

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

SUMMARY SUIT NO.2279 OF 2009

Unity Infraprojects Ltd.Plaintiffs

V/s.

Srimauli Infrastructure Pvt. Ltd. & Anr.Defendants

Ms.Chaitrika Patki i/by Vidhi & Partners for plaintiffs.

None for defendants.

CORAM : K.R.SHRIRAM,J

DATE : 25.8.2016

P.C.:-

1 This is a summary suit filed against two defendants. First one being the company and second one is a director and shareholder of the company as alleged in the plaint. By an order dated 14.6.2016 this court was pleased to grant a summary decree against defendant no.1. As regards defendant no.2 it is recorded in the said order in paragraph-2 that the defendant no.2 is the alleged Chairman and Managing Director of defendant no.1 and the counsel for the plaintiffs in fairness submitted that leave to defend to defendant no.2 should be granted when court asked the counsel as to how the suit against defendant no.2 will lie and how can they expect a summary decree. As regards defendant no.2, un-conditional leave to defend was granted and defendant no.2 was directed to file and serve written statement within two weeks. The counsel for plaintiffs states that they have served copy of the order upon defendant no.2 on 14.6.2016.

Defendant no.2 has not filed any written statement.

2 The suit is listed today under the caption 'undefended suit' as against defendant no.2.

3 It is averred in the plaint that defendant no.2 is the Chairman and Managing Director of defendant no.1 and defendant no.1 with defendant no.2 and his family members are its shareholders. The cause of action as mentioned in paragraph 3.19 of the plaint is that defendant no.1 is a closely held company with defendant no.2 and his wife K.Kamakshi Reddy as its shareholders. Defendant no.2 was in control of all the affairs of defendant no.1 and he personally looked after, administered and managed defendant no.1 company and as such defendant no.2 was personally liable and responsible for every act committed and/or omitted in the name of defendant no.1. Therefore, defendant no.2 is jointly and severally liable to pay and discharge liability of defendant no.1. Apart from this, there are no averments as to how defendant no.2 is personally liable to the plaintiffs.

4 The counsel for the plaintiffs across the bar submitted that court should pierce the corporate veil and grant decree in favour of the plaintiffs against defendant no.2. This court cannot pierce the

corporate veil because there is no such averment in the plaint. There is not even an allegation in the plaint that defendant no.2 has set up the company, defendant no.1, only with an intention to play fraud on creditors or there was an element of dishonesty.

5 In the circumstances, in my view, even if defendant no.2 has not filed written statement, no decree can be granted because the plaintiffs have failed to prove the claim as against defendant no.2. Therefore, suit as against defendant no.2 stands dismissed. Suit accordingly stands disposed.

(K.R.SHRIRAM,J)