

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 43 OF 2014

Asim Kumar Agarwalla

.....Plaintiff

: V/S :

Data Alloys Limited

.....Defendant

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Mr. Rohaan Cama a/w. Mr. Darshan R. Mehta, Mr. Naresh Chheda, Ms. Aditi Gandhi i/by. M/s. Dhruve Liladhar & Co., Advocate for the plaintiff.

Mr. Devasis Mitra a/w. Ms. Devrupa Mitra and Ms. Priyanka Shetty i/by. Legal Assistance, Advocate for the defendant.

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Coram :- Smt. R.P. SondurBaldota, J.

1st September, 2015.

P.C. :-

1). This summary suit is for recovery of amount of Rs.1,47,68,514/- together with interest at the rate of 6% p.a. on the principal sum of Rs.1,00,62,276/- from the date of the suit till payment and/or realisation. The plaintiff claims to have paid, on 5th February, 2005 a sum of Rs.5,00,000/- by cheque to the defendant Company and deposited a sum of Rs.95,62,276/- by cheque dated 18th January, 2006 in

the cash-credit loan account of the defendant towards the “One Time Settlement” of the loan taken from the Bank of India.

2). It is the case of the plaintiff that, the three set of documents i.e. (i) the cheques issued by him, (ii) the receipts signed on behalf of the defendant, and (iii) the plaintiff's own balance sheets disclosing that the payment was made, constitute written contract under which the liquidated debt is due. The defendant contests the claim of the plaintiff in the suit contending that, there is no contract for repaying the money. It is alleged that, the present suit is nothing but a counterblast to the suit for partition filed by a Director of the defendant at Dhanbad which proceedings are suppressed in the plaint. The defendant also contends that the documents relied upon by the plaintiff do not constitute a written contract. Therefore, the suit is not maintainable as a summary suit. The defendant has also raised question of bar of limitation.

3). Mr. Cama, the learned Advocate appearing for the plaintiff, relying upon the decision of the Full Bench of this Court in **Jyotsna K. Valia vs. T.S. Parekhand Co. reported in 2007 (4) Mh.L.J. page 517** submits that, a written contract need not always be a contract signed by both the parties. Even if that is so, the correspondence constituting the contract or the writings relied upon must reflect an express promise to pay. Even if there is an implied promise to pay, a

summary suit is not maintainable. In the present case, there is no promise to pay at all. Mr. Cama, argues that the very fact that the amount paid was by way of loan would mean that the amount was to be repaid. The argument needs to be only stated to be rejected. Bare proof of payment made and proof of payment received cannot be basis of a summary suit.

3). In the circumstances, the defendant is entitled for unconditional leave to defend the suit. The Summons for Judgment is dismissed. Leave is granted to the defendant to defend the suit. The defendant shall file written statement on/or before 13th October, 2015 and furnish copy thereof to the plaintiff. The parties shall thereafter within one week file their affidavits of documents and draft issues. The suit is adjourned to 20th October, 2015.

(SMT. R.P. SONDURBALDOTA, J)