due confirmation from the Defendant to which there is no reply. It is submitted that the Plaintiff's Advocate sent a demand notice dated 22nd December 2016 setting out the facts and demanding payment in response to which a cheque for ₹ 5,48,360/- was sent. The Plaintiff has given due credit and reduced their claim to that extent.

4. The learned counsel draws my attention to the letter dated

15th October 2014 along with debit notes received on 20th October 2016 by the Plaintiff whereby the Defendant referred to LD Deductions on account of delay in supply of material in the sum of ₹ 2,42,41,577.37 along with interest @21 % per annum and not only claimed the same but threatened to take legal action against the Plaintiff on failure to pay. It is submitted that by a letter dated 17th November 2016 Defendant not only denied the alleged claims but substantiated their denial by indicating that whilst the debit notes related to the period 2012 to 2016 they bore a common date viz. 12th May 2015. Furthermore, whilst the letter was dated 15th October 2014, the Debit notes were dated 12th May 2015 which would clearly evince the mala fide intent with which the letter was sent. He further submitted that the letter evinces admission of supply of goods without any objections to their quality whilst merely alleging delay in delivery. He submitted that the letter is sent with a mala fide intent to create an illusory dispute that is clearly unsubstantiated and consequently there is no legitimate defense to the claim. Therefore prayed that the Plaintiff's suit be decreed.

5. By an order dated 14th March 2018 this Court had granted leave under clause XII of the Letters Patent, though the Defendant was outside Mumbai, as a material part of the cause of action arose within the jurisdiction of this Court.

6. The Defendants have not entered appearance despite due service of writ of summons and consequently this suit proceeds *ex parte* as recorded in this court's order dated 26th April 2023.

7. Order XXXVII Rule 2 sub rule (3) lays down that on default of entering an appearance by the Defendant, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree.

8. The Plaintiff have filed the following:

(i) an affidavit in lieu of examination-in-chief of the plaintiff dated 21st June, 2023,

(ii) List of original documents referred to and relied upon in the plaint along with the particulars of claim and

(iii) an affidavit of service dated 11th December 2018 evincing service on the Defendant on 28th October 2018.

9. I have perused the papers and proceedings filed and are on the court records and am of the view that the Plaintiff's averments in the plaint deserve to be accepted. I find no reason to disbelieve it. The reply dated 15th October 2014 is clearly an admission of the goods supplied and the debit notes attached are a sham to create

an illusory defense to delay and deprive the Plaintiff of their legitimate and substantiated claim. Consequently, I am of the view that the Plaintiff is entitled to a decree in this summary suit filed in the commercial division under order XXXVII Rule 2 (3) of the Code of Civil Procedure 1908. I accordingly pass the following order.

10. Ordered and decreed that the Defendant shall pay to the Plaintiff a sum of ₹ 2,16,79,745/- along with interest in the sum of ₹ 28,18,366/- @ 12% per annum from 17th November 2016 i.e. issue of notice till 17th February 2018 being filing of the suit and further interest on the principal sum of ₹ 1,48,88,036/- at 12 % per annum from 18th February 2018 till payment and realization.

11. The costs of the suit in addition to the amount deducted from the court fees refunded, I estimate at ₹ 2,00,000/-.

12. Refund of court fees as per High Court Rules.

13. Decree to be drawn and sealed expeditiously.

14. Office to return the original documents to the Plaintiff's Advocate upon such application against certified true copies.

(KAMAL KHATA, J.)