IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

SUMMONS FOR JUDGMENT NO. 1 OF 2023

IN

COMMERCIAL SUMMARY SUIT NO. 128 OF 2021

Mikas Stainless Steels Pte. Ltd.)
a company incorporated under the)
laws of Singapore having its)
registered office at 133, Cecil Street,)
Suite 16-01, Keck Seng Tower,)
Singapore-069535. ...Plaintiff

Versus

Mr. Ashok Mehta)
Sole Proprietor of M. M. Metal)
International)
Having his office address at:)
28/30, Gajanan Darshan Building,)
1st Floor, C.P. Tank Road,)
Mumbai-400 004) ...Defendant

Mr. Siddhesh Bhole and Mr. Aditya Gupta i/by. SSB Legal & Advisory for the Plaintiff.
Mr. Vikramjit Garewal i/by. Mr. Jitendra Jain for Defendant.

CORAM : ARIF S. DOCTOR, J.
RESERVED ON : 15th MARCH, 2023
PRONOUNCED ON : 18th APRIL, 2023

JUDGMENT:

1. The present Commercial Summary Suit has been filed seeking a decree *inter alia* for a sum of US Dollars 1,86,910/- as more particularly set out in the particulars of the claim annexed as Exhibit-M to the Plaint.

The brief facts are as follows: -

2. The Plaintiff is engaged in the business of the manufacturing, processing and supplying of stainless-steel products. The Defendant is the sole proprietor of M. M. Steel International and is engaged in the business of importing, exporting, stocking and supplying of stainless-steel products. On 17th May 2018 the Plaintiff issued a sales contract dated 17th May 2018 (the suit contract) to the Defendant. The suit contract was accepted by the Defendant's son as authorized representative of the Defendant.

3. Under the suit contract, the Plaintiff was to sell and supply hot rolled stainless steel coil to the Defendant. The contract value was USD 233,910, of which, 20% was to be paid as a deposit and the balance amount was to be paid within 60 days from the bill date. The Plaintiff issued to the Defendant a proforma invoice dated 17th May 2018 for a sum of US Dollars 187,128/- being 80% of the consignment value in terms of the Suit Contract. The proforma invoice was duly acknowledged by the Defendant's son.

4. The Defendant thereafter made payment of the 20% advance amount and the Plaintiff on 4th June 2018 delivered the consignment of hot rolled stainless steel coil to the Plaintiff in terms of the suit contract. The Plaintiff then issued an invoice dated 4th June 2018 to the Defendant for a sum of US Dollars 186,910/- being the balance amount payable under the suit contract. The invoice provided for payment of interest at the rate of 12% per annum if there was delay. Thus, in terms of the suit contract, the Plaintiff was to make the balance payment within a period of 60 days from the date of the invoice i.e., on or before 3rd August 2018.

5. The Defendant did not make the balance 80% payment within a period of 60 days i.e. on or before 3rd August 2018. However, the Defendant thereafter made payment to the Plaintiff of the following amounts i.e., US Dollars 10,000/- on 24th August, 2018, US Dollars 10,000/- on 21st September, 2018 and US Dollars 2,000/- on 23rd January, 2019. Thus leaving a balance of US Dollars 164,910/- as being due and payable to the Plaintiff.

6. Given the Defendant's failure to make the balance payment despite repeated assurances and follow ups with the Defendant's authorized representative and since no further payments were forthcoming, the Plaintiff initiated mediation under the provisions of Section 12A of the Commercial Courts Act, 2015, before the main Mediation Center, High Court of Judicature at

Bombay (Mediation Center). However, since the Defendant did not appear in the Mediation proceedings, despite several opportunities being given, a Non-Starter Report dated 24th August, 2021 came to be filed.

