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

SUMMONS FOR JUDGMENT NO. 4 OF 2014
IN
SUMMARY SUIT NO. 852 OF 2013

The Maharashtra State Cooperative Bank Ltd. ...Plaintiff / Applicant
vs.
Baramati Agro Ltd. & Ors. ...Defendants

Ms.Varsha Palav for Plaintiff.
Mr.Ashutosh a. Kumbhakoni, Senior Advocate with Shardul Singh i/b. Akshay P. Shinde for Defendant No.1.

CORAM : S.C. GUPTE, J.

18 JANUARY 2016

P.C. :

This summary suit is filed by the Plaintiff, which is an Apex Bank of Co-operative Banks in the State of Maharashtra seeking to recover certain dues from Defendant No.1. No relief is sought against Defendant Nos.2 to 6, who are arraigned as proper parties to the suit. The suit is filed purportedly on a written contract, which is envisaged by a sale certificate issued by the Plaintiff in favour of Defendant No.1 read with the tender notice containing various terms and conditions. Defendant No.2 – Kannad Sahakari Sakhar Karkhana Ltd., availed of financial assistance by way of loan from the Plaintiff and owes certain dues to the Plaintiff towards repayment of this loan. Various steps for securitisation of assets against Defendant No.2 were taken by the Plaintiff. After taking steps under Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Plaintiff issued a public notice for sale of movable and immovable assets of Defendant No.2 by inviting tenders. Defendant No.1 submitted a tender. One of the terms and conditions of tender was that that the assets described in the invitation to the tender were sold on “as is where is”, “as is what is” and “whatever there is” basis without any warranty, guarantee, without recourse, assurance, or undertaking or representation of any kind whatsoever. The terms provide that if there are dues, statutory or otherwise, of any authority established by law, such dues would have to be borne / paid by the purchaser. Defendant No.1 was the highest bidder. Its bid was accepted and assets of Defendant No.2 were sold to Defendant No.1 for a sum of Rs.50.20 crores. It appears that subsequently there was a demand from the Provident Fund Authority (Defendant No.3 to the present suit) against Defendant No.2. This amount was sought to be recovered by Defendant No.3 from the sale proceeds of the assets of Defendant No.2 lying with the Plaintiff. The action of the PF authority was challenged by the Plaintiff in a writ petition. The contention of the Plaintiff in that writ petition was that the PF dues were not due and could not be recovered from the Plaintiff. Alternatively, it was prayed that these dues ought to be recovered from Defendant No.1 herein, who was also party respondent to the writ petition. It appears that during the pendency of this petition, the entire amount of purported PF dues was recovered by Defendant No.3 from the Plaintiff. The Plaintiff now seeks to recover this amount from Defendant No.1 on the basis of the written contract referred to above.

2 Defendant No.1 has raised several defences to the suit. In the first place, it is claimed that there is no liability owed by Defendant No.2, which could be recovered by Defendant No.3. It is submitted that this liability has not been crystalised. Secondly, it is submitted that Defendant No.1 has not taken over Defendant No.2 or even the assets and liabilities of Defendant No.2 and in the premises, even under the so called written contract between the parties, the liability of payment of PF dues of Defendant No.2 cannot be foisted on Defendant No.1. Thirdly, it is submitted that Defendant No.2, whose liability in respect of PF dues is the subject matter of the present suit, is a co-operative bank and the suit filed against it without notice under Section 164 of the Maharashtra Co-operative Societies Act is not maintainable. These pleas, in the light of the respective pleadings of the parties and documents on record, give rise to several triable issues, which need to be determined on evidence and after hearing the parties.

3 Defendant No.1, in the premises, is entitled to an unconditional leave to defend the suit.

4 Accordingly, Defendant No.1 is granted leave to defend the suit

unconditionally. The suit is transferred to the list of commercial causes. Written statement to be filed within a period of six weeks from today. The suit to come up on board for directions after six weeks.

(S.C. Gupte, J.)