* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26.03.2015

\+ CS(OS) 2528/2011

M/s. G. E. Capital Services India ..... Plaintiff
Through: Mr. Gaurav Gaur, Adv.

versus

Mr. Prabhu. R ..... Defendant
Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Open Court)

1. This is a suit under Order XXXVII of the Code of Civil Procedure, 1908 (for short *'CPC'*) for recovery of Rs.26,41,056.31/-. The plaintiff is stated to have financed Rs.18,77,818 (for short *'loan amount'*) to the defendant for purchase of certain medical equipment(s). For this purpose, the parties entered into an Equipment Master Security & Loan Agreement (for short *'Agreement'*) on 25th September, 2007. The defendant had also executed a promissory note. The defendant is stated to be a doctor/surgeon based out of Madurai, Tamil Nadu.

2. It is the plaintiff's case that the loan amount was to be repaid in 60 equated monthly installments of Rs. 42,726/-; that the defendant defaulted in repayment of the loan amount. As on the date of institution of the suit, the amount due is stated to be Rs.26,41,056.31/-. In accordance with the terms of the agreement, the plaintiff claims *pendente lite* and future interest @ 20% per annum.

3. Earlier on 30th April 2013, this suit had been decreed *ex parte*. However, upon an application made by the defendant, the same was set aside on 11th February, 2014 and the defendant was directed to file the appearance with a week thereof. Summons for judgment was sent to the defendant by speed post and was also served upon the learned counsel for the defendant in Court on 10.12.2014. The defendant was also directed to file an application for leave to defend within the prescribed period. On 23.02.2015, it was noticed that the defendant had not filed the leave to defend application within the prescribed period of 10 days and the learned counsel for the plaintiff had submitted that under these circumstances, the plaintiff was

entitled to a decree straightaway. Accordingly, this matter has been placed before this Court today.

4. Rule 5 of Order XXXVII of the CPC stipulates that the defendant may, at any time within ten days from service of summons for judgment, apply for leave to defend the suit. It is evident from the records that the summons for judgment was served upon the learned counsel for the defendant on 10.12.2014. Accordingly, the defendant should have filed an application for leave to defend within 10 days *therefrom*. Having not done so, this Court is of the view that the plaintiff is entitled to a judgment forthwith as provided under Rule 3 (6) (a) of Order XXXVII, CPC. Furthermore, there is no application by the defendant under Rule 7, showing sufficient cause for the delay in applying for leave to defend the suit. In effect, there has been no rebuttal to the plaintiff's claims. Accordingly, this court finds no reason to not decree the suit as prayed for.

5. This Court is satisfied that the present suit is maintainable under Order XXXVII, CPC since the plaintiff seeks to recover a debt arising out of a written contract; the original documents on the basis of which the suit is filed are on record; and the suit is not barred by

limitation. The suit is accordingly, decreed in favour of the plaintiff for recovery of Rs. 26,41,056.31. The plaintiff has claimed *pendente lite* and future interest @ 20 % per annum. However, this Court deems it fit to award *pendente lite* and future interest @ 9% per annum.

6. Let the decree sheet be drawn up accordingly.
7. The suit is disposed off in the above terms.

MARCH 26, 2015 NAJMI WAZIRI, J.
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