

ORDER SHEET  
G.A. No. 453 of 2011  
C.S. No. 5 of 2011  
G.A. No. 1626 of 2011  
IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

SANATAN MERCHANTS PVT. LTD.  
Versus  
NARPAT BOKADIA

Plaintiff/Petitioner  
Defendant/Respondent

BEFORE:  
The Hon'ble JUSTICE I. P. MUKERJI  
Date : 14th July, 2014.

For Plaintiff/Petitioner : Mr. Ahin Choudhuri, Sr. Adv.  
with Mr. Souvik Majumdar & Ms. Tannistha Lahiri, Advs.

For Defendant/Respondent : Mr. S. Deb with Mr. B. Ghosh,  
Mr. S. Sengupta & Mr. A.K. Gandhi, Advs.

This [G.A. No. 453 of 2011] is a judgment upon admission application claiming Rs.1,75,27,890/- along with interest. There are also prayers for attachment before judgement.

There is absolutely no dispute that from time to time the plaintiff supplied diverse quantities of goods to the defendant. From the documents annexed to the petition, I find that from time to time the defendant has confirmed the sum due and owing by him to the plaintiff by signing statements of accounts along with the plaintiff. For example, in the statement of accounts dated 1<sup>st</sup> April, 2008, being Annexure 'DD' to the petition, the dues have been shown as Rs.3,28,41,790/-; in a similar statement dated 1<sup>st</sup> April, 2009, the dues have been shown as Rs.1,55,32,591/-; in the third statement dated 1<sup>st</sup> April, 2010, such dues have been shown as Rs.1,09,20,091/-. Mr. Choudhury, learned Senior Advocate for the plaintiff, showed me a letter dated 17<sup>th</sup> November, 2010 of his client, being Annexure 'HH' at page 101 of the petition, to the defendant wherein they claimed a sum of Rs.1,09,20,091/-. He then took



me to the last statement of accounts to argue that this exact amount was admitted therein.

Furthermore, the balance sheet of the defendant which is disclosed in his income tax return as on 31<sup>st</sup> March, 2010, and annexed to the supplementary affidavit filed by the plaintiff, acknowledges the said debt towards the plaintiff.

However, it is also submitted by Mr. Choudhury that after institution of the suit and passing of the interim order dated 23<sup>rd</sup> February, 2011, the defendant changed his records by showing the debt of the defendant towards the plaintiff as only Rs.75,533/-. This was brought on record by the defendant by a rejoinder to the said supplementary affidavit.

In my opinion, from the documents brought on record by the plaintiff as well as those brought on record by the defendants, there is no reason to believe that the defendant has any defence to the claim of the plaintiff. The defendant has not even been able to raise any triable issue. However, from the correspondences at pages 37 to 40 of the affidavit in opposition, it does appear that some quality issue was raised by the defendant and that the plaintiff was trying to resolve the same with them.

In the case of *Mechelac* reported in AIR 1977 SC 577 the Supreme Court pronounced that even when the court thinks that the defendant has no defence to the claim of the plaintiff, the Court might out of sympathy grant the defendant leave to defend, but upon terms set by the Court.

In this case, I can hold in a summary way that the plaintiff is more or less entitled to Rs.1,09,20,091/- on the admission of the defendant. Out of sympathy I permit the defendant to defend the suit upon furnishing security in the shape of flat no.2701 at Shreepati Towers; 27<sup>th</sup> floor, Girgaon (Pipalwadi), Khadikar Road, Mumbai - 400 004. I pass an order of injunction restraining the defendant from selling, otherwise transferring,



encumbering, dealing with or parting with possession of the said flat until disposal of the suit. In case Mr. Choudhury's client finds that the value of the above security is not sufficient, liberty is given to them to apply for orders directing the defendant to furnish further security.

I appoint Mr. Anupam Das Adhikari, Advocate, as Special Officer at a remuneration of 900 GMs to be paid by the plaintiff. The Special Officer shall take and retain symbolic possession of the said flat after making a broad inventory itself. He will file a report in the registry by 14<sup>th</sup> August, 2014.

This application [G.A. No.453 of 2011] is, accordingly, disposed of.

Mr. Choudhury does not press the other application being G.A. No. 1626 of 2011, which is dismissed as not pressed.

Certified copy of this order, if applied for, be supplied to the parties upon compliance with requisite formalities.

(I. P. MUKERJI, J.)