

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM SUMMARY SUIT NO. 479 OF 2017
WITH
NOTICE OF MOTION NO. 777 OF 2017**

Bharat S Shah	...Plaintiff
<i>Versus</i>	
BR Films & Ors	...Defendants

Mr Anoshak Daver, *with Nirav Shah & Priyanka Mehta, i/b Little & Co., for the Plaintiff.*
Mr Haresh Gokhale, *i/b DSK Legal, for Defendants Nos. 1 to 3.*

CORAM: G.S. PATEL, J
DATED: 4th March 2019

PC:-

1. The Plaintiff seeks a decree in the amount of Rs. 2,48,14,520/- with further interest. The writ of summons having been served, the Defendants entered appearance and sought leave to defend. The Plaintiff filed Summons for Judgment No. 85 of 2017. SC Gupte J disposed of that Summons for Judgment on 16th April 2018, granting conditional leave to defend upon the Defendants depositing an amount of Rs. 2.10 crores within six weeks.

2. The Defendants did not comply. There is a no deposit certificate dated 2nd August 2018. The learned Advocate for the Defendants has no instructions but confirms that no deposit has been made till date. This was noted in previous orders as well including the order of 17th July 2018 of AK Menon J by which he placed the matter for an *ex parte* decree.

3. In view of the non-fulfilment of the condition, the Plaintiff is entitled to an *ex parte* decree under the provisions of Order XXXVII Rule 3(6)(b) of the Code of Civil Procedure 1908.

4. Accordingly, for the reasons set out in the order of Gupte J in the Summons for Judgment, the suit is decreed in terms of the prayers but with interest on principal sum of Rs. 2.10 crores at 18% per annum from the date of the suit till payment of realization.

5. In addition, the Plaintiff will be entitled to a decree in costs in view of the amendment to Section 35 of the Code of Civil Procedure 1908 of the Commercial Courts Act. Noting that the order of Gupte J on the Summons for Judgment did not award costs, I believe an amount of Rs. Six lakhs is reasonable as litigation expenses incurred at both stages. The decree for costs will not carry interest.

6. In addition, the Plaintiff will be entitled to a refund of court fee in accordance with Rules.

7. The compilation of document is taken on record and marked **Exhibit “P1”(collectively)** in evidence. The original documents

will be returned to the Plaintiff on these being substituted with the authenticated photocopies, if not already done.

8. The suit is disposed of in these terms.

9. In view of disposal of the suit, the Notice of Motion does not survive and disposed of as infructuous. No costs.

(G. S. PATEL, J)