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

COMMERCIAL SUIT NO. 150 OF 2016

Unayan Trade and Commerce Pvt. Ltd. .. Plaintiff
Vs.
Lalchand Choonilal Bhatia .. Defendant

Mr. Jamshed Ansari for the Plaintiff.
Mr. Binit Kumar Sultania, Director of Plaintiff Company present.
None for the Defendant.

CORAM : B. P. COLABAWALLA, J.
DATE : 10th NOVEMBER, 2017.

P. C. :

1. The present suit has been filed seeking a decree against the defendant in sum of Rs.3 Crores with further interest @ 24% per annum on Rs.2 Crores from 01.07.2016 till payment and/or realization. Over and above this prayer, the plaintiff has also sought a declaration that there is a valid and subsisting mortgage on Flat No. 102, Santacruz Saryu Premises Co-operative Society Ltd., 64B, Linking Road, Santacruz (W), Mumbai – 400 054 admeasuring about 103.13 sq. mtrs. (hereinafter referred to as the 'mortgaged property'). Prayers are also sought for sale of this mortgaged property.

2. After the suit was filed, the Writ of Summons along with a true copy of the plaint was duly served by the bailiff of the office of the Sheriff of Mumbai on 17.11.2016 at about 9.50 a.m. The defendant accepted service and the same is evidenced by the affidavit of service filed by the bailiff dated 21.11.2016. Despite service of writ of summons, no

appearance has been filed by the defendant. It is in this circumstances, that the Prothonotary and Senior Master of this Court by his order dated 25.01.2017 transferred the suit to the list of Undefended Suits. This is how the matter has come up before me today for passing of ex parte decree.

3. The brief facts of this case are that the plaintiff is non banking financial institution. Pursuant to an application/request made by the defendant, the plaintiff on or before 14.06.2013 granted a loan of Rs.2 Crores to the defendant vide its sanction letter dated 14.06.2013. The loan was granted with interest @ 24% per annum. To secure the aforesaid loan of Rs.2 Crores, the defendant executed various security documents in favour of the plaintiff including a mortgage deed, mortgaging his residential premises (earlier referred to as the mortgaged property). This mortgage deed dated 06.07.2013 has been duly registered as document No. 4051/2013 with the Joint Sub-Registrar, Andheri-6. The creation of this mortgage is also recorded by the Housing Society vide its letter dated 03.07.2013.

4. This loan of Rs.2 Crores was given by the plaintiff to the defendant more particularly set out hereunder:-

Date	Amount
09/07/13	50,00,000=00
10/07/13	30,00,000=00
10/07/13	20,00,000=00
23/12/13	1,00,00,000=00
Total	2,00,00,000=00

5. Thereafter, by a letter dated 10.10.2014, the defendant admitted having availed of the loan of Rs.2 Crores from the plaintiff and requested for a further loan of Rs.2-3 Crores. According to the plaintiff, initially the defendant paid monthly interest for few months and thereafter started defaulting and several cheques issued by the defendant towards payment of monthly interest were also dishonoured.

6. In view of the aforesaid defaults, the plaintiff vide their Advocate's demand notice dated 29.06.2015 demanded the arrears of interest for the period from June, 2014 to June, 2015 (13 months) amounting to Rs.52,00,000/- with further penal interest. In reply to the aforesaid Advocate's notice, the defendant vide his letter dated nil (but appears to have been posted on 24.07.2015) expressed his willingness to settle the loan amount. In the interregnum, to discharge his liability the defendant also handed over a cheque of Rs.2 Crores dated 05.07.2015 drawn on IDBI Bank Ltd. This cheque when presented for payment was dishonoured and accordingly the plaintiff vide their Advocate's demand notice dated 31.07.2015 demanded the arrears of interest amounting to Rs.56,00,000/- and the principal amount of Rs.2 Crores. Thereafter the defendant tried to settle the matter with the plaintiff but the settlement offer given by the defendant was rejected by the plaintiff vide its letter dated 18.09.2015 as it was too low to accept.

7. It is in this factual backdrop that the present claim has been made by the plaintiff against the defendant. The plaintiff has also filed an

affidavit of evidence of its witness Mr. Binit Kumar Sultanina dated 27.03.2017. He is a director of the plaintiff and as stated in the affidavit that he is personally conversant with the facts of the case and able to depose the same. He has been administered oath and the affidavit of evidence is taken on record and marked as Exhibit P-1. On going through this affidavit, I find that the representative of the plaintiff who is conversant with the case has basically reiterated the facts and have been stated in the plaint. The original documents supporting the claim of the plaintiff have also been tendered as compilation of documents. As the Index of Compilation of documents would indicate there are 16 documents starting from serial No.1 to serial No.16. These documents, namely, documents from serial No.1 to serial No.16 are marked as Exhibits P-2 to P-17 respectively.

8. I have gone through the averments in the plaint as well as affidavit of evidence of the plaintiff's witness (PW 1). On going through the evidence of PW 1, it is apparent that the defendant had availed of a loan of Rs.2 Crores from the plaintiff. To secure this loan, the defendant had also created a mortgage in favour of the plaintiff of the mortaged property. Despite repeated requests and reminders sent to the defendant, payment was not forthcoming. After this suit was filed, the defendant has neither entered appearance nor filed any written statement despite writ of summons being duly served upon the defendant. Looking to the totality of the facts of the present case and considering that everything stated in the

plaint as well as in the affidavit of evidence has gone unchallenged, there is no reason as to why the plaintiff's case should not be accepted. This being the case, I am of the view that the decree sought in the present suit ought to be granted.

9. In view thereof, the suit is decreed in terms of prayer clauses (a) to (d) which read as under:

> a. That the defendant be ordered and decreed to pay the plaintiff, a sum of Rs.3,00,00,000/- (Rupees Three Crores only) with future intest @ 24% per annum on Rs.2,00,00,000/- (Rupees Two Crores only) from 01.07.2016, till payment and/or realization;
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> b. That this Hon'ble Court be pleased to declare that there is valid and subsisting mortgage on Flat No. 102, Santacruz Saryu Premises Co-operative Society Ltd., 64B, Linking Road, Santacruz (W), Mumbai-400 054, admeasuring about 103.13 sq. mtrs.;
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> c. That it be declared that the repayment of the said sum of Rs.3,00,00,000/- (Rupees Three Crores only) with future interest @ 24% per annum on Rs.2 Crores as mentioned in prayer (a) above is secured by valid, subsisting & binding mortgage on a Flat No. 102, Santacruz Saryu Premises Co-operative Society Ltd., 64B, Linking Road, Santacruz (W), Mumbai – 400 054, admeasuring about 103.13 sq. mtrs.;
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> d. That this Hon'ble Commercial Court be pleased to direct sale of Flat No.102, Santacruz Saryu Premises Co-operative Society Ltd., 64B, Linking Road, Santacruz (W), Mumbai – 400 054, admeasuring about 103.13 sq. mtrs. to recover the dues as mentioned in prayer clause (a) above.

10. The plaintiff shall be entitled to refund the Court fees, if any, as per rules. However, in the facts and circumstances there shall be no order as to costs.

[B. P. COLABAWALLA, J.]