

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 281 OF 2019
IN
COMM SUMMARY SUIT NO. 303 OF 2017**

Thinkink Print Solutions LLP	...Applicant/ Plaintiff
<i>Versus</i>	
Inspiration Publication	...Defendant

Mr Preeti Gada, *with Arshil Shah, Disha Vardhan, i/b Sudhir Shah & Associates, for the Plaintiff/Applicant.*

Mr Malcom Sigamporia, *with Mr Suddhasattwa Roy, i/b Vis Legis Law Practice, for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 8th April 2019

PC:-

1. The Motion is by the original Plaintiff for leave to withdraw the amount of Rs.95 lakhs deposited by the Defendants.

2. This is how the case has unfolded. The Plaintiff filed this summary suit in the commercial division on 21st April 2017 seeking recovery of an amount of approximately Rs. 1.20 crores and interest. The Defendant entered appearance on 18th July 2017. The Plaintiff

filed a Summons for Judgment on 18th August 2017. That was heard by SC Gupte J on 22nd March 2018. He granted the Defendant conditional leave to defend. The Defendant was to deposit Rs. 95 lakhs in eight weeks. The Defendant deposited nothing. On that reckoning, the 120-day period for filing the written statement in any expired on 21st March 2018. But the proposition is academic because the right to file a written statement was conditional upon the deposit being made in the first place.

3. On 26th June 2018, the Appeal Court dismissed the Defendant's appeal against the order granting conditional leave. On 4th July 2018, AK Menon J decreed the suit in the amount of Rs. 1.20 crores with further interest at 9% per annum. The Defendant challenged that order in appeal. The Division Bench rendered a decision on 13th August 2018. A copy of that decision is annexed to the Affidavit in Reply at page 30. There was some initial controversy about a previous order of 26th June 2018 but that need not detain us. Counsel for the Defendant before the Appeal Court had in his hands a cheque for Rs. 95 lakhs and, therefore, in paragraph 7 of its order, the Division Bench said that it believed that an opportunity ought to be given to the Defendant. It allowed the Defendant time deposit Rs. 95 lakhs and costs of Rs. 2 lakhs by 20th August 2018. The Division Bench said that upon this being done, "the Defendant be granted an opportunity to defend the suit". The Defendant has indeed deposited the amount. I will take it, therefore, that the time for filing the written statement begins from 20th August 2018. There is a written statement that the Registry is supposed to have taken on file but it did so only on 11th March 2019. The Registry was wholly wrong in doing this. It could not have taken that written

statement on file. Even reckoning from 20th August 2018, the time period would have expired by 20th December 2018 and there was simply no possibility of that written statement being filed thereafter. The Division Bench order did not extend the time for filing a written statement beyond the statutorily mandated period under the Commercial Courts Act. Hence, that written statement will be struck from the record.

4. The suit is thus undefended and the Plaintiff is entitled to a decree.

5. In this view of the matter, the Plaintiff is undoubtedly entitled to a withdrawal of the amount deposited.

6. The Notice of Motion is made absolute in terms of prayer clause (a). Costs of the Notice of Motion are, in addition, assessed at Rs. 1 lakh, this being a Motion in a summary suit filed in the commercial division.

7. The Plaintiff is entitled to withdrawal of amount deposited with all accrued interest.

8. List the Suit for ex parte decree on 10th April 2019.

(G. S. PATEL, J)