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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.58 OF 2016
IN
COMMERCIAL SUIT NO.469 OF 2016
WITH
CHAMBER SUMMONS NO.75 OF 2017 (NOB)

IL And FS Financial Services Limited ...Plaintiff
vs
Champion Agro World Private Limited And 3 Ors. ...Defendants

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Mr. Chetan Kapadia, a/w. Mr. Vivek Dwivedi, i/b. Manilal Kher Ambalal & Co., for the Plaintiff.

Mr. Vishal Kanade, a/w. Mr. M.P. Vora, i/b. M/s. Pramodkumar & Co., for Defendant Nos. 1 to 4.

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CORAM : S.C. GUPTE, J.

DATED : JULY 24, 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Summons for Judgment is taken out in a summary suit seeking a decree in the sum of about Rs.48.43 lakhs along with interest. The Summary Suit is based on a loan agreement executed between Defendant No.1 (principal borrower) and separate guarantees issued by each of Defendant Nos. 2 to 4. According to the Plaintiff, though a material part of the cause of action arose in Mumbai, the contract,

namely, the loan agreement, and the guarantees having been executed outside Mumbai, this Court would have jurisdiction to entertain the suit only upon leave being granted under Clause 12 of the Letters Patent. Accordingly, the Plaintiff sought leave, which was granted by this Court on 6 June 2016.

3. The Defendants have now taken out a Chamber Summons, being Chamber Summons No.29 of 2017, for revocation of that leave. The Chamber Summons is not on board. However, by consent of Counsel, it is mentioned, taken on board and called out, and heard along with the present Summons for Judgment. The subject matter of the Chamber Summons anyway also forms part of the Defendants' defence to the Summons for Judgment.

4. The Defendants submit that no part of cause of action in the present suit has arisen in Mumbai. Mr. Kanade, learned Counsel for the Defendants, contends that not only do the Defendants carry on business outside the jurisdiction of this Court, but the entire cause of action has arisen outside Mumbai. It is submitted that the contract between the parties, namely, the loan agreement and the letters of guarantee, on the basis of which the present Summary Suit is filed, were executed outside Mumbai; the payment was to be made thereunder by deducting the Defendants' account in a bank at Rajkot in Gujarat. It is submitted that leave under Clause 12 must accordingly be revoked and the Defendants be granted unconditional leave to defend the suit.

5. As far as Defendant No.1, namely, the principal borrower, is

concerned, though the contract is executed at New Delhi, there is a specific stipulation in the contract that all monies payable by the borrower to the lender under the contract shall be paid by telegraphic/telex transfer/mail transfer to a designated account or by account payee cheques or bank drafts drawn in favour of the vendor on a scheduled bank or such other bank as may be specified by the vendor or acceptable to the vendor. It is not disputed that, in pursuance of this stipulation, the Defendants signed a mandate form on 20 May 2014, which inter alia required the funds to be credited to ING Vaishya Bank at its branch in Bandra (East), Mumbai, as is indicated by the nine digit code of the bank and its branch on the mandate form. This being an express stipulation between the parties, read with the relevant clause in the contract referred to above, it is beyond dispute that the payment under the loan agreement was to be made at a place in Mumbai. If that is so, a part of the cause of the action did indeed arise within the jurisdiction of this Court and, upon leave being granted under Clause 12 of the Letters Patent, this Court would have jurisdiction to entertain and try the present suit. Leave under Clause 12 was, accordingly, correctly granted, and there is no merit in the defence of want of jurisdiction insofar as Defendant No.1 is concerned.

6. As far as the claim against the guarantors, namely, Defendant Nos. 2 to 4, is concerned, the documents of guarantee are silent on the place at which the payments are required to be made by the guarantors. In the absence of any contractual stipulation as to the place of payment, the principle that the debtor must seek the creditor and pay at his residence must be followed. Our Court, in a recent case, in **Deccan**

Chronicle Holdings Ltd. vs. Future Corporate Resources Ltd.[1], relying on the decision of Calcutta High Court in **A.K. Raha (Engineers) Ltd. vs. State of Punjab**[2], reiterated this position in a similar case, where revocation of leave granted under Clause 12 of Letters Patent was sought. This has been a time tested principle of common law applied uniformly by our Courts so far.