7. Thereafter, on the very next day i.e. 25th August, 2021, the Defendant addressed an email stating that the Defendant was unable to attend the hearing on 24th August, 2021 on account of "*continuous instability of my health conditions due to ages now*". The Defendant therefore sought a last opportunity to settle the dispute by mediation. On that day itself, the Member Secretary, Maharashtra State Legal Services Authority, Mumbai passed an order for recall of the Non-Starter Report issued the day prior i.e. 24th August, 2021 for the reasons set out in the said order. The Plaintiff, thereafter, on 28th August, 2021 filed the present Suit. On 30th August, 2021, the mediation center issued a notice for payment for mediation charges to the parties. The Plaintiff then by their advocate's letter dated 30th August, 2021 placed on record that the order dated 30th August, 2021 came to be passed on false and misleading submissions of the Defendant. The letter pointed out that the mediation center was also informed of the filing of the present Suit. The letter therefore recorded that appropriate directions be passed for closing the mediation proceedings for the reasons more particularly set out in the said letter. On 30th August, 2021, a hearing was held in office of the Member Secretary, Maharashtra State Legal Services Authority, Mumbai to consider the Defendant's Application. Notice

was issued to both the parties subject to payment of mediation fees and the same was returnable on 6th September, 2021. The Defendant thereafter appears to have paid/deposited the mediation fees.

8. On 6th September, 2021, the Member Secretary, Maharashtra State Legal Services Authority, Mumbai was pleased to pass the following order:-

> *"1) The order of this Authority dated 30/08/2021 regarding recalling of non-starter report in PIMS No. 72/2021 shall be communicated to the concerned Registrar of the Hon'ble High Court.*
>
> *2) Awaiting the orders there from, the Pre-Institution Mediation process be kept in abeyance."*

9. It was in this backdrop that the Plaintiff then on 16th June 2022 took out the present Summons for Judgment. The Defendant filed its Reply, to which, the Plaintiff filed its Rejoinder. The Defendant then, by an Additional Affidavit cum Sur Rejoinder, took the plea that the pre-mediation process was not concluded, and the authority was awaiting further directions and therefore the Suit was contrary to the provisions of Section 12A of the Commercial Courts Act, 2015 and that the Plaint was liable to be rejected on this ground alone.

Submissions of Mr. Garewal on behalf of the Defendant.

10. Since a preliminary issue of maintainability was raised, Mr. Garewal learned counsel for the Defendant argued first. He submitted that the

Non-Starter Report dated 24th August 2021 had admittedly been recalled. He submitted that there could be no dispute to this fact. Learned Counsel pointed out that the Non-Starter Report was recalled after recording the consent of the learned Advocate for the Plaintiff. He therefore submitted that (a) the Suit could not have been filed since the mandatory prerequisite contained in Section 12A of the Commercial Courts Act, 2015 was not complied with and (b) that the Plaintiff could now not contend that the requirement of Section 12A stood complied with since the Plaintiff had through its Advocates consented to the recall of the said Non-Starter Report. Learned Counsel thus submitted that the Plaint was thus liable to be rejected under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 since the provisions of Section 12A of the Commercial Courts Act, 2015 had not been complied with.

11. Learned counsel then placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Patil Automation Private Limited and Others Vs. Rakheja Engineers Private Limited***[1] to contend that in the present case, since the Non-Starter Report had been recalled on 25th August, 2021, the same was before the Plaint had been registered and thus there was no valid institution of the Suit for want of compliance of Section 12A of the Commercial Courts Act, 2015. In support of his contention, he placed reliance upon the following paragraphs of the said judgment: -

1 2022 SCC Online SC 1028

"77. Another area of debate has been about the distinction between the presentation of a plaint and institution of a Suit. Section 3(2) of the Limitation Act, 1963, provides that for the purpose of the Limitation Act, a Suit is instituted in the ordinary case, when the plaint is presented to the proper officer. In the case of a pauper, the Suit is instituted when his application to leave to sue as a pauper is made. Order IV Rule 1 of the CPC reads as follows:

"Order IV Rule 1. Suit to be commenced by plaint. -(1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints this behalf

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)."

