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

SUMMONS FOR JUDGMENT NO. 46 OF 2013
IN
SUMMARY SUIT NO.306 OF 2013

Tejpal Ambalal Shah & Ors. ...Applicants/Plaintiffs
vs
Dhilin Mehta ...Defendant

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Mr Rajiv Narula a/w Bhupesh Dhumatkar i/b Jhangiani Narula & Associates for the Plaintiff.
None for the Defendant

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CORAM : S.C. GUPTE, J.

FEBRUARY 23, 2015

P.C. :

This Summons for Judgment is taken out in a Summary Suit, claiming a decree in the sum of Rs.8,18,29,641.88 together with interest. The claim arises out of a written contract contained in the letter dated 30 July 2011. By this letter, the Defendant recorded his having instructed the Plaintiffs to purchase the shares of M/s Shree Ashtavinayak Cine Vision Ltd. on the BSE / NSE at a price of Rs.34.56 per share. The letter, further, records that pursuant to the instructions of the Defendant in the month of November 2010, the Plaintiffs had accordingly purchased shares of a total value of Rs.36,95,23,607/-. The letter encloses cheques / RTGS payment of Rs.26.63 crores towards the value of the shares and seeks further time to make the balance payment. The letter records an agreement that the shares would be held in the Plaintiffs' account until a complete payment of purchase price and holding costs was made by the Defendant to the Plaintiffs. The letter further records an authority in favour of the Plaintiffs, in the event of the Defendant failing to make payment of the full purchase price and holding costs to the Plaintiffs by 30 September 2012, to dispose off the shares and recover and adjust the sale proceeds. It is the

Plaintiffs' case that the Defendant has failed and neglected to pay the balance amount of Rs.10,32,23,607/- by 30 September 2012. It is the Plaintiffs' case that between 19 November 2012 and 8 March 2013, the Plaintiffs sold the shares of the Defendant held by the Plaintiffs in their account and a total amount of Rs.2,13,93,963.12 was recovered towards the ssle. It is the Plaintiffs' case that after adjusting the sum of Rs.2,13,93,963.12, a sum of Rs.8,18,29,641.88 is now due and payable by the Defendant to the Plaintiffs together with interest @ 24 % p.a. from the date of filing of the suit till payment/realization as per the particulars of claim at Exh G to the plaint.

2 The Summons for Judgment is being opposed by the Defendant by filing a limited affidavit in reply dated 27 January 2014. The limited affidavit in reply raises only two defences. Firstly, it is submitted that the accounts between the parties need to be scrutinized and evidence is required to be led in that behalf and that, accordingly, triable issues arise in the matter. Secondly, it is denied that the letter dated 30 July 2011 constitute a written contract. It is also submitted that the same is not sufficiently stamped. Though the Defendant has sought leave to file an additional affidavit in detail, no such reply is to be found in the record of proceedings. It appears, however, that an additional affidavit dated 3 March 2014, has been served by the Defendant on the Plaintiffs. That additional affidavit, which is a short affidavit of one page, merely raises one defence, namely, that the letter of 30 July 2011, having been signed by the Defendant in his capacity as a Director of M/s Shree Ashtavinayak Cine Vision Ltd. and not in his personal capacity, does not personally bind the Defendant. It is submitted on the basis of this averment that the Defendant is not personally liable in the matter and, accordingly, an unconditional leave to defend is sought.

3 As far the first defence of the Defendant, namely, there being a question of account between the parties, nothing is placed on record to show that the Plaintiffs' claim has at any time been disputed by the Defendant or that there is indeed any outstanding question of accounts as between the parties. The letter of 30 July 2011, which is admitted by the Defendant, clearly shows that there exists a debt of Rs.10,32,23,607/- due and payable by the Defendant to the

Plaintiffs. Nothing contrary is placed before the Court by the Defendant. There is, thus, clearly no statable defence on merits in this behalf. As for the defence that the letter of 30 July 2011 does not constitute any written contract, it is clear that the letter of 30 July 2011 not merely admits the liability of the Defendant but also contains a clear promise to make the payment. It further authorizes the Plaintiff to adjust the sale price of the shares purchased by the Plaintiff on behalf of the Defendant and recover the balance. The Plaintiff's case of recovery of sale price of Rs.2,13,93,963.12 from the sale of shares is also not disputed by the Defendant. In the premises, the balance of Rs.8,18,29,641.88 is clearly due and payable by the Defendant to the Plaintiff. As noted above, there is no defence on merits to this claim. Now as regards the defence of the letter of 30 July 2011 having been addressed by the Defendant to the Plaintiffs in his capacity as a Director and not in his personal capacity, the letter itself is absolutely clear that the same is addressed in his personal capacity by the Defendant and not as a Director of M/s Shree Ashtavinayak Cine Vision Ltd. The only reference in the letter to M/s Shree Ashtavinayak Cine Vision Ltd. is in relation to the cheques / RTGS payment made. These cheques/ RTGS payments are from the account of M/s Shree Ashtavinayak Cine Vision Ltd. The letter, however, does not claim that the shares were purchased on behalf of M/s Shree Ashtavinayak Cine Vision Ltd. or that the payment of the value of the shares was due from M/s Shree Ashtavinayak Cine Vision Ltd. There is, thus, clearly no bona-fide defence in this behalf either.

4 The reply of the Defendant to this Summons for Judgment thus does not indicate any bona-fide defence or raise any triable issue to be decided in the present suit. However, to give the Defendant an opportunity to make out a defence at the trial, it will be in the interest of justice to grant the Defendant a leave to defend on the condition of depositing the entire principal amount claimed in the suit. Accordingly, the following order is passed.

(i) On the Defendant depositing a sum of Rs.8,18,29,641.88, within a period of 10 weeks from today, the Defendant is granted leave to defend the suit;

(ii) On such deposit being made, the suit shall be transferred to the list of commercial causes. Written Statement to be filed within a period of six weeks from that date;

(iii) On the amount being deposited, the same shall be invested by the Prothonotary and Senior Master of this Court in Fixed Deposit of a Nationalized Bank, initially for a period of two years and thereafter renewable from time to time till the disposal of the suit.

5 Place the suit for directions after 16 weeks, i.e. on 22 June 2015.

(S.C.GUPTE J.)