

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

COMMERCIAL APPEAL NO.12 OF 2016
IN
SUMMONS FOR JUDGMENT NO.28 OF 2015
IN
SUMMARY SUIT NO.287 OF 2015

Anil Narendranath Wahal & Anr. Appellants
Vs.
Bhavik Bharatbhai Shah Respondent

WITH
NOTICE OF MOTION NO.347 OF 2016
IN
APPEAL NO.132 OF 2016
IN
SUMMONS FOR JUDGMENT NO.28 OF 2015
IN
SUMMARY SUIT NO.287 OF 2015

Anil Narendranath Wahal & Anr. Applicants
In the matter between
Anil Narendranath Wahal & Anr. Appellants
Vs.
Bhavik Bharatbhai Shah Respondent

Mr. Sanjay Jain with Mr. Nishant Sasidharan &
Ms Debashree Mandape i/by M/s. Ganesh and Company
for the Appellants/Applicants.

Mr. Chirag Balsara with Mr. Karan Bhosale & Ms Pooja
Shah i/by Ms Neha Dilip Bhosale for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : DECEMBER 19, 2016

P.C:

1. This appeal is challenging an Order passed on the Summons For Judgment No.28 of 2015 in Summary Suit No.287 of 2015.

2. Both sides extensively argued this appeal on the earlier occasion. Later on a suggestion was given to them as to why the claim in the Suit cannot be amicably settled. Mr. Jain, learned counsel appearing for the appellants, sought time to take instructions. Mr. Jain was given time and for reverting back to the Court.

3. Accordingly, in the last hearing and today both sides agree that this appeal and the Summary Suit, both, can be disposed of by the following order:-

4. That the appellants/original defendants shall pay to

the respondent/original plaintiff the decretal sum of Rs.5,84,00,000/- in instalments, as under:

- (a) The first instalment of Rs.25,00,000/- shall be paid on or before 28-2-2017
- (b) Rs.25,00,000/- on or before 31-3-2017
- (c) Rs.50,00,000/- on or before 30-4-2017
- (d) Rs.50,00,000/- on or before 31-5-2017
- (e) Rs.50,00,000/- on or before 30-6-2017
- (f) Rs.50,00,000/- on or before 31-7-2017
- (g) Rs.75,00,000/- on or before 31-8-2017
- (h) Rs.75,00,000/- on or before 30-9-2017
- (i) Rs.75,00,000/- on or before 31-10-2017
- (j) Balance of Rs.75,00,000/- on or before 30-11-2017
- (k) Balance decretal amount, if any, on or before 31-12-2017

5. If the amount is paid, as above, that will be accepted in full and final settlement of the plaintiff's claim in the Suit.

6. In the event of default in making payment of the first instalment of Rs.25,00,000/- on or before 28-2-2017 or default in making payment of any further instalment, the entire amount as claimed in the Suit with interest shall become payable. In that

event, the decree will be drawn up for that amount. That decree will become enforceable and executable in accordance with law.

7. However, if the entire amount is paid in instalments, as aforesaid, the Suit claim shall be marked as satisfied. Thereafter, no further payment will be made by the appellants.

8. The first appellant undertakes to make payment of the instalments and without any default. The second appellant being a company has passed a Resolution in the meeting of its Board of Directors held on 16-12-2016. This Resolution duly and fully authorises appellant No.1 to execute such terms and conditions as are permissible in law and to submit to a decree on admission. The second appellant has also agreed to bind itself with all the terms and stipulations in the order of this Court. It shall also be bound by the other conditions that are imposed insofar as the payment is concerned.

9. The parties have agreed that till the amount is disbursed, as above, the appellants shall not create third party rights or transfer any of their immoveable assets or properties save and except by obtaining prior leave of this Court.

10. Further, if the amounts are paid as agreed and within the time stipulated above, then, the respondent shall also write-off the mortgage debt as satisfied. The mortgage then to stand completely redeemed. Needless to clarify that in the event of default the rights under the mortgage shall remain intact and can be enforced in accordance with law.

11. To enable the appellants to remit the first instalment, the execution proceedings initiated by the respondent shall be held in abeyance. The parties agree that they would be continued to be held in abeyance so as to enable the appellants to fulfil and make payment in instalments, as agreed above. Meaning thereby, for every further instalment and till the debt is payable, the respondent shall not proceed with the execution proceedings even if they are pending. They would be held in abeyance so long as the appellants abide with the conditions to pay the amount by instalments within the stipulated time.

12. Both sides state that this Court should not assign any reason. It should proceed on the footing that the appeal can be

disposed of with this consent order. They also agree that the order of the learned single Judge impugned in this appeal and passed on the Summons For Judgment be substituted as above. The Suit is decreed in the above terms. There will be no order as to costs. The appeal accordingly stands disposed of.

13. In view of disposal of the appeal, Notice of Motion No.347 of 2016 does not survive and it accordingly stands disposed of.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)