

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY

SUMMONS FOR JUDGMENT NO.117 OF 2017

IN

SUMMARY SUIT NO.205 OF 2017

M/s, Veena Tech Screen Printing Pvt. Ltd.)
Company Incorporated under the provisions)
of Indian Companies Act, 1956)
Having its Regd. office at 556,)
Marina Mansion No.1, Ground floor,)
Behind Finlay Store, Chowpatty Sea)
Face, Mumbai – 400 007).....**Plaintiff**

Versus

Sanjay Technoplast Pvt. Ltd)
a company incorporated under the)
provisions of companies Act, 1956,)
having its registered office at F-16 & 17,)
MIDC Area, Ranjangaon Tal -Shirur,)
Pune- 412 220.)...**Defendants**

APPEARANCE :

Ld. Adv. Aarti Nimbalkar for the plaintiff.

Ld. Adv. Manish Jain for the defendant.

CORAM : HER HONOUR AD-HOC JUDGE

C. P. JAIN (C.R.NO.40)

DATED : 21th DECEMBER, 2019.

JUDGMENT

(Delivered on 21th day of December, 2019.)

1. The summons for judgment is taken out by plaintiff praying for judgment in summary suit against defendant for sum

of Rs.2,67,667/- together with interest.

The facts of the case of plaintiff are as follows :-

2. The plaintiff is duly registered private limited company engaged in as the manufacturer and exporter of industrial screen printing machines, industrial heating machines and mobile rack trolley. The defendant is also duly registered private limited company engaged in the business of supply and manufacture of bio mass stove, plastic part of injection moulding, automotive sub-assemblies, 4 wheeler sheets parts, 2 wheeler assemblies. Defendant has been regularly placing orders with plaintiff for last 2 to 3 years. On 11.07.2015, the defendant had placed purchase order for supply of 10,000 pieces of Wire Mesh-SGM308 with plaintiff. Plaintiff has accordingly sold, supplied and dispatched the pieces of Wire Mesh-SGM308 and raised invoice No.53, dated 18.08.2015 for Rs.24,072/- and invoice no.54, dated 25.08.2015 for Rs.1,64,695/-. Defendant has accepted the terms and conditions of the said invoices and are therefore bound by the terms and conditions mentioned in the invoices. The goods dispatched to defendants were accepted by defendant and subsequently consumed. No complaint is raised by defendant in respect of the consignment sent by plaintiff on any aspect. On 30.11.2015, defendant called up plaintiff on phone and submitted that he has passed only 1000 pieces of Wire Mesh-SGM 308 and balance of 7000 pieces of Wire Mesh-SGM 308 are rejected as the said goods are slow moving items and the defendant is finding difficult to sell in market. Plaintiff was shocked and therefore immediately clarified to defendant that defendant was supposed to raise

objection with respect to the goods within 24 hours of receipt of goods. Thereafter, defendant has been promising to pay the bills since September-2015. When outstanding bills were to be finally released on 21.11.2015, defendant brought an issue of rejection after 100 days. Plaintiff had issued email to defendant on 02.02.2016 to which defendant did not respond. Plaintiff therefore issued legal notice dated 12.02.2016, and called upon defendant to make outstanding payment of amount of Rs.1,88,767/- together with interest @ 24% per annum. Defendant has duly received the notice, however failed and neglected to comply the notice. Therefore, plaintiff company was constrained to file summary suit.

3. Upon receiving the writ of summons, defendant has filed his appearance. Upon service of summons for judgment, defendant had moved leave to defend. According to him, the summary suit of plaintiff is not maintainable. He has admitted that he had placed order for 10,000 pieces of Wire Mesh-SGM308. However, the said order was placed on 11.07.2015 and not on 11.06.2015 as is alleged by plaintiff in his suit. According to his defence, though he had placed purchase order of 10,000 pieces of Wire Mesh-SGM308, plaintiff supplied only 6955 pieces of Wire Mesh-SGM308 on 18.08.2015 and 1,000 pieces on 25.08.2015. However, the lot of 7955 pieces were under sized that is not as per the size given by the defendant company. Therefore, all the lot of 7955 pieces was not usable to manufacture the complete product of defendant company. The defendant has brought the aforesaid fact to the notice of plaintiff in November-2015. However, plaintiff company without looking into the facts of the case irresponsibly has given false answer

that they have supplied as per the drawing. Plaintiff company deliberately failed to take physical inspection of the under-sized product. Nor did plaintiff company take the inspection through any expert. Plaintiff company deliberately avoided their ethical and contractual responsibility. Defendant had thereafter dispatched back to plaintiff company, the under-sized product through his regular transport Prabhat Roadways, L.R. No.992 dated 19.01.2016. But plaintiff with fraudulent intention dispatched back the said product to warehouse. The said consignment is in warehouse of transport. Defendant has paid the damage and ware house holding charges of Rs.7,350/- vide cheque No.081930 dated 20.07.2016. The plaintiff is therefore liable to pay this amount to them. The product is lying unused in the warehouse. Plaintiff with ulterior motive did not accept them, so also did not take proper inspection through the expert technician. Defendant is unnecessarily bearing the charges of ware house. The production of Wire Mesh-SGM308 is hampered. Defendant is facing financial loss due to irresponsible act of the plaintiff. Plaintiff therefore by supplying defective under sized product has violated the terms and conditions of the contract. The suit is therefore not maintainable and binding upon the defendant. Defendant has good defence. Therefore, he has prayed for unconditional leave to defend the suit.

