

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

IL & FS Financial Services Ltd. ...Plaintiff
vs
Champion Agro World Pvt. Ltd. & Ors. ...Defendants

CORAM: **B.P.COLABAWALLA, J.**
NOVEMBER 3, 2017.

Learned advocate appearing on behalf of Defendant Nos.1 to 4 have appeared today and stated before me that he has filed a Chamber Order (L) No.1205 of 2017 seeking discharge in this matter as he has not received any instructions from the Defendants. He has also informed the Defendants vide his letter dated 1st November, 2017 informing the Defendants that the matter has been placed on board today. This letter is not only

sent by Speed Post, but a scanned copy of the same has also been forwarded to the Defendants vide the Advocate's email dated 1st November, 2017. Despite this the Defendants have not come forward to give any instructions to their advocates.

2 This Summons for Judgment is filed in Summary Suit seeking decree in the sum of Rs.48.43 crores along with interest. The Summary Suit is based on a Loan Agreement executed between Defendant No.1 (principal borrower) and separate guarantees executed by Defendant Nos.2 to 4 respectively. Before filing of this suit, leave under Clause 12 of the Letters Patent was obtained by the Plaintiff. The Defendants have thereafter taken out the Chamber Summons being Chamber Summons No.29 of 2017 for revocation of that leave. That Chamber Summons was dismissed by this Court vide its order dated 24th July, 2017.

3 As far as the Summons for Judgment is concerned, this Court heard both the parties and by its order dated 24th July, 2017, granted conditional leave to defend the suit on the Defendants depositing in this Court a sum of Rs.40 Crores within

a period of eight weeks from 24th July, 2017. It is an admitted position before me that this amount has not been deposited in this Court within the stipulated period. The Prothonotary and Senior Master of this Court has also issued a non-deposit certificate dated 7th October, 2017 whereby it has been certified that the Defendants have not deposited the sum of Rs.40 Crores on or before 30th September, 2017.

4 As mentioned earlier, the suit is based on a Loan Agreement executed between Defendant No.1 (principal borrower) and separate guarantees executed by Defendant Nos.2 to 4. The Plaintiff has tendered a compilation of original documents including the Loan Agreement and the guarantees executed by Defendant Nos.2 to 4. This compilation of documents is taken on record.

5 In view of Clause (b) of sub-rule (6) of Rule (3) of Order XXXVII of the Code of Civil Procedure, 1908, the Plaintiff is forthwith entitled to a Judgment against the Defendants in view of non-compliance with the order of this Court dated 24th July, 2017 granting conditional leave to defend the suit. The

Plaintiff has claimed a sum of Rs.48,43,02,538/- together with further interest on the principal sum of Rs.40 Crores at the rate of 18 % per annum from the date of filing of the suit till payment and or realization. Considering that the Loan 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 Defendants are jointly and severally ordered and decreed to pay to the Plaintiff a sum of Rs.48,43,02,538/- together with further interest on the sum of Rs.40 Crores at the rate of 18 % per annum from the date of filing of the suit till payment and or realization;
- (ii) The Defendants 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.

6 On the Plaintiff furnishing true certified copies of the originals that have been tendered today, the Plaintiff shall be permitted to take back the original documents.

(B. P. COLABAWALLA, J.)