7. Coming now to the defence on merits, the thrust of the Defendants' argument is that the loan was advanced to Defendant No.1 basically for refinancing another term loan given to a group company of Defendant No.1, namely, Champion Agro Ltd. whose shares were held by the promoters and Small Industrial Development Bank of India ('SIDBI') in the proportion of 85.60% and 14.40% respectively; in September 2011, one Siddharth Dinesh Mehta, who was a director of IL & FS Energy Development Company Ltd., a sister concern of the Plaintiff, showed interest in providing private equity to Champion Agro Ltd.; since, however, neither Champion Agro Ltd. nor any of its sister concerns, was a listed company, it was agreed that the funds could be arranged through an initial public offering ('IPO') of Champion Agro Ltd. and, in the meantime, the shareholding of SIDBI in Champion Agro Ltd. would be acquired by arranging a fund of Rs.35 crores. Accordingly, by a loan agreement dated 19 October 2011, executed between the Plaintiff and Champion Agro Finance Ltd., a sister concern of Champion Agro Ltd., a term loan facility of Rs.35 crores was granted to Champion Agro Finance Ltd. It is the case of the Defendants that, due to inadequate rains in Gujarat in 2013, the agricultural market in Gujarat was on a back foot

1 2013 SCC OnLine Bom 192
2 AIR 1961 Cal 166

and, as a result, Champion Agro Ltd. could not gather steam. Since, however, it was not possible to extend the term of the loan agreement dated 19 October 2011 in favour of Champion Agro Finance Ltd., under the policy of the Plaintiff, it was proposed that the Plaintiff could offer a term loan of about Rs.40 crores to Defendant No.1 towards refinancing the existing borrowings of Champion Agro Finance Ltd. Accordingly, the suit term loan agreement of Rs.40 crores was entered into between the parties. Upon disbursement of this term loan, the overdue loan of Champion Agro Finance Limited was repaid to the Plaintiff by NEFT/RTGS in full and final settlement of the loan agreement of 19 October 2011. In short, the defence is that the loan was made available to Defendant No.1 for refinancing an existing borrowing of its group company. What this defence boils down to is that the loan of Champion Agro Finance Limited was substituted by the loan of Defendant No.1 herein, who is admittedly a group company of the former. This, however, does not make the loan any the less lawful. There is no manner of doubt, and it is indeed not disputed by the Defendants, that the loan amount was actually disbursed. By means of such disbursal, the loan of a group company was fully repaid. In other words, admittedly the original debtor, which was a group company of Defendant No.1, stood substituted by Defendant No.1. That does not in any way change the position as far as the liability owed to the Plaintiff is concerned. Defendant No.1 is still liable to repay that loan. In the premises, there is, absolutely, no merit in the defence. The defence may be characterized as merely nominal or moonshine.

8. In these facts, this Court would be perfectly justified in

making the Summons for Judgment absolute by passing a decree in favour of the Plaintiff. However, with a view to give one chance to the Defendants, only by way of mercy, this Court is inclined to grant leave to the Defendants to make out their case at the trial of the suit on and subject to the condition of deposit of the entire principal amount of Rs.40 crores in this Court.

9. Accordingly, the Summons for Judgment is disposed of in terms of the following order :-

(i) The Defendants are granted leave to defend the suit on and subject to the condition of depositing in this Court a sum of Rs.40 crores within a period of eight weeks from today;

(ii) If this amount is deposited, it shall be invested by the Prothonotary & Senior Master of this Court in fixed deposit/s of Nationalized Bank/s, initially for a period of 13 months and thereafter renewable from time to time until further orders, and to abide by such orders as may be passed in the present suit;

(iii) The Defendants shall be at liberty to file written statement within a period of four weeks of making such deposit;

(iv) The Plaintiff will be at liberty to apply to the Court for withdrawal of the amount deposited by the Defendants;

(v) Chamber Summons No. 75 of 2017 is dismissed;

(vi) Costs to be costs in the cause;

(vii) The suit to appear on board after twelve weeks for directions.

(S.C. GUPTE, J.)