

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL SUIT NO.679 OF 2017**

Rajul Patel & Anr

..Plaintiffs

Vs.

Ajay Mody & Ors

..Defendants

Mr. Abhay Dhadiwal I/b Jaykar & Partners for Plaintiffs

Mr. Ajinkya Patil I/b Naik Patil Salvi Associates for Defendant No.1

Mr. N. C. Parekh a/w Mr. Nirav Marjadi and Ms Janhavi Doshi I/b
Mansukhlal Hiralal and Co. for Defendant Nos.2 and 3

CORAM : K.R.SHRIRAM, J.

DATE : 15th MARCH, 2019

P.C.:

1 Paragraph 7 of order dated 5th March 2019 reads as under:

“7 Mr. Dhadiwala, counsel for plaintiffs states that the writ of summons had been served before December 2017. Mr. Mookhi and Mr. Shah do not dispute that. No written statement is on record. The time prescribed under Order 8 Rule 1 of the Code of Civil Procedure 1908 expired long ago. As held by the Apex Court in its judgment dated 12th February 2019 in Civil Appeal No.1638 of 2019 in the matter of M/s. SCG Contracts India Private Limited V/s. K.S. Chamankar Infrastructure Private Limited and Ors., defendants have forfeited their right to file written statement.

2 Order 8 Rule 10 of the CPC provides that when any party from whom a written statement is required under Rule 1 fails to present the same within the time permitted, the court shall pronounce the judgment against him or make such order in relation to the suit as it thinks fit. Considering the facts of the case, I see no reason why plaintiff should be directed to lead

oral evidence.

3 Plaintiff is a housewife and the widow of one late Mr. Vikram Patel, who expired in the year 2008. Defendant No.1 is a financial broker and stock broker. Defendant no.2 and defendant no.3 are the father and mother of defendant no.1. Plaintiff/her husband handed over to defendant no.1 share certificates of 28,200 equity shares of Siemens India Ltd. (said shares). The said shares were to be kept in safe custody of defendant no.1 to be dealt with as and when required. Subsequently, in 2001 plaintiff along with her late husband Mr. Vikram Patel, agreed to pay and paid a sum of Rs.2,75,00,000/- to defendant no.1 for purchase of shares of various companies. From time to time, plaintiff/and her husband late Mr. Vikram Patel, gave further sums of money to defendant no.1 for short term trades in the stock market and share certificates were always retained by defendant no.1. Unfortunately, on 23rd May 2008, Mr. Vikram Patel, husband of plaintiff died. Subsequently, plaintiff noticed that certain shares of companies in which they had invested, had stopped giving dividends and it came to light that defendant no.1 has been playing a fraud on plaintiff and Mr. Vikram Patel. Defendant no.1 informed plaintiff that he did not hold any shares and that they were sold off in the year 1999 unauthorisedly and illegally. It came to light that defendant no.1 hypothecated plaintiff's share as security for some loan from HDFC Bank and he had also submitted a fake

NOC from plaintiff. It appears that the bank sold plaintiff's shares of Siemens India Ltd at Rs.615/- per share and the bonus shares that were allotted to the shareholders. It is stated that 28,200 shares of Siemens India Ltd had, due to change in face value became 2,82,000 shares, which were worth Rs.17,34,30,000/- as of year 2008. From the subsequent monies given by plaintiff and her late husband Mr. Vikram Patel, it is stated in the plaint that defendant no.1 admitted that if he had invested further amounts given between 1999-2008 and value of those shares as of the year 2008 would have aggregated to a sum of Rs.7,65,34,623/- and this includes Rs.2,75,00,000/- that was given, as mentioned earlier. It is plaintiff's case that, therefore, the amount that was payable by defendant no.1 is Rs.24,99,64,623/-. It is also stated that the total amount repayable would have been in excess of Rs.25,00,000,00/-.

4 Defendant no.1 and plaintiff executed an Articles of Agreement and Memorandum of Understanding, both dated 25th July 2008, along with supplement Memorandum of Understanding dated 10th November 2008. Under these agreements, defendant no.1 admitted, confirmed and acknowledged his liability to compensate plaintiff in the sum of Rs.25,00,000,00/- along with additional incremental compensation of Rs.3,00,000,00/- as settlement of plaintiff's claim. There was, therefore, an admission by defendant no.1 to pay a sum of Rs.28,00,000,00/- to plaintiff.

