

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 42 OF 2018
IN
COMM SUMMARY SUIT NO. 111 OF 2018**

Anzar Ebrahim Darvesh Enterprises	...Plaintiff
<i>Versus</i>	
Adil Yusuf Patel	...Defendant

Mr SM Bhagwat, i/b HH Nagi & Associates, for the Plaintiff.

**CORAM: G.S. PATEL, J
DATED: 19th/22nd November 2018**

PC:-

1. None for the Defendant though served.

2. The Plaintiff brought suit to recover an amount of Rs. 6.65 crores as per the Particulars of Claim, Exhibit "F" to the Plaint, with interest on the principal amount of Rs. 1 crore at the rate of 18% p.a. from the date of the Suit.

3. The Plaintiff is a dealer and supplier of building construction material. The Defendant is said to be engaged in the real estate business. The Plaintiff invested an amount of Rs. 50 lakhs by RTGS transfer from his bank account on 27th February 2012 and an

additional amount of Rs. 50 lakhs in cash, in the Defendant's project. Paragraph 6 of the plaint then says that the Defendant issued a cheque in favour of the Plaintiff on 24th January 2013 for Rs. 5 lakhs. This was dishonoured. In May 2013, the Defendant issued two post-dated cheques No. 708574 dated 20th May 2013 for Rs. 20 lakhs and No. 708571 dated 30th June 2013 for Rs. 50 lakhs. The first was dishonoured for insufficient funds. The second was also dishonoured but with a remark that the account was closed.

4. The Plaintiff then filed proceedings under Section 138 of the Negotiable Instruments Act, 1881. In those proceedings, the Defendant undertook to issue nine demand drafts in the aggregate amount of Rs. 80 lakhs. They were to cover the agreed interest from February 2012 till March 2013. However, these were dishonoured. The Defendant then issued four post-dated cheques as set out in paragraph 15 of the plaint aggregating to Rs. 2.60 crores. These cheques were dated 30th May 2015 for Rs. 1.20 crores; 25th June 2015 for Rs. 10 lakhs, 25th July 2015 for Rs 10 lakhs, and 30th July 2015 for Rs. 1.20 crores. The Defendant then requested the Plaintiff to defer the deposition of these cheques. It seems that the first two were not deposited on their due dates. The third and fourth cheques were dishonoured on presentment. The Plaintiff was forced to file further proceedings under Section 138. Later, when the Plaintiff deposited the first and second of these four cheques, they too were dishonoured.

5. It is in these circumstances that a claim is made for the recovery of a total amount of Rs. 6.65 crores. This comprises of Rs.

1 crore towards principal, Rs. 2.40 crores as interest till 31st March 2015, and the remainder as further interest thereafter.

6. A writ of summons having been served, the Defendant entered appearance. The Plaintiff accordingly filed the present Summons for Judgment No. 42 of 2018 as required by Order 37 of the Code of Civil Procedure, 1908. The Summons for Judgment is dated 18th April 2018. There is an Affidavit of Service dated 23rd May 2018. There is no Affidavit in Reply to the Summons for Judgment.

7. There is no manner of doubt that the cheques referred to above were dishonoured. The amounts of the dishonoured cheques cover the claim for the principal amount and the interest. There is no defence disclosed. The Defendant clearly agreed to interest at 18% per annum.

8. The Summons for Judgment is made absolute in terms of prayer clause (a).

9. The Affidavit of Evidence of the Plaintiff is taken on record. The Plaintiff also submitted a compilation of documents. The entire compilation is taken on record and marked **Exhibit “P”** in evidence. The original documents have been tendered in the Metropolitan Court. An Affidavit to that effect is on record.

10. The Suit is decreed against the Defendant in the amount of Rs. 6.65 crores as per the Particulars of Claim, Exhibit “F” to the

Plaint, with further interest on the principal amount at the rate of 18% p.a. from the date of the Suit till payment.

11. Decree to be drawn expeditiously.

(G. S. PATEL, J)