

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

COMMERCIAL SUMMARY SUITS NO. 689 OF 2018

Smt. Kanchan Vaswani
M/s. K. G. MarketingPlaintiff
v/s.
M/s. Suvidha Sign Studios Pvt. Ltd.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 defendants to pay a sum of ₹1,90,29,459/- (Rupees One Crore Ninety Lakhs Twenty Nine Thousand Four Hundred and Fifty Nine Only) along with interest thereon at 12 % per annum from the date of the notice being 22nd November, 2016 till 22nd January 2018 being the date of filing of the suit aggregating to ₹ 26,64,124/- and further interest at such rate as this court deems fit and proper on the principal amount of Rs.1,41,51,552/- (Rupees One Crore Forty One Lakhs Fifty One Thousand Five Hundred and Fifty Two 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. Plaintiff's Advocate notice dated 22nd November 2016 setting out the facts and demanding payment was responded to by Defendant's letter dated 26th December 2016.

3. The learned counsel for the Plaintiff submits that the Defendant's stand their letter dated 26th December 2016 is self-contradictory in as much as it is admitted that all 'C' forms have been issued to the Plaintiff and none are pending at Defendant's end for the goods delivered. He further submitted that the letter evinces bare denials and unsustainable vague defenses raised with an intent to create an illusory dispute. He submitted that the Plaintiff suit be decreed.

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

5. 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.

6. 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.

7. 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 20th October 2018.

8. 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 26th December 2016 is clearly self-contradictory and an illusory defense is raised with an intent

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.

9. Ordered and decreed that the Defendant shall pay to the Plaintiff a sum of ₹ 1,90,29,459/- along with interest in the sum of ₹ 26,64,124/- at the rate of 12% per annum from 26th November 2016 i.e., issue of notice till 22nd January 2018 being filing of the suit and further interest on the principal sum of ₹ 1,41,51,552 at 12 % per annum from 23rd January 2018 till payment and realization.

10. The costs of the suit in addition to the amount deducted from the court fees refunded, I estimate at ₹ 1,50,000/-.

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

12. Decree to be drawn and sealed expeditiously.

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

(KAMAL KHATA, J.)