

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

**SUMMONS FOR JUDGMENT NO. 32 OF 2014
IN
SUMMARY SUIT NO. 2755 OF 2009**

Bhaverdevi Agarwal

.. Plaintiff

Vs.

Jatin Khandawala

.. Defendant

Mr.S.L. Shah i/b Shah Legal for plaintiff.

Mr.Vivek Kantawala a/w. Mr.Amey Patil i/b Vivek Kantawala & Co. for defendant.

CORAM : K.R.SHRIRAM, J.

DATE : 28TH JULY, 2015

P.C.

1 The suit is for recovery of a sum of Rs.1 crore that the plaintiff had given to the defendant in December 2006. It is also stated in the plaint that the defendant had agreed to pay a nominal quarterly interest at 9% p.a. on the loan amount from the date of the plaintiff disbursing the friendly loan until repayment. It is also stated in the plaint that the plaintiff had agreed to reduce the interest rate from 9% p.a. to 6% p.a. because the defendant cited financial difficulties. The plaintiff has annexed copies of the plaintiff's bank pass-book to show that a sum of Rs.1 crore was withdrawn. However, the pass-book does not show that this amount has been paid to the defendant. The counsel for the plaintiff states that the defendant however deducted

TDS and paid interest on the principal amount upto 21.03.2005. At the same time, the counsel for the defendant also states that there was no written agreement between the parties. In fact, there is not even an averment in the plaint as to how the present suit falls under the provisions of Order 37 of the Code of Civil Procedure, 1908 (CPC). Paragraph 14 of the plaint simply states that the present suit is filed under provisions of Order 37 of the CPC.

2 Order 37, Rule (1)(2)(b) of the CPC provides that the order applies to a suit in which the plaintiff seeks to recover a debt or liquidated amount on a written contract or on an enactment or on a guarantee. The plaintiff's case do not fall under any of these classes.

3 In the circumstances, the summons for judgment is rejected. The suit transferred to the list of commercial causes. The defendant to file their written statement within four weeks from today.

4 Stand over to 15.09.2015 for framing of issues. The parties to file their respective affidavit of documents and also complete discovery and inspection before the next date.

(K.R. SHRIRAM, J.)