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

COMMERCIAL SUIT NO. 394 OF 2016

Rupinder Singh Arora

...Plaintiff

VS

Kapil Puri

...Defendant

.....

Ms Ankita Singhanian a/w Mr Siddharth Samantaray i/b Kanga &
Co. for the Plaintiff

Ms Neha Naik i/b Phoenix Legal for the Defendant.

.....

CORAM : **B.P.COLABAWALLA, J.**
OCTOBER 31, 2017.

P.C. :

The Plaintiff has approached this Court seeking a decree in the sum of Rs.9,80,34,795/- with further interest on the sum of Rs.6 Crores at the rate of 18 % per annum from 1st March, 2016 until payment and or realization. The suit is based upon a Loan Agreement dated 29th June, 2010 read with 10 extensions of the said agreement, last of which is dated 5th October, 2012 and read with the Settlement Agreement dated 27th September, 2013. After filing of this suit, the writ of summons was served upon the Defendant and the Advocate for

the Defendant filed their appearance. The Plaintiff, therefore, took out the Summons for Judgment being Summons for Judgment No. 34 of 2016. By an order dated 17th October, 2016, this Court granted conditional leave to the Defendant to defend the suit subject to the Defendant depositing a sum of Rs.6 Crores with the Prothonotary and Senior Master of this Court within a period of six weeks from 17th October, 2016. This conditional order has been challenged by the Defendant before the Division Bench of this Court. This appeal was filed on 17th November, 2016. However, till date no efforts have been made to obtain any ad-interim relief in this appeal. Even after passing of this order, this matter again came up before this Court on 18th July, 2017. On that date this Court noted that the Defendant was granted conditional leave to defend the suit and admittedly there was no deposit by the Defendant. The suit was accordingly posted for ex-parte decree on 3rd August, 2017. The Plaintiff was directed to obtain a certificate of non-deposit by the Defendant from the Prothonotary and Senior Master of this Court before the next date.

2 This certificate has now been obtained by the Plaintiff

dated 27.7.2017 and which is on record. This certificate clearly states that the Defendant has not deposited the sum of Rs.6 Crores on or before 5th December, 2016.

3 The suit, as mentioned earlier, is based on the Loan Agreement dated 29th June, 2010 for Rs.6 Crores read with the Settlement Agreement dated 27th September, 2013. The Plaintiff has placed on record the original Settlement Agreement dated 27th September, 2013. In view of clause (b) of sub-rule (6) of Rule (3) of Order 37 of the Code of Civil Procedure, 1908, the Plaintiff is forthwith entitled to a judgment against the Defendant in view of non-compliance with the order of this Court granting conditional leave to defend the suit. The Plaintiff has claimed a sum of Rs.9,80,34,795/- together with further interest on the sum of Rs.7.35 Crores at the rate of 18 % per annum from the date of filing of this suit till payment and/or realization. In my opinion and considering that the Settlement Agreement itself provides that the interest shall be charged at the rate of 18 % per annum, the Plaintiff is entitled to interest as claimed. Hence, I pass the following order:

O R D E R

- (i) The Defendant is ordered and decreed to pay to the Plaintiff a sum of Rs.9,80,34,795/- together with further interest on the sum of Rs.7.35 Crores at the rate of 18 % per annum from the date of filing of the suit till payment and or realization;
- (ii) The Defendant shall pay to the Plaintiff costs of the suit;
- (iii) The Plaintiff is entitled to refund of court fees, if any, as per rules;
- (iv) The suit is accordingly disposed of;
- (v) Issuance of certified copy of the decree is expedited.

2 The Plaintiff is at liberty to substitute the original Settlement Agreement which is on record of this Court with certified copy thereof and take back the originals.

(B. P. COLABAWALLA, J.)