78. Sub-Rule (3) of Order IV Rule 1 was inserted by Act 46 of 1999 w.e.f. 01.08.2002. Shri Sharath Chandran has drawn our attention to the Judgment of the High Court of Madras reported in Olympic Cards Limited v. Standard Chartered Bank[29]*. In the said case, the question, which arose was, whether there was an abandonment or withdrawal of suit within the meaning of Order XXIII Rule 1 of CPC, which would operate as a bar to file a fresh suit. In this context, we notice the following discussion:*

"16. Rule (1) of Order 4 of C.P.C. provided for institution of Suits. Rules 3 & 4 of Order 4 contains the statutory prescription that the Plaint must comply with the essential requirements of a valid Plaint and then only the process of filing would culminate in the registration of a Suit. Rule 21 of Civil Rules of Practice

contains basis difference between presentation and institution. There is no dispute that the date of filing the Plaint would be counted for the purpose of limitation. However, that does not mean that the Suit was validly instituted by filing the Plaint. The Plaint, which does not comply with the Rules contained in Orders 4 & 7, is not a valid Plaint. The Court will initially give a Diary Number indicating the presentation of Suit. In case the Plaint is returned, it would remain as a "returned Plaint" and not a "returned Suit". The act of numbering the Plaint and inclusion in the Register of registration of Suit are all preliminary in nature. The Stages prior to the registration is for the purpose of complying with certain defects pointed out by the Court. The further procedure after admitting of the Plaint is indicated in Rule 9 of Order 7. This provision shows that the Court would issue summons to the parties after admitting the Plaint and registering the Suit. Thereafter only the Defendants are coming on record, exception being their appearance by lodging caveat. Even jurisdiction under Rule 10 of Order 7 of C.P.C. The fact that the Plaintiff/Petitioner served the Defendant/respondent the copies of Plaint/Petitions before filing the Suit/Petition would not amount to institution of Suit/ filing Petition. It is only when the Court admits the Plaint, register it and enter it in the Suit register, it can be said that the Suit is validly instituted.

17. It is, therefore, clear that any abandonment before the registration of Suit would not constitute withdrawal or abandonment of Suit within the meaning of Order 23, Rule 1, C.P.C., so as to operate as a legal bar for a subsequent Suit of the very same nature. It is only the withdrawal or abandonment during the currency of a Legal proceedings would preclude the Plaintiff to file a fresh Suit at a later point of time on the basis of the very same cause of action."

> *79. The contention appears to be that it may be a fair view to take that there is no institution of the suit within the meaning of Section 12A, until the Court admits the plaint and registers it in the suit register. In other words, presentation of the plaint may not amount to institution of the Suit for the purpose of Order IV Rule 1 of the CPC and Section 12A of the ct. If this view is adopted, it is pointed out that before the plaint is registered after presentation and there is non-compliance with Section 12A, the plaintiffs can, then and there, be told off the gates to first comply with the mandate of Section 12A. This process would not involve the Courts actually spending time on such matters. In the facts, this question does not arise and, it may not be necessary to explore this matter further."*

Basis the above, he submitted that since the Non-Starter Report had been recalled and mediation proceedings were kept in abeyance and had not been completed, there was no valid institution of the Suit since no mandatory prerequisite under Section 12A of the Commercial Courts Act, 2015 remained to be complied with.

12. He then, on merits, submitted that the Defendant was entitled to unconditional leave to defend the suit for the following reasons, viz.

a) That the Plaintiff had taken out the Summons for Judgment belatedly.

b) That the suit was neither based on a debt or a liquidated sum of demand.

c) That the Plaintiff had failed to produce any record of any proof of acceptance of the proposal and the receipt by the Defendant but had relied upon the actions of the alleged authorized representative of the Defendant.

d) That the Defendant's son was not the authorized representative of the Defendant and was not authorized to enter into the Suit Contract.

e) That in the absence of the Plaintiff establishing that the Defendant had accepted the suit contract, the question of their being any concluded a contract between the parties on which a summary suit would lie, did not arise.

f) The Defendant had denied the authenticity and veracity of the WhatsApp chats and communications relied upon by the Plaintiff to contend that the Plaintiffs claim had been admitted by the Defendant.