This amount was to be settled by making regular monthly payments. Defendant no.1 also agreed to achieve yearly milestones of payments to be made towards repayment. Defendant no.1 also deposited shares/cheques worth Rs.5,00,000,00/- with plaintiff and the balance amounts were to be paid on or before 30th June 2014. The said minimum yearly withdrawals under the agreement, plaintiff was entitled to, is also mentioned in paragraph 17 of the plaint. Defendant no.1 also gave a flat situate in Mumbai being Flat No.153/B, Heera Panna Building, Bhulabhai Desai Road, Mumbai 400 026, (the said flat), as additional security and the said flat is in the name of defendant nos.2 and 3. It was given as security with the consent of defendant nos.2 and 3, who have also signed the said agreements.

5 There are communications annexed to the plaint written by defendants' advocates admitting liability also. There is a reference to the three agreements in the letters from defendants' advocate, copies whereof are annexed to the plaint. Defendants have paid a sum of Rs.7,71,04,396/- as per the particulars of claim annexed to the plaint. It is stated in the plaint that defendant no.1 had agreed that the remaining unpaid amount would be paid along with interest accrued @ 18% p.a. Plaintiff therefore, is seeking the decree in the sum of Rs.30,63,72,360/- together with interest @ 18% p.a. from the date of suit until payment/realization. Plaintiff is also seeking

a prayer to sell the said flat under the order and directions of this court and the sale proceeds be adjusted towards the outstanding payable to plaintiff and pending the disposal, hand over peaceful possession of the said flat.

6 Having considered the averments made in the plaint and the fact that defendants have also admitted their liability to plaintiff and have given the said flat as additional security, plaintiff is entitled to a decree in terms of prayer clauses (a) and if amounts are not paid within three weeks then in terms of prayer clauses (e), (f) and (g) and the same read as under:

“(a) That this Hon'ble Court be pleased to pass an order and Decree directing the Defendant No.1 to pay the Plaintiffs a sum of Rs.30,63,72,360/- (Rupees Thirty Crores Sixty Three Lakhs Seventy Two Thousand Three Hundred and Sixty Only) together with interest thereon @18% p.a. from the date of the filing of this Suit upto realization of monies thereof, as per the particulars of Claim (Exhibit H hereto)

(e) That in the alternative to prayers (a) to (d), this Hon'ble Court be pleased to permit the Plaintiffs to sell the property being Flat No.153/B, Heera Panna Building, Bhulabhai Desai Road, Mumbai 400 026, and that the Defendant No.1 be further ordered and directed to appropriate the outstanding amount due and payable to the Plaintiffs under prayer (a) pursuant to the sale of the said Flat No.153/B, Heera Panna Building, Bhulabhai Desai Road, Mumbai 400 026, and realization of monies thereof by the Plaintiffs.

(f) That this Hon'ble Court be pleased to direct the Defendant Nos.1, 2 and 3 to hand over the vacant and peaceful possession to the Plaintiffs, of the property being Flat No.153/B, Heera Panna Building, Bhulabhai Desai Road, Mumbai 400 026, given as security towards Defendant Nos.1's liability of payment of outstanding dues.

(g) That this Hon'ble Court may be pleased to restrain by an order and permanent injunction of this Hon'ble Court the Defendants and/or their servants, agents, representatives and/or any other person claiming through them from alienating,

encumbering, handing over and/or otherwise creating any kind of third party, rights/interest in respect of the property being Flat No.153/B, Heera Panna Building, Bhulabhai Desai Road, Mumbai 400 026, the share certificates of which bear Distinctive Nos.515 to 520 and are in the name of Defendant Nos.2 and 3.”

7 Suit stands decreed accordingly with costs of Rs.1,00,000/- against defendant no.1. Decree be drawn up in terms of the above order. Suit stands disposed.

8 Refund of court fees, if any, with accordance with rules.

(K.R. SHRIRAM, J.)