4. Heard both the learned advocates. Perused the proceeding. Plaintiff has filed this money suit for recovery of sum of Rs.2,67,667/-together with interest against the invoices raised by him for the supply of 7955 pieces of Wire Mesh-SGM308. It is not in dispute that defendant had placed order for supplying the 10,000 pieces of Wire Mesh-SGM308 with

plaintiff. It is further not in dispute that plaintiff has not supplied the entire quantity of purchase order of defendant. It is further not in dispute that plaintiff has supplied 1,000 pieces of Wire Mesh-SGM308 vide invoice no.53 dated 18.08.2015 worth Rs.24,072/-, so also 6955 pieces of Wire Mesh-SGM308 vide invoice no.54 dated 25.08.2015 worth Rs.1,64,695/- to defendant. It is further not in dispute that the goods vide invoice no.53 and 54 were received by the defendant.

5. Defendant has specifically contended that the goods received by them vide invoice no.53 and 54 were under-sized and not as per the size and the dimensions given by the defendant company vide their purchase order. They have specifically contended that the lot supplied of 7,955 pieces by plaintiff had major rejections and they could not use the said product for manufacturing the complete product of defendant company. It is further specifically contended that they have dispatched back to plaintiff company the under sized product through regular transport Prabhat Roadways, vide L.R. No.992 dated 19.01.2016. It is further contended that plaintiff has refused to take the delivery of said product and the said consignment is in ware-house of transport.

6. The correspondence tendered on record do reflect that defendant had rejected the 7955 pieces of Wire Mesh-SGM308. It is case of plaintiff that that if defendant were not satisfied with the quality of the goods and if intended to raise any claim, then defendant should have raised the claim within 24 hours of receipt of the goods as is agreed and settled between them. Defendant has raised the claim of rejection of goods after

100 days. Therefore, according to plaintiff, defendant is making false allegations against them. From the correspondence tendered on record, it is clear that defendant has not consumed the goods and still the goods are lying in the ware-house of the transport. Though plaintiff has averred that defendant has consumed the goods, there is no rejoinder to the fact that the goods are lying in the ware-house of the transport.

7. Whether as is case of plaintiff, the disputed goods of 7,955 pieces of Wire Mesh-SGM308 were as per the purchase order of defendant and that whether defendant was supposed to raise the objection with respect to quality of goods within 24 hours of receipt of goods and whether the objection of defendant is falsely vexatious or whether as per defence of defendants, the disputed goods 7,955 pieces of Wire Mesh-SGM308 were under-sized and not according to the dimensions given in the purchase order by them and that the defendant was entitled to raise the claim with respect to the goods supplied after 24 hours and whether defendant is facing financial losses as they could not manufacture their product and further are liable to pay the damages of the ware-house of transport are all facts which can be proved only after both parties lead evidence.

8. The aforesaid defence is certainly leading to conclusion that defendant has raised triable issue. The defence raised by the defendant is not appearing to be moonshine to delay or prevent the plaintiff from getting the decree in his suit. There is nothing on record that defendant had earlier opened the goods in consignment, retained and thereafter in November-2015 they raised false objection about the goods being unsized

and not as per dimensions of their purchase order. It is not case of plaintiff that defendant had opened the consignment and has consumed the goods and thereafter in November-2015, defendant has raised false objection with respect to the quality of the goods. There is no evidence on record that the defence raised by defendants is not real but sham defence. The aforesaid facts do reflect that defendant has raised bonafide/plausible defence in his favour. The truth and the good faith of all the facts of triable issues will be decided at the time of leading evidence. But at this stage certainly one can conclude that defendant has raised a triable issue. Once it has come on record that the defence of defendant is not sham but has raised bonafide/plausible defence, in light of observations in the case of *Santosh kumar V/s. Bhai Mool Singh reported in AIR 1958 SC 321*, unconditional leave needs to be given to defendant.

9. Plaintiff company has concealed all the correspondence with respect to rejection of goods, the goods being lying in the ware-house of transport etc. in its plaint. On the contrary, plaintiff is claiming that goods are consumed by defendant which is not the fact as discussed above. It is expected from plaintiff that it should unfold all the facts before the court. This conduct of plaintiff is fatal to it.

10. For aforesaid discussion, the arguments of learned advocate for plaintiff for making absolute prayers in the summons for judgment cannot be accepted as against the arguments of learned advocate for defendant for granting unconditional leave to defendant. If defendant is denied opportunity, it will be as good as denial of adjudication of the

contentions of both the parties on merits Therefore, I proceed with the following order.

ORDER

1. Unconditional leave to defend the suit is granted to defendant with direction to submit written statement within four weeks from the date of order.
2. Summons for Judgment No.117/2017 is dismissed and disposed of accordingly.



(C.P. Jain)

Ad-hoc Judge, (C.R.No.40)
City Civil Court, Gr. Mumbai

Date : 21.12.2019

Dictated on : 21.12.19
Transcribed on : 21.12.19, 23.12.19 & 30.12.19
Signed on : 31.12.19

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE AND TIME : 31.12.2019, 10.53 am.
NAME OF STENOGRAPHER : Mr. Harshal D. Jagtap

Name of the Judge (With Court Room No.)	HHJ Shri. U. M. Mudholkar C.R. No.48
Date of Pronouncement of JUDGMENT/ORDER	21.12.2019
JUDGMENT/ORDER signed by P.O. on	31.12.2019
JUDGMENT/ORDER uploaded on	31.12.2019