

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

SUMMARY SUIT NO. 923 OF 2004

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

Ms.Nupur Mukherjee a/w. Mr.Rahul Raut i/b M/s. N.N. Vaishnava & Co.
for plaintiff.

None for defendant.

**CORAM : K.R.SHRIRAM, J.
DATE : 1ST APRIL, 2016**

P.C.

1 By an order dated 3rd July 2015, the summons for judgement was dismissed and the defendant was granted unconditional leave to defend. The defendant was also directed to file the written statement within four weeks. The four weeks expired in August 2015. Till date, the defendant has not filed any written statement. From the order sheets, it appears that when the matter was listed on 20th October 2015, 8th December 2015, 5th January 2016, 7th March 2016, 17th March 2016 and 23rd March 2016, on none of the dates, the defendant remained present. The suit is listed today for ex-parte decree.

2 The plaintiff has filed this suit claiming a sum of Rs.1,84,97,105/- which includes interest. 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. The defendant has admitted liability by providing to the plaintiff its statement of accounts as on 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.

3 The plaintiff has filed the affidavit in lieu of examination in chief of one Shyam Sundar Agarwal (PW-1), who was partner of the plaintiff at the relevant time, PW-1 is present in Court and is administered oath. On oath, PW-1 confirms having affirmed the affidavit dated 14th October 2015 in lieu of examination in chief and also identifies his signature. The same is taken on record and marked **Exh.P-1**.

Along with Exh.P-1, the plaintiff has also filed a compilation of documents which contains original documents as well as office copies. The documents are received in evidence and marked as **Exh.P-2** collectively.

4 The counsel for the plaintiff states that the defendant is not reachable. The counsel has filed an affidavit of service of one Vishwanath Nayak, affirmed on 21st March 2016 in which it is states that they attempted to serve the letter in August 2015, but the packet has come back with the endorsement '*left without address*'. The counsel states that from the website of the Ministry of Corporate Affairs, the registered office of the defendant is still shown as the address given in the cause title. The defendant is not appearing and the earlier advocates have also taken discharge.

5 I have considered the affidavit in lieu of examination in chief and also compilation of documents. The defendant has not filed written statement

controverting the averments in the plaint. The defendant is also not present today to cross-examine the witness.

6 The fact that the plaintiff had lent and advanced various amounts to the defendant from time to time to make payments on their behalf to various suppliers has not been controverted. The fact that the plaintiff made payment of Rs.30,56,288/- to M/s. Liberty Oil Mills Ltd., Rs.23,21,070/- to one M/s. B.Prem Kumar Trading Pvt. Ltd. or payments were made 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, has not been controverted. Moreover, the fact that the defendant had admitted its liability to the plaintiff has remained uncontroverted.

7 In the circumstances, the plaintiff is entitled to a decree as prayed. Therefore, the suit stands decreed in terms of prayer clause (a) which reads as under :

(a) That the defendants be ordered and decreed to pay to the plaintiffs a sum of Rs.1,84,97,105/- as per particulars of claim, Exhibit 'R' hereto, and thereafter interest @18% per annum from 1st February 2004 till final payment and/or realisation thereof and cost of the suit.

8 I am also granting interest at 18% p.a. in view of the defendant having admitted the interest at 18% was agreed, as could be seen from the documents at page 22, page 24 and page 25 of the compilation of documents. From the date of the decree, however, the interest payable will be at 12% p.a. The plaintiff is also entitled to costs which is fixed at Rs.50,000/-.

9 The suit disposed accordingly. Decree be drawn up accordingly.

(K.R. SHRIRAM, J.)