

*rrpillai***IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****SUIT NO. 3073 OF 1986**

Vinesh Narayandas Davda & Ors.

... Plaintiff

vs.

Darshan Sing Sadana

... Defendants.

Mr. Gautam Mehta a/w. Mr. Rakesh Mandavkar i/b. Mr. Bhavesh Panjuani i/b.
Mulla & Mulla & Craigie Blunt & Caroe for the Plaintiffs.

None for the Defendants.

CORAM : A.K. MENON, J.**DATE : 12th SEPTEMBER, 2018****P. C.**

1. Called for ex-parte decree. The suit seeks specific performance of agreement dated 31st May, 1983 and in the alternative money decree in a sum of Rs.3,00,00,000/- as compensation along with interest thereon @ 19.5 % per annum. The defendants have not filed their written statement despite opportunity to do so, including vide order dated 10th November, 2003 where conditional order was passed by this Court permitting them to file their written statement subject to payment of costs. Despite such opportunity they have failed and neglected to file their written statement.

2. The plaintiff have since tendered an affidavit in lieu of examination in chief of plaintiff no. 1 which is on record at Exhibit-A. The plaintiff no. 1 Mr. Vinesh Narandas Davda who is present in Court today tenders an additional affidavit in

lieu of examination in chief. The same is taken on file and marked as Exhibit-B. The plaintiff has tendered a compilation of documents.

3. The deponent has deposed in paragraph 8 that the original of the suit agreement dated 31st May, 1983 is in the possession of the defendants. The affidavit in lieu of examination in chief sets out that the defendants have failed and neglected to comply with their obligations under the suit agreement. In paragraph 13 of the plaint the plaintiff have averred they were at all time ready and willing to fulfill their obligations under the contract. The witness has also deposed to that effect in paragraph 47 of his affidavit of evidence. In the additional affidavit of the witness he has deposed to the fact that the plaintiffs' Advocates had issued notice to produce documents to the company of the defendants to which there is no response.

4. An affidavit of service is tendered today by Mr. Mehta to prove service of the notices. Copy of the notice has been served to defendant no. 1 at its address at London on 1st September, 2017 as evident from the consignment tracking report annexed to the affidavit. As far as notice to defendant no. 2 is concerned delivery has been established by the tracking report which shows that the consignment was delivered on 1st September, 2017. In the circumstances, I am satisfied that the defendants having failed to appear despite service of summons.

5. As far as the compilation of documents is concerned, 12 documents in compilation are in photocopy and pursuant to the notice to produce documents upon failure of the defendant to do so the affidavit filed today sets out far as

document no. Sr. No. 1 is concerned in view of the deposition in paragraph 24 of the affidavit of evidence the same are taken on record as secondary evidence and are marked P-1 to P-12 as detailed below :

Sr. No.	Particulars	Exhibit
1	Copy of Balance Sheet and Profit & Loss Account of Day Light Ceramics Gujrat Pvt. Ltd for year ended 31 st December, 1982	P-1
2	Photo copy of Certified Board Resolution dated 15 th March, 1983.	P-2
3	Statement of Shares held by the Plaintiffs as on 31 st May, 1983	P-3
4	Notarized true copy of the Agreement entered into between the Plaintiffs and the Defendants dated 31 st May, 1983	P-4
5	Typed copy of letter from Controller of the RBI to Day Light Ceramics Pvt. Ltd. Dated 5 th September, 1983	P-5
6	Typed Copy of the letter from Controller of RBI to Defendant no.1 dated 17 th September, 1983.	P-6
7	Original signed letter from M/s. Pathare Dhru & Co for Defendant to Plaintiff dated 2 nd November, 1984.	P-7
8	Photocopy of signed letter from M/s. Pathare Dhru & Co. for the Defendants to M/s. Kanga & Co. dated 13 th September, 1985.	P-8
9	Signed carbon copy of the letter from M/s. Mulla & Mulla & CBC for the Plaintiffs to M/s. Pathare Dhru & Co. for the Defendants dated 4 th October, 1985.	P-9
10	Photocopy of signed letter from M/s. Pathare Dhru & Co. the Advocate for the Defendants to M/s. Mulla & Mulla & CBC for the Plaintiffs.	P-10
11	Statement of amounts due as on 30 th September, 1986 under clause 6 of the Agreement dated 31 st May, 1983	P-11
12	Photocopy of Order passed by Labour court & Authority under the payment of wages Act, Rajkot in the matter of Payment of Wages (P.W.) Applications Nos. 10/1986 to 18/1986.	P-12

6. Mr. Mehta submits that the plaintiff are seeking the alternative prayer in the suit. He does not press for reliefs of specific performance but only damages in lieu of specific performance. In view of the unchallenged deposition of the witness and the defendants having failed to defend the suit I am of the view that the plaintiff is

entitled to a decree in terms of prayer clause (c) and (d). Accordingly, I pass the following order :

- (i) Suit is decreed in terms of prayer clause (c) and (d).
- (ii) Interest from the date of suit is payable @ 12% p.a.
- (ii) Drawn up decree is expedited.

(A.K. MENON, J.)

Rajeshwari
Ramesh
Pillai

Digitally signed
by Rajeshwari
Ramesh Pillai
Date:
2018.09.24
17:38:56 +0530