13. Thus, basis the above the learned counsel for the Defendant submitted that the suit must necessarily be rejected since the same had been filed without compliance of the mandatory requirement of Section 12A of the Commercial Courts Act, 2015 and in the alternative and without prejudice submitted that the Defendant ought to be granted unconditional leave to defend the Suit for the reasons set out in the Affidavit-in-Reply.

Submissions of Mr. Bhole on behalf of the Plaintiff

14. Mr. Bhole learned counsel for the Plaintiff submitted that the

Plaint had been properly instituted and registered. He submitted that the Defendant had despite ample opportunity given by the Mediation Center, not only did the Defendant not appear, but also did not even have the courtesy of responding to the notices/intimations sent by the Mediation Center. He submitted that the Defendant had not appeared despite being given five opportunities. He therefore submitted that the Non-Starter Report had correctly been filed and the Plaint properly registered and instituted. He submitted that there had been full and due compliance with the provisions of Section 12A of the Commercial Courts Act, 2015. He submitted that the ground now taken was only in an attempt to delay the hearing of the present Suit given that the liability was admitted and that the Defendant did not have any case on merits to the Plaintiff's claim.

15. Without prejudice to the above, he submitted that the order of recall was passed based on false and misleading submissions made by the Defendant and an incorrect recording of the submissions of the advocate, who appeared for the Plaintiff. He submitted that this was therefore recorded in the Plaintiff's Advocate's letter dated 30th August 2021 addressed to the Deputy Registrar, Main Mediation Center, High Court of Bombay.

16. Mr. Bhole at the outset submitted that the prayer clause inadvertently mentioned that a sum of USD 186,910/- was due and payable

when in fact the same should read as USD 164,910/- in view of the part payment made. He then on merits pointed out that the entire defence put forth by the Defendant was patently false and dishonest. He pointed out the following viz.,

a) That the there was no dispute raised at all about the delivery, quantity or quality of the goods sold and delivered to the Defendant.

b) That the Defendant had in fact made advance payment towards the goods supplied and subsequently made further part payments the following amounts viz., US Dollars 10,000/- (on 24th August 2018), US Dollars 10,000/- (on 21st September 2018) and US Dollars 2,000/- (on 23rd January 2019).

c) That at no point of time prior to the filing of the Affidavit-in-Reply had the Defendant ever taken the stand that (i) Dhanesh Mehta was not authorized or (ii) that the Defendant was not liable to make the payment of the amounts under the said sales contract/purchase order.

d) That the very sales contract itself made plain that Dhanesh Mehta was the authorized representative of the Defendant as it was signed by Dhanesh Mehta and affixed by the Defendant clearly describe Dhanesh Mehta as the authorized representative.

e) He submitted that the correspondence produced showed unequivocal acceptance of liability of the Defendant by Dhanesh Mehta. He therefore submitted that there was absolutely no ground made out by the Defendant for grant of unconditional leave to defend that the defence of the Defendant was completely dishonest, vexatious and frivolous and thus the Plaintiff was entitled to a decree as prayed for.

17. I have heard learned counsel for the parties and perused the pleadings and after a careful consideration of the same have absolutely no hesitation in holding that the Plaintiff is entitled to a decree as prayed for. The defense of the case by the Defendant is not only frivolous and vexatious, but infact patently dishonest for the following reasons, viz.

