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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO. 4441 OF 1999

SKM Steels Limited

...Plaintiff

Vs.

Bank of India & Ors.

...Defendants

Mr. Mayur Khandeparkar, Counsel with Mr. Sharad W.
for Plaintiffs

None for Defendants

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 4TH FEBRUARY, 2015**

P.C. :

1. The suit reached hearing on 21st November, 2014. Writ of summons was seen to have been served upon defendant Nos. 1, 2, 4 and 5. The writ of summons was not shown to have been served upon defendant No.3. The suit was dismissed against defendant No.3.
2. The written statement of the defendant Nos. 1, 2, 4 and 5 were seen not to have been filed. Hence the suit was adjourned to 8th December 2014 for ex-parte decree against defendant Nos. 1, 2, 4 and 5. The plaintiff was directed to produce the original documents. On 15th December, 2014 the suit was adjourned. On 14th January, 2015 affidavit of documents and affidavit of evidence on behalf of the plaintiff came to be filed. It was seen that defendant No.4 had filed written statement on 29th April, 2004.

Hence notice was directed to be issued to the Advocate of defendant No.4. Notice has been given as directed on 14th January, 2015 itself. It is sent by registered post to the Advocates of defendant No.4. The acknowledgment is produced. The Advocate for defendant No.4 has replied to the said notice. The reply shows that they have returned the papers. However they have not taken a discharge from the Court. Their names appears on the board of the Court. The copy of the notice along with the acknowledgement of postal authority sent to the Advocate of defendant No.4 are taken on record. Defendant No.4 has not appeared at the hearing of the suit despite having filed written statement. The plaintiff presses for reliefs against defendant Nos. 1, 2 and 4.

3. The suit has been filed in effect upon a fraud alleged to have been perpetrated by defendant Nos. 2 and 4 upon the plaintiff making the plaintiff not liable to make payment. Under an ex-parte order dated 14th December, 2001 the relief is stated to be granted restraining payment under the letter of credit. The plaintiff has set out the particulars of the fraud in paragraphs 3 and 4 of the plaint.
4. The issues are framed as follows:
 1. Whether fraud has been perpetrated by defendant Nos. 2 and 4 upon the plaintiff.
 2. What relief, if any, is the plaintiff entitled to ?

5. The plaintiff has tendered the evidence of its Director and the compilation of its documents along with the list thereof. The affidavit of evidence of the plaintiff is accepted on record under the provisions of Order 18 Rule 4 of the CPC. The documents of the plaintiff are accepted on record and marked **Exhibit-A (colly)**.
6. The averments in the plaint as also the statements in the affidavit of evidence are not controverted despite the written statement of defendant No.4. Consequently the suit is required to be decreed. The plaintiff prays for the decree against defendant Nos. 1, 2 and 4.
7. The suit is decreed as prayed against defendant Nos. 1, 2 and 4.

(ROSHAN DALVI, J.)