



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

**APPEAL NO.71 OF 2025
WITH
INTERIM APPLICATION (L) NO.18413 OF 2023
IN
APPEAL NO.71 OF 2025
IN
SUMMONS FOR JUDGMENT NO.1 OF 2023
IN
COMMERCIAL SUMMARY SUIT NO.128 OF 2021**

Ashok Mehta

...Appellant/Applicant

V/s.

Mikas Stainless Steels Pte. Ltd.

...Respondent

Mr. Sharad Bansal i/b. _____
Mr. Laxman I. Jain for the
Appellant/Applicant.

Ms. Apporva Kulkarni with Ms. Bhavika Thakkar i/b. M/s.
SSB Kagal & Advisory for the Respondent.

CORAM: ALOK ARADHE, CJ. &

SANDEEP V. MARNE, J.

Dated: 16 JULY 2025.

P.C.:

1) The Appellant has filed the present Appeal under the provisions of Section 13(1-A) of the Commercial Courts Act, 2015 (**Act of 2015**) challenging the judgment and decree dated 18 April 2023 passed by the learned Single Judge of this Court in

Summons for Judgment No.1 of 2023 filed in Commercial Summary Suit No.128 of 2021. The learned Single Judge has allowed the Summons for Judgment and has decreed Plaintiff's Suit directing Appellant-Defendant to pay to the Plaintiff the awarded sum alongwith interest @ 12% per annum from 3 August 2018 till 12 April 2021.

2) Brief facts leading to the filing of the Appeal are as under:-

Plaintiff is engaged in the business of manufacturing, processing and supplying stainless steel products. Defendant is the sole proprietor of MM Steel International and is engaged in the business of import, export, stocking and supplying of stainless steel products. On 17 May 2018, Plaintiff issued sales contract to the Defendant, under which Plaintiff was to sell and supply hot rolled stainless steel coil to the Defendant on contract value of USD 2,33,910. Out of that amount, 20% was to be paid as deposit and balance amount was to be paid within 60 days from the bill date. The Plaintiff issued to the Defendant a proforma invoice dated 17 May 2018 in the sum of USD 1,87,128/- being 80% of the consignment value. Proforma invoice was duly acknowledged by the Defendant's son. Defendant thereafter made payment of 20% advance amount and Plaintiff delivered the consignment of hot rolled stainless steel coil to the Defendant on 4 June 2018. The Plaintiff thereafter issued invoice dated 4 June 2018 to the Defendant for USD 1,86,910/- being the balance amount payable under the contract. The Defendant failed to make payment against the said invoice within 60 days i.e. on or before 3 August

2018. However, Defendant paid to the Plaintiff amounts of USD 10,000/- on 24 August 2018, USD 10,000/- on 21 September 2018 and USD 2,000/- on 23 January 2019. The balance amount of USD 1,64,910/- remained unpaid by the Defendant.

3) Plaintiff initiated mediation under provisions of Section 12A of the Act of 2015, which resulted in Non-Starter Report dated 24 August 2021 on account of failure on the part of the Defendant to appear for mediation proceedings. Defendant thereafter sent email dated 25 August 2021 seeking an opportunity to settle the dispute by mediation. The Non-Starter Report was recalled by the Mediation Centre. Plaintiff filed Commercial Summary Suit No.128 of 2021 on 28 August 2021. The Plaintiff thereafter took out Summons for Judgment on 16 June 2022. Defendant filed reply. By impugned judgment and decree dated 18 April 2023, Summons for Judgment is made absolute by decreeing the Suit. By orders dated 20 April 2023 and 2 May 2023 the operative part in paragraph No.18(iii) of the judgment dated 18 April 2023 has been corrected.

4) Mr. Bansal, the learned counsel appearing for the Appellant-Defendant has essentially raised only two points in support of the Appeal. Firstly, he would contend that Non-Starter Report was recalled by the Secretary, Maharashtra State Legal Services Authority, Mumbai and that therefore the Plaintiff could not have instituted suit under Section 12A of the Act of 2015. Secondly, he would contend that Plaintiff has purchased insurance policy and has recovered the entire sum due

from the Defendant from the insurance company after sanction of the insurance claim. It is therefore submitted that the Plaintiff cannot be permitted to recover the same amount once again from the Defendant.

5) The appeal is opposed by Ms. Kulkarni, the learned counsel appearing for the Respondent-Plaintiff, who supports the findings recorded by the learned Single Judge in the impugned judgment and decree. She would submit that the point of insurance claim is raised for the first time directly before this Court. That the learned Single Judge has rightly decreed the Suit after noticing absence of any defence for the Defendant.

6) We have heard the learned counsel appearing for both the parties and perused the records.

7) So far as the first point of impermissibility to institute suit by Plaintiff in view of bar under Section 12A of the Act of 2015 is concerned, the learned Single Judge has held that five opportunities were given to the Defendant to attend the mediation proceedings, but Defendant neither appeared nor sought time. Though Defendant took a stand in additional affidavit-cum-surrejoinder that he had requested the mediation center to adjourn the meeting, not a single letter was produced under the pretext of the correspondence not being traceable. So far as Defendant's email for recall of Non-Starter Report is concerned, the learned Single Judge has refused to believe the pretext of ill health put forth by the Defendant. The learned Single Judge has doubted the conduct of the Defendant, who was

non-responsive despite grant of five chances and suddenly appeared on the scene after the Non-Starter Report came to be filed. The learned Single Judge has appreciated the object and purpose of the Act of 2015 and has held that Defendant did not have *bonafide* intention of arriving at a settlement and was merely attempting to delay filing of suit by the Plaintiff. We do not find any element of perversity in the above findings recorded by the learned Single Judge. First point raised by Mr. Bansal accordingly deserves rejection.

8) So far as the second point of Plaintiff recovering the sum through insurance claim is concerned, the said point was not raised before the Single Judge by the Defendant. No application is filed seeking leave of this Court to file additional evidence under provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908. In that view of the matter, no cognizance can be taken of the additional material that is sought to be produced directly before this Court.

9) Considering the overall conspectus of the case, we do not find any valid ground to interfere in the impugned judgment and order dated 18 April 2023. The Appeal is accordingly **dismissed** with costs.

10) Pending Applications, if any stand disposed of

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]