

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUMMARY SUIT NO. 779 OF 2017**

Vinod Lalji Nandu & Ors	...Plaintiffs
<i>Versus</i>	
Mohammad Imtiaz Yunus Khan & Ors	...Defendants

**Mr Rohan Kelkar, with Ms Gargi Bhagwat & Shrishti Shetty, i/b M/s
Divekar Bhagwat & Co, for the Plaintiffs.**

**CORAM: G.S. PATEL, J
DATED: 15th February 2019**

PC:-

1. The Plaintiff filed a Summary Suit in the Commercial Division to recover an amount of Rs. 3,16,67,294.50 with interest on the principal sum of Rs. 2.5 crores at the rate of 18% per annum from 31st March 2016 till payment or realisation. The Writ of Summons having been served, the Defendant entered appearance. The Plaintiff filed Summons for Judgment No. 60 of 2018. The Defendants opposed, filing an Affidavit in Reply to show cause why unconditional leave ought to be granted. AK Menon J disposed of that Summons for Judgment by his order and Judgment dated 10th September 2018. He found *inter alia* that the conduct of the Defendants was not above board. He held that the defence was dishonest. Accordingly, he said that the Defendants would be

granted leave to defend only subject to terms. He ordered that the Defendants to deposit an amount of Rs. 3 crores in Court within twelve weeks.

2. I am informed that the Defendants have filed an Appeal but this has not been served and it has not been moved. There does not appear to be an order of stay by the Division Bench.

3. Mr Kelkar tenders today a certificate of non-deposit confirming that the Defendants have not deposited any amount within the time specified. No extension of time appears to have been granted.

4. The Plaintiff is entitled to a judgment forthwith under the provisions of Order XXXVII Rule 3(6)(b). The Suit is accordingly decreed in these terms. The original documents of the Plaintiff are taken on record and marked “P1” in evidence. There will thus be a decree jointly and severally against the Defendants in the amount of Rs. 3,16,57,294.50 with interest at the rate of 18% per annum on the principal amount of Rs. 2.5 crores from the date of the suit till payment or realisation.

5. The Suit having been filed in the Commercial Division, under the amended Section 35 of the Code of Civil Procedure, 1908, the Plaintiffs are entitled to a decree in costs. The Plaintiffs have paid the maximum *ad valorem* court fees in this Court. In my view, having regard to the fact that the Summons for Judgment was heavily contested, and disposed of without costs by the conditional order,

and since there is no compliance with that order, I believe an order of costs in the amount of Rs. 7.5 lakhs is justified as reasonable litigation expenses. I clarify, however, that if the Plaintiffs seek a refund of the Court Fee as it is entitled to do, this amount of costs will stand reduced by the amount refunded. The decree for interest, which is passed jointly and severally against the Defendants, will carry no interest.

6. The Suit is decreed in these terms.

7. Lastly I grant leave under Order II Rule 2 of the Code of Civil Procedure 1908 to the Plaintiff to omit to sue for enforcement of the security mentioned in paragraph **50** of the plaint.

(G. S. PATEL, J)

Note: This order is modified as per order dated 20th February 2019. The correction in paragraph 7 is shown in bold and italics.