

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 76 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 675 OF 2018**

Future Lifestyle Fashions Ltd ...Plaintiff
Versus
Beejay Investment & Financial Consultants Pvt
Ltd & Ors ...Defendants

Mr Ashish Kamat, *with Mr Chirag Kamdar, Ms Anuja
Jhunjhunwala, Mr Abhishek Kale & Ms Swati Singh, i/b Naik
Naik & Company, for the Plaintiff.*
Ms Neha Mehta, *i/b Neha Mehta & Company, for the Defendants
Nos. 1, 2 and 3.*

CORAM: G.S. PATEL, J
DATED: 4th December 2018

PC:-

1. The suit is filed under Order XXXVII Rule 2 of the Code of Civil Procedure 1908 (“CPC”) in the Commercial Division of this Court for recovery of the amount of Rs.25,93,23,808.22/- and further interest at 18% per annum. Particulars of claim are at Exhibit “G” to the plaint.

2. The Writ of Summons having been served on 10th July 2018, the Defendants entered appearance on 19th July 2018. The Plaintiff then filed the present Summons for Judgment on 30th July 2018. Though the Summons for Judgment was served, no reply was filed within the time prescribed. On 13th August 2018 AK Menon J granted time till 27th August 2018 for filing a Reply and also afforded time to 3rd September 2018 for a Rejoinder, adjourning the matter to 10th September 2018. Even then the Defendants filed no Reply. Ultimately in this and two companion suits filed by the same Plaintiff against sister concerns of the Defendants, on 8th October 2018 AK Menon J ordered costs of Rs.1 lakh as a condition precedent to extending time for the Affidavits in Reply for a further period of two weeks. Time was similarly extended for the Rejoinder.

3. Until today, several weeks after the time for costs fixed by AK Menon J expired, the Defendant has done nothing. It has not even paid those costs. An application is made today to extend time for payment of costs and grant further time to file an Affidavit in Reply.

4. I refuse to do anything of the kind. There is a reason for the enactment of the Commercial Courts Act 2015 and it is not to allow Commercial Suits to be delayed indefinitely like this. Quite the opposite: it is meant for the rapid disposal of commercial suits and makes several provisions to that end. There is no Affidavit in Reply and the only question, therefore, is to see whether the suit as filed falls within the frame of Order XXXVII Rule 2 of the CPC.

5. The claim is that there was a Memorandum of Understanding (“**MoU**”) dated 23rd January 2015 between the Plaintiff and the 1st Defendant to be read with another MoU of 4th December 2015. The Plaintiff develops retail estate. It entered into a MoU with the 1st Defendant on 23rd January 2015. The terms of this MoU for obtaining of an immovable property in Kolkata are not immediately relevant since clause 5 provided for a refund of the amount of deposit made by the Plaintiff with certain provisions for a grace period and interest. According to the Plaintiff, by 24th February 2015 the Defendants made part repayment of Rs. 3,15,00,000/- against the Plaintiff’s deposit of Rs. 20 crores made on 27th January 2015. In October-November 2015, the Defendants sought an extension of time to make payment of the balance. Ultimately the Plaintiff sent a legal notice on 25th April 2018 demanding payment of an amount of Rs.25,88,25,232.88/-. This was the aggregate of the balance deposit of Rs.16.85 crores and interest at the agreed rate of 18% per annum from 30th April 2015 to 20th April 2017.

6. It is important to note that a few months earlier on 4th December 2015 the Defendants entered into another MoU with the Plaintiff, a copy of which is at Exhibit “C”. This document refers to the first MoU of 23rd January 2015. It acknowledges payment by the Plaintiff of Rs.20 crores, the Defendants’ liability to repay the balance and the fact that it had repaid Rs.3,15,00,000/-. The understanding of 4th December 2015 expressly accepts the Defendants’ liability in the amount of Rs.16.85 crores. As to the question of interest that is sufficiently covered by the principal MoU.

7. There is no defence to the claim either in correspondence prior to the suit or after the suit was filed. The Defendants have failed to abide by the direction of this Court and have failed to avail of opportunities given to it to file a Reply.

8. The Summons for Judgment succeeds and is made absolute as prayed. Further simple interest on the principal amount from the date of the suit will run at 9% per annum.

9. There remains the question of costs. There is a statement of costs tendered by Mr Kamdar for the Plaintiff, which is taken on record and marked "X1" for identification with today's date. I am accepting this statement in view of Section 35 of the CPC as amended by the Commercial Courts Act 2015. These amendments specifically state that in commercial suits the successful party is entitled as a matter of course to costs. If costs are *not* to be awarded, then reasons must be recorded. The explanation tells us the considerations the Court must bear in mind while assessing costs and these include reasonable legal expenses. The statement tendered by Mr Kamdar includes as item 2 the amount paid towards Court Fees and in item 3 litigation fees quantified at Rs.7.10 lakhs, which is reasonable, and certain other minor expenses towards photocopying and other charges. The costs awarded by AK Menon J of Rs.1 Lakh for the three suits have been apportioned between the three suits and in each suit, therefore, an amount of approximately Rs.34,000/- is claimed towards this head.

10. In addition to the decree sought in the suit there will be a decree of costs, but carrying no interest, in the amount of items 2, 3, 4 and 5 of the statement marked "X1", and which aggregates to Rs.10,71,525/-, recoverable by the Plaintiff jointly and severally from the Defendants.

11. A compilation of documents tendered by Mr Kamdar is taken on record and marked "P1" for identification with today's date. The original documents will be returned upon these being substituted with authenticated photocopies.

12. The Summons for Judgment is disposed of in these terms. The Suit is decreed in terms aforesaid.

13. Drawn up decree expedited.

14. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J)