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

SUMMONS FOR JUDGMENT NO.14 OF 2017
in
SUMMARY SUIT NO.580 OF 2015
(COMS/160/2015)

Liechtensteinische LandesBank AG .. Plaintiff
vs
Nitin Sandesara .. Defendant

Mr.Darius B.Shroff Sr.Advocate with Mr.Ishrar Ahuja,
Mr.Nirav Merchant I.b Thakordas & Madgavkar & Co
for Plaintiff
Mr.Prem Jha for Defendant.

Coram : A.K.MENON, J
Date : 2ND JULY, 2018

P.C

1. This summons for judgement seeks a decree in the sum of Rs.72,92,37,871.50. The computation of the claim is based on the particulars of claim appearing at Exhibit M to the plaint. The plaint is based on a guarantee dated 24.8.2012 described as "Declaration, Undertaking and Acknowledgment." It is executed by the defendant at Mumbai, in presence of two witnesses as can be seen from Exhibit H. The said Declaration, Undertaking and Acknowledgment constitutes a written agreement to pay the amount owing from one Sunshine Investment Business Ltd, a company incorporated in British

Virgin Island and also carrying on business amongst other places at Liechtenstein Europe. The said company (hereinafter referred to as the 'company') had entered into an agreement described as Lombard Loans and General Deed of Pledge with the plaintiff-Bank. There is no dispute that such an agreement had been entered into between the company and the Bank. The plaint proceeds on the basis that the company had failed to pay the amount due and payable by the company, to the bank under the said loan facility. The plaint refers to letters addressed to the company and by the company as also subsequent demands made from the defendant in his capacity as a guarantor under the said Declaration, Undertaking and Acknowledgement.

2. The defendant is a resident of Mumbai amongst other places, as can be seen from the cause title of the plaint. The guarantee was executed in Mumbai. The said guarantee also discloses as his address as that appearing in the cause title to the plaint. The plaint discloses that the company owed money to the bank which the defendant undertook to pay in the event the company failed to pay. The company has made part payment of US dollars 250,000 towards its total liability. Thus, the suit claim shows balance of the amounts owing from the company to the plaintiff-bank along with interest thereon at 4.15% p.a. being the agreed rate of interest under the Lombard Loans Agreement. The guarantee has

since been invoked because the company had failed and neglected to pay the balance sum of monies. It appears that the defendant failed to pay the said sum as a result of which, further correspondence ensued but save and except part payment of USD 2,50,000 no other payments were made by the company. A suit was then filed in Dubai First instance Court. It is stated across the bar that the plaintiffs are not proceeding against this defendant in the Court at Dubai and have filed this suit in view of the fact that the defendant was at all material times, a resident of Mumbai.

3. In reply to the Summons for Judgement, the defendant by his affidavit dated 15.2.2017 has taken up the contention that this Court does not have jurisdiction to entertain the suit, the reason being that the loan transaction between the company and the bank provided that Liechtenstein laws would apply and that the proceedings would be adopted against the company in that jurisdiction. It is further submitted that as per the loan agreement, the plaintiff-bank may enforce its rights vis-a-vis borrower incorporated in British Virgin Island under laws of Liechtenstein and at Vaduz and therefore, this Court will not have jurisdiction to entertain the suit. The defendant had reserved his right to file a further affidavit in reply after taking inspection of documents. Inspection has since been offered but had not been taken.

4. Learned counsel for the defendant on a query as to why inspection of the documents which he had sought vide letters dated 23.1.2017, 4.2.2017, 8.2.2017 had not been taken despite the same being offered to him, submits that he has no instructions as on date to take inspection. He submits that since he has no instructions to take inspection, no further affidavit can be filed.

5. Be that as it may, appearance has been entered and vakalatnama is admittedly executed by the defendant and affidavit-in- reply dated 15.2.2018 has also been affirmed by the defendant and duly identified by the Advocate appearing for him. The only document on which reliance is placed is the Lombard Loan Agreement between the plaintiff-bank and the said company and certain other correspondence addressed by him to the Advocate for the plaintiff-bank and copies of certain extracts, screen-shots of case details pertaining to the suit.

6. Heard learned counsel for the parties, perused the documents. From the pleadings, it is clear that execution of the guarantee is not in dispute. In fact, the defendant relies upon the documents made by the company. The particulars of claim reveals that the plaintiff-bank gave due credit for USD 2,50,000. Thus, the particulars of claim reflects the balance due as on date of filing the suit. The averments in the plaint as far as it deals with execution of

the guarantee have not been disputed. The defendant had an opportunity of perusing copies of the documents annexed to the plaint has not disputed his signatures on the documents. Even assuming the inspection of the originals had not been granted, it was always open for the defendant to have disputed his signatures as appearing in the annexures to the plaint. Thus, the plea of jurisdiction is moonshine. The affidavit-in-reply discloses a promise by the company to pay as can be seen from Exhibit A which is a letter dated 5.1.2012 addressed by the company to the plaintiff-Bank wherein the company admits of financial difficulties and seeks further time to pay the outstanding amounts. Thus, invocation of the guarantee cannot be faulted.

7. Exhibit B to the affidavit in-rejoinder is an acknowledgement of debt stated to be executed by the defendant wherein he admits the total debt of Rs.1,03,63,898.88 in the letter dated 12.1.2012. There is also another personal guarantee dated 23.1.2012 wherein the defendant has admitted the liability to the amount up to USD 12,00,000 (US Dollars Twelve Million) wherein he has undertaken to pay the amount if any, to be paid by the company. This guarantee however was shown to be valid till 31.12.2012. The fact that this guarantee is governed by the laws of British Virgin Island is not relevant for the purposes of the present suit, since the suit is based on a subsequent guarantee executed on

24.8.2012 and executed in Mumbai.

8. In the circumstances, considering the fact that even after execution of the guarantee, the defendant had sought time to pay the Bank's dues which are undisputed as far as quantum is concerned, and which the defendant is bound to pay upon default by the company of which he was the Director, the defendant has no defence whatsoever to the claim. The objection as to jurisdiction as stated above, has no merit in view of the fact that at all material times, he was a resident of Mumbai and had executed the guarantee in Mumbai. In the circumstances, I pass the following order :

ORDER

(i) The Summons for Judgement is made absolute. The suit is decreed as prayed.

(ii) The defendant shall pay pay interest on the sum of Rs.72,92,37,871.50 at the rate of 6 % per annum from 31st March 2015 till payment or realization.

(iii) Defendant shall pay costs of the suit.

(iv) Refund as per rules.

(A.K.MENON, J)