

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.7/2015
IN
SUMMARY SUIT NO.662/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. K. H. Halai a/w. P. Ranjan i/b. Halai & Co. for the Plaintiff

CORAM : K. K. TATED, J.

DATE : DECEMBER 2, 2015

P.C.:

1. Heard the learned counsel for the Plaintiff. None for the Defendant though duly served.

2. This court (Coram : R. P. SondurBaldota,J.) by order dated 30/09/2015 recorded that the Defendants were duly served and have filed their appearance. In spite of that, none appeared for them. Hence, this court has passed an order to proceed exparte against them.

3. In the present proceedings, the Plaintiff filed Summary Suit for recovery of sum of Rs.4,42,79,338/- with 18% p.a. on principal outstanding amount of Rs.3,06,70,803/- towards

goods transportation charges. In support of this, the Plaintiff placed on record invoices issued by them from time to time. The learned counsel for the Plaintiff submits that subsequently, the Defendant issued cheques towards part payment. Those cheques were dishonoured. He submits that the Defendant also executed declaration-cum-indemnity bond dated 09/01/2012 admitting their liability to the extent of Rs.3,06,70,803/-. He submits that it is specifically stated in the said indemnity bond that if the Defendant fails to pay the said amount within stipulated time, the Plaintiff would be entitled to recover entire amount within 18% p.a. interest. The relevant portion of the indemnity bond reads thus:

"I hereby accept and confirm that I have to pay Rs.3,86,70,803/- (Rupees Three Hundred Eight Six Lacs Seventy Thousand Eight Hundred Three) against outstanding payment to DIESL for the purpose of the Said LOI. As mutually agreed between us, balance amount of Rs.3,86,70,803/- (Rupees Three Hundred Eight Six Lacs Seventy Thousand Eight Hundred Three)(said amount) shall be paid to DIESL.

Hence, I hereby confirm to pay the Said amount to DIESL in 6 installments through cheques drawn on SBI, Commercial Branch, IDCOL, Building Ground Floor, Ashoknagar, Bhubanewar, Orissa-75, starting from (1) dated 12th January 2012 Rs.50 lacs vide

cheque no.116877 (2) dated 25th January 2012 Rs. 1 crore vide cheque No. 116878 (3) dated 28th January 2012 Rs.50 lacs, vide cheque No.116879 (4) dated 31st January 2012 Rs.50 lacs vide cheque No.116880 (5) dated 15th February 2012 Rs.50 lacs vide cheque no.116881 (6) and final payment dated 28th February 2012 Rs.86,70,803/- vide cheque No.116882 against outstanding showing in my name in books of account of DIESL. I hereby also confirm that DIESL has the right to deposit the above said cheques into their Bank without prior intimation to me. In case delay to pay the Said amount within the stipulated timeline, I agree to pay the Said amount to DIESL along with the interest of 18% p.a.

4. The learned counsel for the Plaintiff tendered compilation of original documents. Same is taken on record and marked "X" for identification.

5. As none appeared for the Defendant in spite of service, the Plaintiff is entitled to make Summons for Judgment absolute as per order XXXVII Rule 3(6)(a) of the Code of Civil Procedure, 1908.

6. Hence, following order is passed:

a. Decree passed against the Defendants.

b. The Defendants are jointly and severally liable to pay to the Plaintiff a sum of Rs.4,42,79,338/- along with further interest @ 18% p.a. on principal amount of Rs.3,06,70,803/- from 15/05/2014 till realization of entire amount.

c. Cost of the suit.

d. Summons for Judgment is made absolute accordingly.

JUDGE