

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMARY SUIT NO. 793 OF 2015

M/s. Soul Jewels and Anr. ... Plaintiffs
Versus
Nadeem Ashraf Furniturewala ... Defendant

Mr. Anoshak Daver a/w. Mr. Sumit Raghani i/b. Agrud Partner for the Plaintiffs.
None for the Defendant.

CORAM : S.J. KATHAWALLA, J.
DATED : 10TH FEBRUARY, 2017

JUDGMENT :

1. The above Summary Suit is filed by the Plaintiffs under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for an Order and Decree against the Defendant to pay to the Plaintiffs a sum of Rs.9,15,92,000/-, as per the Particulars of Claim annexed and marked Exhibit-H to the Plaint alongwith interest thereon at the rate of 18% per annum from the date of filing of the Suit till payment.
2. The above Summary Suit is filed on the basis of an implied promise to pay the liquidated sum of money, based on three writings / confirmations dated 1st April, 2009, 1st April, 2010 and 1st April, 2013 annexed as Exhibits-B to D respectively, to the Plaint. The Defendant has made part payment on 22nd May, 2013. Since the amount was lent and advanced by the Plaintiffs to the Defendant as friendly loan, no interest is claimed by the Plaintiffs till the date of filing of the

above Summary Suit. The Plaintiffs had by their Advocate's notice dated 11th February, 2015 called upon the Defendant to pay to the Plaintiffs an amount of Rs.9,15,92,000/- alongwith interest at the rate of 18% per annum till payment, which the Defendant failed to pay on the grounds, which according to the Plaintiffs are false and incorrect. The Plaintiffs have in the present Suit therefore claimed 18% interest, only from the date of the filing of the Summary Suit until payment and / or realization.

3. After the filing of the Summary Suit, the Plaintiffs have sought to serve the Writ of Summons on the Defendant. Since the Plaintiff failed to serve the Writ of Summons on the Defendant, the same was served through publication as can be seen from the Affidavit proving service dated 3rd August, 2016. Affidavits of Service dated 16th February, 2016, 21st March, 2016, 25th July, 2016, 28th July, 2016 and 13th October, 2016 are also taken on record. Since the Defendant has not entered an appearance and has not come forward to defend the Summary Suit, the Plaintiffs are entitled to an Order and Decree as prayed. The Plaintiffs have tendered the original documents before the Court, which are taken on record. In view of Sub Clause (iii) of Rule 2 of Order XXXVII of CPC, the Plaintiffs are entitled to a Decree against the Defendant. Hence, the following order :

i. The Defendant is ordered and decreed to pay to the Plaintiffs a sum of Rs.9,15,92,000/- alongwith interest thereon at the rate of 18% per annum from the

date of filing of the Summary Suit till payment and / or realization.

- ii. The Defendant shall pay to the Plaintiffs the costs of the Suit.
- iii. The office shall return the original documents to the Advocate for the Plaintiffs upon the Advocate for the Plaintiffs handing over photostat copies of the said documents duly certified by him as true copies.
- iv. Refund of Court fees, if any, as per Rules.
- v. The Summary Suit is accordingly disposed off.

(S.J.KATHAWALLA, J.)