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

SUMMONS FOR JUDGEMENT NO. 52 OF 2015
IN
SUMMARY SUIT NO. 349 OF 2015
WITH
SUMMONS FOR JUDGEMENT NO. 53 OF 2015
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SUMMARY SUIT NO. 350 OF 2015
WITH
SUMMONS FOR JUDGEMENT NO. 54 OF 2015
IN
SUMMARY SUIT NO. 359 OF 2015

Arun Kantilal Parekh & Anr. .. Plaintiffs
Vs.
First Health Care Pvt. Ltd. .. Defendant

Mr.Zal Andhyarujina a/w. Mr.Punit Damodar & Ms. Nikita Vardhan i/b Kanga & Co. for plaintiffs in all suits.

Mr.Rohaan J. Cama a/w. Mr.Shanay Shah & Mr.G.C. Mohanty i/b Mohanty & Associates in all suits.

CORAM : K.R.SHRIRAM, J.
DATE : 12TH APRIL, 2016

P.C.

1 The plaintiffs have filed three summary suit for three different Trusts, viz.Taurus Investment Trust, Virgo Investment Trust and Sagittarius Investment Trust. The facts in all the three suits are identical and therefore for the sake of convenience let us deal with the facts in one suit viz. suit No.359 of 2015.

2 The plaintiffs are the trustees of Virgo Investment Trust, a Private Trust set up by the plaintiffs for the benefit of their grand children. It is the case of the plaintiffs that they had lent an amount of Rs.3,02,50,000/- in two tranches of Rs.2,52,50,000/- and Rs.50,00,000/- together with interest thereon @ 18% p.a. from the date of filing of this suit till payment/realisation. There is no written agreement. The plaintiffs have relied upon the Confirmation of Accounts dated 1st April 2012 issued by the defendant, copy whereof are at Exhs.'D' and 'E' to the plaint. The counsel for the plaintiffs relied upon a judgement of the Full Bench of this Court in the matter of ***Jyotsna K. Valia Vs.T.S. Parekh & Co.***[1] and submitted that a summary suit is maintainable on such confirmation of accounts. The counsel also submitted that the plaintiffs, by their letter dated 13th January 2015, called upon the defendant to repay the amount of Rs.3,02,50,000/- but the defendant had failed and neglected to pay. It is submitted that the defendant have acknowledged and admitted its liability to repay the aforementioned amount of Rs.3,02,50,000/- which is in the nature of a fixed debt, a liquidated demand of a fixed sum and hence the plaintiff is entitled to a summary judgement.

3 In the affidavit in rejoinder, the defendant has cast lot of aspersions on

1 2007 (3) BomCR 772, 2007

the deceased son of the plaintiffs one Amitabh A. Parekh. It is stated that amount of Rs.3,02,50,000/- was not a friendly loan but part payment towards share subscription amounts in the defendant's company. It is stated that the late Amitabh Parekh and the family concerns/trusts were to acquire 35% of share of the defendant-company by paying an initial sum of Rs.30 crores. It is also stated that Mr.Amitabh Parekh initially transferred an amount of Rs.2,52,50,000/- X 3 = Rs.7,57,50,000/- on 4th October 2011 to the company towards purchase of shares of the defendant-company but on the same day diverted a sum of Rs.5,11,00,000/- to a company by the name of Proton Construction Limited controlled by him by taking a cheque from defendant-company. It is also stated that late Amitabh Parekh transferred the balance Rs.1.50 crores to the defendant on 8th October 2011 but on the same day took a cheque for Rs.1.50 crores from defendant in favour of said Proton Construction Limited. It is also alleged that it was part of a fraud being perpetrated by late Amitabh Parekh. The short point, therefore, is whether the amount was given as a friendly loan or whether it was towards share subscription.

4 In the affidavit in rejoinder, the plaintiffs have denied the allegations made. The plaintiffs have also denied that a sum of Rs.5,11,00,000/- was paid to the Proton Construction Company but they have not denied that the

Proton Construction Co. was a company controlled by the plaintiffs' son late Amitabh Parekh. The link to late Amitabh Parekh is also important because Amitabh Parekh as could be seen from Exh.'E' annexed to the plaint, has deposited in the account of the trust the amounts paid by the Trust to the defendant-company. The defendant has also relied upon copies of the Resolution passed at the meeting of the Board of Trustees of the Trust of which the plaintiffs are Managing Trustees in which the Trustees have been authorized to invest the amount claimed in the suit from the defendant-company for acquiring the shares in the defendant-company. The Resolutions, copy whereof are annexed to the affidavit in reply, appears to have been signed by plaintiff no.1 though the counsel for plaintiff no.1 alleges that these are forged signatures. In my view, on this point alone, triable issues arise.

5 Moreover, the defendant has relied on a Confirmation of Accounts of the Trust which also have been signed by plaintiff no.1. The cheque numbers mentioned therein tally with the cheque numbers mentioned in the Trusts' Bank Accounts. In the Confirmation of Accounts from the Trust of the plaintiffs to defendant, it is also mentioned *“being amount paid for share purchase”*.

6 In ***M/s. Mechelec Engineers & Manufacturers Vs. M/s. Basic Equipment Corporation***[2], paragraph 8 reads as under :-

> *"8 In Smt. Kiranmoyee Dassi & Anr. v. Dr. J. Chatterjee(1), Das. J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by order 17 C.P.C. in the form of the following propositions (at p. 253):*
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> > *"(a) If the Defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the Defendant is entitled to unconditional leave to defend.*
> >
> > *(b) If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the Defendant is entitled to unconditional leave to defend.*
> >
> > *(c) If the Defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the infer- ence that at the trial of the action he may be able to establish a defence to the plaintiff's claim the Plaintiff is not entitled to judg- ment and the Defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.*
> >
> > *(d) If the Defendant has no defence or the defence set up is illusory or sham or practi- cally moonshine then ordinarily the Plaintiff is entitled to leave to sign judgment and the Defendant is not entitled to leave to defend.*
> >
> > *(e) If the Defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the Plain- tiff is entitled to leave to sign judgment, the Court may protect the Plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise se- cured and give leave to the Defendant on such condition, and thereby show mercy to the Defendant by enabling him to try to. prove a defence".*

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2 (1976) 4 SCC 687

7 In view of the fact that the reliance on Confirmation of the Accounts of the Trust controlled by the plaintiffs atleast appears to have been signed by plaintiff no.1 and also *prima-facie* tallies with the stand taken by the defendant that the amount was given towards purchase of shares in my view, the defence raised by the defendant cannot be brushed aside as misconceived or moon shine. The defendant has certainly raised triable issues indicating that it has a fair and reasonable defence.

8 In the circumstances, unconditional leave to defend has to be granted and is accordingly granted.

9 All the three summons for judgement stand dismissed. All the three suits transferred to the commercial causes.

10 In all the three suits, the defendant to file its written statement within four weeks from today. Within two weeks thereafter, the parties to file their respective affidavits of documents giving details of the documents in the schedule together with compilation of documents. Within two weeks thereafter, parties to take inspection of documents and also file and exchange their statements of admission and denial with reasons for denial.

11 All the three suits to be listed on 25th July 2016 for settling issues.

(K.R. SHRIRAM, J.)