i. The Defendant's contention that the present Suit is liable to be rejected because of non-compliance with Section 12A of the Commercial Courts Act, 2015 is one which is required to be stated to be rejected in the facts of the present case. It is not in dispute that the Defendant despite being given five opportunities, did not appear before the mediation center. The Defendant also did not even once respond to the notices sent nor did the Defendant seek time. Though the Defendant has in its Additional Affidavit cum Sur-Rejoinder contended that he had requested the mediation center to adjourn the meetings, nor a single such letter was produced. The Defendant has pleaded "The said correspondences are not traceable at present with me". It was in these circumstances that the Non-Starter Report came to be filed. However, on the very next day, after the filing of the Non-Starter Report, the Defendant for the first time addressed an email to the mediation center stating that the reason for non appearance was on account of ill health. However, no details much less any medical reports were annexed or even relied upon to show what the alleged ill heath was which prevented the Defendant from appearing before the mediation center on five different occasions. The conduct of the Defendant is more than telling. The Defendant who does not once either seek time nor appears before the mediation center despite being given five chances and who then is jolted into action only when a Non-Starter Report comes to be filed is clearly someone who is not remotely interested in mediation. The object and purpose of Section 12A of the Commercial Courts Act, 2015 is to provide an opportunity and encourage parties to attempt to settle their disputes outside Court by availing of the mechanism of mediation. This process to be fruitful would necessarily require both Parties to act in a sincere and bonafide manner in working towards a resolution of their disputes using the mechanism of mediation as provided for. It is not a provision which is to be used by the Defendant to delay and/or defeat the filing of a Suit against the Defendant. Therefore, the intention of both parties to arrive at a settlement must be genuine and bonafide. In the facts of the present case, I have no hesitation in holding that the Defendant's bonafides in arriving at any settlement in the pre-institution mediation proceedings are wholly lacking for the reasons already recorded. Thus I find that the Non-Starter Report was properly filed and constitutes due compliance with Section 12A of the Commercial Courts Act, 2015. The Defendant's contention that the said Non-Starter Report has been recalled is entirely devoid of merit. The circumstances in which the said recall order came to be passed has been more than adequately explained in the Applicant Advocate's letter and thus it is clear that mediation proceedings before the mediation center cannot now be reopened in the manner which the Defendant seeks to do. To permit such a course of action would be to allow the Plaintiffs suit to be inordinately delayed. Hence, I have no hesitation in holding that the said Non-Starter Report had been validly filed and the institution of the present Suit was in compliance with the provisions of Section 12A of the Commercial Courts Act, 2015.

ii. Even on merit I find that the stand taken by the Defendant is entirely lacking in merit. The Defendant has neither disputed due receipt of the goods in terms of the suit contract nor has disputed making part payments towards the same. No dispute whatsoever has been raised at any time prior to the Affidavit in Reply regarding the authority of the Defendants son or of the fact that admissions of liability as also assurances of payment of the monies due and payable to the Plaintiff by the Defendant have been made. Even after the suit has been filed, the Defendant does not in the Affidavit in Reply dispute either due receipt of the goods or the making of part payments to the Plaintiff in respect thereof. The defence sought to be putforth for the first time is essentially that the Defendants son was not authorized and that nothing has been shown to prove that the Defendant accepted the suit contract. All this from a Defendant who does not dispute the receipt of the goods, raises no dispute about quality and quantity and makes part payment for the said goods. Therefore, at this juncture and in these circumstances to permit such defences to be taken would amount to putting a premium on dishonesty to say the least. Additionally, this stand by itself makes glaring the malafides of the Defendant who on one hand submits that mediation has not been exhausted where on the other seeks to deny the entire transaction and liability of the Defendant. Clearly therefore the contention that mediation has not been exhausted is nothing more than a play for time and attempt to delay the present Suit.

iii. The Hon'ble Supreme Court has in the case of ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.***[2] laid down the guiding principles for the grant/refusal of leave to defend. The Hon'bel Supreme Court has in paragraph No.17.5 of the said judgment held as follows:-

> *"**17.5.** If the Defendant has no substantial defence and/or reaises no genuine triable issues, and the court find such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith."*

18. In the facts of the present case, I have absolutely no hesitation in holding that the defences raised by the Defendant are wholly frivolous and vexatious in nature. In the facts of the present case to permit the Defendant leave to defend (even conditionally) would be amounting to putting premium on dishonesty. Therefore, I pass following order:-

i. Summons for Judgment is allowed.

ii. Suit stands decreed.

iii. The Defendant to pay the Plaintiff a sum of USD 186,910/- (US Dollars One Lakh Eight Six Thousand Nine Hundred and Ten only) along with interest of 12% p.a. from 3rd August, 2018 till 12th April, 2021 amounting to USD 60,145.30 (US Dollars Sixty Thousand One Hundred and Forty Five and Cents Thirty only).

2 (2017) 1 SCC 568

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.)