

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

**SUMMONS FOR JUDGMENT NO. 34 OF 2014
IN
SUMMARY SUIT NO. 923 OF 2004**

M/s. Pratik Enterprises	.. Plaintiff
Vs.	
Darshan Oils Ltd.	.. Defendant

Ms. Sandhya Lokhande i/b N.N. Vaishnawa & Co. for plaintiff.

Ms.Ambreen Saheed i/b M. Dhruva & Co. for defendant.

**CORAM : K.R.SHRIRAM, J.
DATE : 3RD JULY, 2015**

P.C.

1 After the suit was filed, the defendant filed a reference to B.I.F.R. Therefore, the plaintiff did not take out any summons for judgment.

2 By an order dated, 2.07.2014, it was noted that the advocate for the defendant states that the B.I.F.R. proceedings have abated. In view thereof, the plaintiff took out the present summons for judgment. No reply has been filed by the defendant. Ms.Ambreen Saheed i/b M.Druva & Co. states that they have not been receiving any instruction in the matter from the defendant and therefore, they have filed a chamber order for discharge in the matter.

3 The case of the plaintiff as stated in the plaint is that the plaintiff lent and advanced various amounts to the defendant from time to time to make payment on his behalf to various suppliers. The plaintiff states that they have, on request of the defendant, made a payment of Rs.30,56,288/- to M/s. Liberty Oil Mills Ltd. sometime in August 1996. The plaintiff, thereafter, made a payment of Rs.23,21,070/- to one M/s. B.Prem Kumar Trading Pvt. Ltd. at the request of the defendant also in August 1996. Thereafter, the plaintiff made four further payments on behalf of the defendant to Godrej Foods Ltd.; Liberty Oil Mills Ltd., Shantilal & Co. and B. Arunkumar Trading (P) Ltd. in the sum of Rs.7,95,227/-, Rs.28,45,822/-, Rs.9,11,483/- and Rs.4,13,373/- respectively. Therefore, the plaintiff states that they had advanced a total sum of Rs.1,03,43,263/- to the defendant by making payment to various parties for and on behalf of the defendant.

4 The defendant has admitted liability by providing to the plaintiff its statement of accounts on as 31.08.2000 whereby the defendant states that they owe to the plaintiff a sum of Rs.1,15,38,849/- as on 31.08.2000. The defendant has also been issuing TDS certificates to the plaintiff. A similar letter was issued by the defendant on 14.08.2001 whereby the defendant has admitted that they owe to the plaintiff a sum of Rs.1,19,34,084/- towards principal and Rs.20,21,661/- towards interest. The defendant, however, did

not make any payment despite repeated demands from the plaintiff. The counsel for the plaintiff, therefore, submits that the defendant having admitted the liability, the plaintiff is entitled to a summary decree under Order 37 of the Code of Civil Procedure.

Order 37 Rule 2 lists the classes of suits to which the said order would apply. Order 37(1)(2) read as under :

Order 37 Rule 1

(2) Subject to the provisions of sub-rule (1) the Order applies to the following classes of suits, namely:—

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,—

(i) on a written contract, or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.

5 I do not find any averment that the suit would fall under any class mentioned in Order 37(1)(2). The suit as filed is not a suit upon bills of

exchange, hundies and promissory notes. In the suit though the plaintiff is seeking only to recover a debt or liquidated demand in money with interest payable by the defendant, the same is not arising on a written contract or on an enactment or on a guarantee. Therefore, in my view, the suit is not maintainable as a summary suit.

6 The summons for judgment is, therefore, dismissed. The suit be transferred to the list of commercial causes.

7 The defendant to file written statement within four weeks from today.

8 Stand over to 3.08.2015 for directions.

(K.R. SHRIRAM, J.)