

(2011) 09 BOM CK 0086

In the Bombay High Court

Case No : Summons for Judgment No. 45 of 2010 in Summary Suit No. 2818 of 2009

Ajay Aggarwal

APPELLANT

Vs

Mohit Aneja

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Citation : (2012) 1 BomCR 158

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Yashpal M. Jain, for the Appellant; Mohan V. Khatavkar, for the Respondent

Judgement

Anoop V. Mohta, J.—The Plaintiff has filed the Summary Suit to recover a sum of Rs. 18,14,447.90 ps. based upon the invoices of delivery of goods and the confirmation letter dated 1 April 2007.

2. In the invoices, there is a clear clause with regard to the Bombay jurisdiction.

3. In view of this agreed clause, the Suit as filed in Mumbai, is maintainable. The Plaintiff has also taken leave under Clause 7 of Letters of Patent on 6 October 2009. The Summons for judgment is dated 22 January 2010. Replied by the Defendant on 8 February 2010. There is a rejoinder by the Plaintiff dated 8 February 2011.

4. The Plaintiff based upon the agreement, from time to time supplied the goods. The invoices placed on record confirmed the said supply and receipt of the goods. The delivery of goods were on regular basis since 2005. The last transaction was of 28 March 2006. The Defendant made payment by two cheques on 23 January 2007 and the last cheque was of 14 February 2007. The Defendant confirmed the Accounts of the period 1 April 2006 to 31 March 2007 (Exhibit A). In the reply, there is a vague denial in respect of acknowledgment dated 21 March 2007 stating that there was no transaction after 2005, thereby raised a plea of

limitation. In my view, the said denial is evasive and unsustainable also for the basic reason that the last three part payments were made by the cheques as recorded above and therefore the suit so filed on the basis of confirmation of Accounts dated 1 April 2007, is within limitation. Those cheques also falsify the case of the Defendant that they never signed acknowledgment or received the goods. Mere submission that the statement of Accounts and the invoices are fabricated and manipulated, also appear to have made to delay the due payments. Therefore, in view of the averments made and the acknowledgment/confirmation of the amount read with the fact that three cheques were issued at later point of time as recorded, in my view, the Plaintiff has made out the case, as the defence so raised by the Defendant is evasive and only with an intention to delay the payment.

5. The case that the Defendant's father demanding the rate difference of Rs. 40 lacs and that the goods worth of Rs. 58 lacs are lying with him, as raised for the first time in the common reply dated 10 July 2009 to the demand notices issued by the Plaintiff, also nowhere sufficient to justify the case without supporting documents and averments in the case. There was no such demand raised by the Defendant at the earlier point of time.

6. In Rakesh Aggarwal v. Mohit Aneja Summons for Judgment No. 44 of 2011 in Summary Suit No. 2817 of 2009 dated 22 July 2011., in a similar type transactions and acknowledgment, this Court has already granted the Summons for Judgment. The further defence that the goods were delivered and the acknowledgments were in the name of wrong party, is also unacceptable in view of the acknowledgment and the documents on record. The fact that he has retained and/or not made the payment for want of Account balance or Rate Difference or Credit Note as referred, itself show that there is no denial to the receipt of the goods and any allegation about the quality. Therefore, retention of due payment in this background without taking steps at the appropriate time also shows that the defence so raised is not bonafide.

7. A Full Bench of this Court in Jyotsna K. Valia Vs. T.S. Parekh and Co., . has stated that the Summary Suit based upon the confirmation of Account is maintainable. This, in my view, also amounts "Acknowledgment" and Agreement to make the payment of due and payable amount.

8. Considering above facts and law with regard to the grant of leave and/or conditional or unconditional leave as contemplated under Order 37 of the CPC and as observed by me in the judgment Satchi Development Company Pvt. Ltd. v. Karishma Mahtani @ Vijayalakshmi Shyamsunder Advani and Anr. SJ 41 OF 2010 IN SS 2778 OF 2009 dated 19/07/2011.in my view, the Plaintiff has made out the case as all the above elements are available in the present matter, i.e. there is a written contract between the parties and the liability is duly acknowledged based upon the accounts. The Full bench of this Court in Jyotsna K. Valia (Supra) has observed as under:

A summary suit would therefore lie on Settled accounts duly confirmed by the Defendant. Issue (1) is answered accordingly.

9. This case falls within the ambit of this principle. The reply defence so raised in the present facts and circumstances appears to be sham and bogus and evasive. I am convinced that the Plaintiff has made out the case for grant of Summons for judgment as prayed.

10. Resultantly, the Summons for judgment is allowed in the following terms:

a) The Plaintiff is entitled for the principal due and payable amount of Rs. 14,00,507.90ps and interest @ 12% p.a. from the date of confirmation letter i.e. from 1 April 2007 till realization.

b) The decree be drawn accordingly.

c) The parties are at liberty to settle the matter.

d) There shall be no order as to costs.