
(2012) 08 BOM CK 0210

In the Bombay High Court

Case No : Summons For Judgment No. 466 of 2010 In Summary Suit No. 2949 of 2010

Tata Capital Financial Services Limited

APPELLANT

Vs

J.B.Dyechem

RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 30

Citation : (2012) 08 BOM CK 0210

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Kingshuk Baneerjee with Ms. Prachi Dhanani, instructed by Wadia Ghandy and Co, for the Appellant; R.U. Singh, for the Respondent

Judgement

R.D. Dhanuka, J.—By this Summons for Judgment, the Plaintiff seeks to recover a sum of Rs.3, 39, 852/with interest. The suit is based on Bill of Exchange drawn by the Defendant and is dishonoured on presentation. The Plaintiff had granted this discounting facility to M/s.Biator Industries Ltd. (Biator) to the tune of Rs.50 crores so as to facilitate the payment to its vendors towards its supply of raw material and the goods. The Defendant had sold goods to the said M/s. Biator. The Defendant and M/s.Biator had agreed that in respect of such goods supplied by the Defendant to M/s. Biator, the Bill of Exchange would be drawn by the Defendant, would be accepted by the said M/s. Biator and thereafter would be discounted with the Plaintiff. Accordingly Plaintiff drew the Bill of Exchange on 23rd March, 2009 in the sum of Rs.3, 39, 852/. The said Bill of Exchange was accepted by M/s. Biator. It is not in dispute that the said Bill of Exchange was thereafter discounted by the Defendant with the Plaintiff in respect of the said transaction between the Defendant and M/s. Biator.

2. According to the Plaintiff, at the first instance M/s.Biator committed default in making payment of the Bill of Exchange inspite of various reminders. The Plaintiff thereafter called upon the Defendant to pay the said amount and the Defendant

committed default in making payment.

3. The Learned Counsel appearing for the Plaintiff informs that the Plaintiff has invoked arbitration clause in so far as M/s. Biotor is concerned and the said proceedings are pending in this court.

4. The Defendant has filed affidavit in reply.

5. The Learned Counsel appearing for the Plaintiff submits that the Defendant has admittedly drawn Bill of Exchange and the same is discounted. The Defendant has failed to pay, upon the presentation of the said Bill of Exchange on due date. The reliance is placed on section 30 of the Negotiable Instrument Act which provides that the drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate title holder, provided due notice of dishonour has been given to, or received by, the drawer as provided in the said provision. It is submitted that merely because a separate dispute filed by the Plaintiff against M/s. Biotor is pending, it cannot be said that Defendant is not liable. The Defendant who has admittedly drawn the Bill of Exchange is jointly and severally liable. It is not in dispute that demand was raised by the Plaintiff upon the Defendant for payment and the same was not met with.

6. The Learned Counsel appearing on behalf of the Defendant on the other hand submits as under :

a) This court has no territorial jurisdiction to entertain, try and dispose of this suit on the ground that Bill of Exchange was drawn at Baroda. The Defendant is carrying on business at Baroda. Goods were sold and delivered by the Defendant to M/s.Biotor within the territorial jurisdiction of Gujarat. It is submitted that the Plaintiff" has obtained leave under Clause 12 of the Letters Patent by suppressing some of these facts.

(b) The payment received by the Defendant on discounting the Bill of Exchange was towards the goods supplied to M/s.Biotor. There is no privity of contract between the Plaintiff" and the Defendant.

(c) Separate proceedings are already filed by the Plaintiff" for recovery of their alleged dues against the acceptor of Bill of Exchange. The Plaintiff" has admitted that its amount due has already been recovered by the Plaintiff" from M/s.Biotor and therefore the Defendant shall be granted unconditional leave to defend the suit.

7. As far as issue of territorial jurisdiction raised by the Defendant is concerned, it is common ground that bill discounted facility was granted by the Plaintiff" at Mumbai. The Bill of Exchange on the basis of which the suit is filed, was also admittedly discounted at Mumbai. The Plaintiff" has obtained leave under Clause 12 of the Letters Patent. It is also common ground that Defendant has not applied for revocation of leave granted by this court. In my opinion, there is no substance in this defence raised by the Defendant that this court has no

jurisdiction to entertain, try and dispose of this Summary Suit.

8. Admittedly the Defendant had drawn Bill of Exchange and the same was discounted with the Plaintiff". In view of Section 30 of Negotiable Instrument Act, the Defendant is jointly and severally liable to pay on presentation of the Bill of Exchange with the acceptor. Bill was presented to the Defendant which was not paid by the Defendant. In my view, there is no substance in this defence raised by the Defendant that the Defendant is not liable as the Defendant has only received payment for the goods supplied to M/s.Biotor.

9. There is no substance in the plea raised by the Defendant that there is no privity of contract between the Plaintiff" and the Defendant. It is common ground that Bill of Exchange was discounted by the Defendant with the Plaintiff.

10As far as the plea that the Plaintiff has already recovered substantial amount from M/s.Biotor or that the Plaintiff" would be entitled to recover amount from the insurance company is concerned, Plaintiff has disputed the same. Since Defendant is jointly and severally liable to pay in respect of the Bill of Exchange as drawer, it would be proper to grant conditional leave to defend. I, accordingly, pass the following order :

a) The Defendant is granted leave to defend the suit on deposit of Rs. four lacs in this court within a period of twelve weeks from today.

(b) The Defendant is directed to file Written Statement within a period of four weeks after the date of such deposit if is made by the Defendant.

(c) If amount as directed is deposited by the Defendant, Prothonotary & Senior Master to invest the same in a nationalised bank initially for a period of two years and thereafter for a like period after obtaining further orders from this Court.

(d) In the event of Defendant committing default in making payment as directed, the Plaintiff" would be at liberty to apply for further orders.

(e) Suit is transferred to the list of commercial causes.

(f) Summons for Judgment is accordingly disposed of.

(g) There shall be no order as to cost.