

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 75 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 681 OF 2018**

Future Lifestyle Fashions Ltd	...Plaintiff
<i>Versus</i>	
Sagittarians Credit Capital 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.4,91,07,698.63/- and further interest at 18% per annum. Particulars of claim are at Exhibit “F” 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 till 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, AK Menon J on 8th October 2018, ordered costs of Rs.1 lakh as a condition precedent to extending time for filing the Affidavits in Reply by 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 Defendants had done nothing. It had not even paid those costs. An application is made today to extend time for payment of costs and for a grant of 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. The Plaintiff develops retail estate. It entered into a MoU with the 1st Defendant on 23rd January 2015. The terms of the MoU for obtaining an immovable property in Kanpur are not immediately relevant since clause 5 provided for a refund of the amount of the deposit made by the Plaintiff with certain provisions for a grace period and interest. According to the Plaintiff, the Defendants made certain part repayments against the Plaintiff’s deposit of 24th January 2015 of Rs. 10 crores. On 23rd February 2015, a part repayment of Rs. 35 lakhs was made. On 22nd April 2015, the MoU stood expired by efflux of time and as such stood terminated. After the expiry of the grace period, the Defendants made a part repayment of Rs.3 crores on 18th May 2015 and a part repayment of Rs.3.5 crores on 21st May 2015. Ultimately, the Plaintiff sent a legal notice on 25th April 2018 demanding payment of an amount of Rs.4,90,14,493.15/-. This amount is an aggregate of (a) interest at 18% per annum on Rs.9.65 crores from 30th April 2015 till 18th May 2015; (b) interest at 18% per annum on Rs.6.65 crores from 18th May 2015 till 21st May 2015; (c) the balance deposit of Rs.3.15 crores; and (d) interest at 18% per annum on the balance deposit of Rs.3.15 crores from 21st May 2015 till 20th April 2018.

6. 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.

7. 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.

8. 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 quantified at Rs.3 lakhs and at 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.

9. 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.10,80,352/-, recoverable by the Plaintiff jointly and severally from the Defendants.

10. 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.
11. The Summons for Judgment is disposed of in these terms. The Suit is decreed in the terms aforesaid.
12. Drawn up decree expedited.
13. All concerned are to act on an authenticated copy of this order.

(G. S. PATEL, J)