

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

SUMMARY SUITS NO. 6427 OF 1999

Bajaj Auto Ltd.	...Plaintiff
<i>Versus</i>	
The Official Liquidator, M.P. High Court, (In Liquidation) Kedia Distilleries Limited.	...Defendant

Mr.Vishnu Pai i/b M/s. Dhru & Co. for plaintiff.

Ms.K.R.Shah i/b P.D. Jain & Co. for defendant no.3.

CORAM : K.R.SHRIRAM, J.
DATE : 24TH JUNE, 2016

P.C.

1 The suit has been getting listed for ex-parte decree from time to time.
The defendants had been served by way of substituted service.

2 By an order date 27th January 2004, defendant no.1 was directed to be wound up by the Hon'ble High Court of Madhya Pradesh, Indore. The plaintiffs, therefore, filed an application under Section 446 of the Companies Act, 1956 for leave to prosecute the present suit. The application came to be allowed pursuant to which the cause title to include defendant no.1 was amended. Paragraph 2 was also inserted to bring the fact as to how the Official Liquidator is required to be impleaded. The amended plaint has been served upon the Official Liquidator of defendant

no.1 on 20th July 2015. The counsel for the plaintiff undertakes to file affidavit of service within one week from today. Defendant Nos.2 and 3 have also been served the copy of the amended plaint. The packet that was sent to the registered office address of defendant nos.2 and 3, as available in Ministry of Corporate Affairs website, the counsel for the plaintiff states, were returned with the endorsement '*left*'. I would still say that is a 'good service' because if there was a change in the registered address, the same could have been reflected in the records of Ministry of Corporate Affairs.

2 Though the packets have come back, strangely an Advocate has appeared for defendant no.3 on 17th June 2016 and also today. The Advocate is unable to explain as to how they came to know about this suit when the packets have been returned. The Advocate also states that they came to know about the suit in March 2016. Today, the Advocate states that they will file Vakalatnama but has no explanation as to why till date, the Vakalatnama has not been filed. In any event, the suit has been listed for ex-parte decree and, the suit, it should be remembered is of the year 1999. There is no application also on record for condonation of delay. As regards defendant no.4, the counsel for the plaintiffs states that they have not been able to serve because defendant no.4 does not exist at the address mentioned in the cause title and they have not been able to even find out where defendant

no.4 is. As regards defendant no.5, the counsel states that defendant no.5 has been served a copy of the amended plaint as on 22nd March 2016. The undertaking to file affidavit of service within one week from today is accepted.

Therefore, all the defendants, in my view, have been served. None of the defendants have entered appearance or filed any leave to defend.

3 The suit is for return of inter-corporate deposits. The plaintiffs have given Inter Corporate Deposits (ICD) for Rs.25,00,000/- for a tenure of six months repayable at 21.5 % p.a. interest and later a sum of Rs.1,00,00,000/- for a tenure of six months at 22.5% p.a. interest.

4 Defendant nos. 2 and 3 stood as pledger-cum-guarantor for repayment of the amount of Rs.1,25,00,000/- with interest. As the amounts were not paid, the defendants requested for extension to pay and also agreed to pay interest at 30% p.a. The amount as payable on the date of the suit has accumulated to Rs.2,76,18,207/-, after deducting a sum of Rs.7,75,800/-, which the plaintiffs could gather by selling some of the pledged shares. The defendants have not entered appearance nor filed any reply or leave to defend.

5 The plaintiffs, therefore, under Order XXXVII, Rule 3, Sub-Rule 6 of the Code of Civil Procedure is entitled to a judgement forthwith.

6 The plaintiffs have also filed compilation of documents which are taken on record and marked as **Exh.P-1 colly.**

7 Therefore, the plaintiffs are entitled to a decree in terms of prayer clause (a), which reads as under :

(a) that this Hon'ble Court be pleased to order and decree the defendants jointly and/or severally to pay to the plaintiffs the said sum of Rs.2,76,18,207/- together with interest at the rate of 30% p.a. on the principal amount of Rs.1,25,00,000/- from the date of the suit till payment as per the Particulars of Claim being Exhibit 'G' hereto together with costs.

8 Decree be drawn up accordingly.

9 The suit stands disposed.

(K.R. SHRIRAM, J.)