

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

**SUMMONS FOR JUDGEMENT NO. 51 OF 2015
IN
SUMMARY SUIT NO. 430 OF 2015**

Sanjay Kumar

.. Applicant/(Org. Plaintiff)

In the matter between :

Sanjay Kumar

.. Plaintiff

Vs.

Ajit Kamath

.. Defendant

Mr.R.A. Shah a/w. Ms.Shikha Raniwala i/b Mansukhlal Hiralal & Co. for plaintiff.

None for defendant.

CORAM : K.R.SHRIRAM, J.

DATE : 12TH APRIL, 2016

P.C.

1 The suit filed is for recovering a sum of US\$ 42,11,938 from the defendant.

Sometime in the last week of October 2012, the defendant requested the plaintiff to give a sum of US\$ 6.00 million as loan for a period of 18 months to a company by the name Regal Pharma PTE Limited (the said company) which is beneficially owned by the defendant. The defendant also gave a personal guarantee as evidenced by the Personal Guarantee Agreement dated 3rd November 2012 and specifically guaranteed repayment

of the loan given to the Regal Pharma PTE Limited if the said company defaults in paying the principal sum and interest. Accordingly the plaintiff advanced a sum of US\$ 6 million as loan to be repaid with interest at 1% p.a. at the time of maturity. The tenure of the loan was for 18 months from 3rd November 2012.

2 By a letter dated 1st May 2014, the defendant requested for further time to repay the loan amount together with interest thereon. The said company repaid a sum of US\$ 1.93 million on 10th December 2014 leaving a balance of US\$ 4.07 million and interest outstanding. The said company, by a letter dated, 9th April 2015, copy whereof is at Exh.'F' to the plaint, confirmed that this amount of Rs.4.07 million plus interest is due and payable. As the company did not pay the said amount, the plaintiff, by their letter dated 13th April 2015, called upon the defendant who was the guarantor for the said company to pay the amount of US\$ 4.07 million together with outstanding interest thereon under the Personal Guarantee Agreement dated 3rd November 2012. This was followed by a letter dated 22nd April 2015 calling upon the defendant to repay. The defendant did not pay the amount of US\$ 4.07 million together with outstanding interest or any other sum. The counsel for the plaintiff Shri Shah states that the defendant did not even reply to the said notices.

3 On 19th November 2015, the counsel appearing for the defendant M/s.Vidhii Partners, on whom the summons for judgement was served, sought further time to file affidavit in reply. This Court, as a last chance, granted two weeks to file the reply. Subsequently, on 11th January 2016, the counsel instructed by M/s. Vidhii Partners informed the Court that the Advocates for the defendant seek to obtain discharge and have communicated to the defendant accordingly.

4 The advocate for the defendant was directed to communicate the next date to the defendant and it was also made clear that no accommodation will be granted on the next occasion to the defendant. On 8th February 2016, the counsel instructed by the Advocate A.M. Saraogi for the defendant appeared and requested the Court to grant time to file Vakalatnama as well as reply on behalf of the defendant. The Court granted two weeks time. On 5th April 2016, the counsel instructed Shri A.M. Saraogi for the defendant stated that even they wish to withdraw their appearance as they are not receiving any instructions from the client. Therefore, the defendant not having filed any reply, the allegations contained in the plaint have remained uncontroverted. Therefore, all allegations contained in the plaint are deemed to have been admitted by the defendant. Shri Shah, counsel for the plaintiff also tenders a compilation of original documents which are taken on record and marked

Exh.P-1 colly.

5 In view of the above, the plaintiff is entitled to a summary decree in terms of prayer clause (a) of the plaint which reads as under :-

(a) The defendant be ordered and decreed to pay to the plaintiff a sum of Indian Rupees on the date of decree, equivalent to US\$ 4,211,938 million plus interest at the rate of 1% per annum from the date of suit till payment and/or realization.

6 The summons for judgement accordingly disposed.

7 The plaintiff is also entitled to cost in the sum of Rs.50,000/-.

8 After the decree is drawn up, the Prothonotary and Senior Master to permit the plaintiff to withdraw the original documents upon filing true copies thereof duly certified as true copy by advocates for the plaintiff.

9 The suit also accordingly disposed.

(K.R. SHRIRAM, J.)