

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

**SUMMONS FOR JUDGMENT NO. 33 OF 2017
IN
COMMERCIAL SUMMARY SUIT NO. 302 OF 2016**

The Shipping Corporation of India	...Plaintiff/Applicant
Vs.	
The State Bank of India	...Defendant

Mr.Sanjay Jain with Prathamesh Kamat I/b. A. Mehta Laljee & Co. for Plaintiff.
Mr.Atul Damle, Senior Advocate I/b. Vivek S. Sawant for Defendant.

CORAM : S.C. GUPTE, J.

DATE : 26 FEBRUARY 2018

P.C. :

Heard learned Counsel for the parties.

2 This summons for judgment is taken out in a summary suit based on bank guarantee. The Defendant bank appears to have guaranteed the dues under a ship building contract between the Plaintiff and one Bharati Shipyard Ltd. It appears that originally the bank guarantee issued by the Defendant bank covered not just the principal amount upto a certain limit but also interest at the rate of 7% thereon as may be due and payable by M/s.Bharati Shipyard Ltd. to the Plaintiff. It appears that this bank guarantee was amended in August 2013 and such amendment was carried throughout the relevant period when the bank guarantee was extended. By this amendment, the amount, upto which the bank was liable, was restricted to a stated amount and not interest over and above that amount. It is not in dispute that the principal amount was duly paid by the

Defendant bank to the Plaintiff. The suit claim is in respect of interest over and above the principal amount. The Defendant relies on documents effecting amendment of the bank guarantee and also extending its term/s. These documents *prima facie* indicate that the amount stated therein is the maximum amount of liability undertaken by the Defendant bank under the bank guarantee and not interest over and above that amount as was the case in the original (i.e. unamended) bank guarantee. This does raise a genuine triable defence and for which the Defendant bank deserves an unconditional leave.

3 Accordingly, the summons for judgment is disposed of in terms of the following order :

- (I) The Defendant is granted unconditional leave to defend the suit.
- (II) The written statement shall be filed within four weeks from today.
- (III) The suit is transferred to the Commercial Division.
- (IV) Place the suit for directions after four weeks.

4 At the request of learned Counsel for the Plaintiff, the hearing of the suit is expedited.

(S.C. GUPTE, J.)