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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM SUMMARY SUIT NO. 714 OF 2018

Gannon Dunkerley & Co Ltd ...Plaintiff
Versus
Sangeeta Aviation Services Private Limited ...Defendant

Appearance not given.

CORAM: G.S. PATEL, J
DATED: 9th January 2019

PC:-

1. On 27th August 2018 AK Menon J disposed of the Summons for Judgment. He held that the defence was moonshine and that Defendant was not entitled to leave to defend except on condition of securing the Plaintiff's claim. He made an order requiring the Defendant to deposit an amount of Rs. 1,21,71,243.00 within eight weeks.

2. No deposit has been made and there is a Non Deposit Certificate dated 20th December 2018 that is tendered and taken on file.

3. In view of this the Plaintiff is entitled to a decree against the Defendant.

4. The conspectus of the suit has been fully set out by AK Menon J in his order of 27th August 2018 in paragraphs 1 to 3. The defence was noted in paragraph 4. For completeness, I will reproduce all four paragraphs:

> "1. The claim in the suit is a sum of Rs.1,21,71,243/- consisting of principal sum of Rs. 1,00,00,000/- and interest thereon @ 18% p.a. from 22nd March, 2017 till 30th June, 2018. The claim in the suit arises on account of two dishonoured cheques dated 14th May, 2018 each for a sum of Rs. 50,00,000/- .
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> 2. It is the case of the plaintiff that at the request of the defendants, the plaintiff advanced a sum of Rs. 1,00,00,000/- to assist the defendants in their business. The amount of Rs. 1,00,00,000/- was advanced and was to be repaid with interest @ 18% p.a. on or before 14th May, 2018. A sum of Rs. 50,00,000/- was transferred through RTGS on 22nd March, 2017 and a further sum of Rs.50,00,000/- was transferred on 31st May, 2017. Against transfer of these amounts by RTGS the 1 of 3 53SJ732018 defendant issued two post dated cheques both dated 14th May, 2018. Copies of the cheques are annexed at Exhibit "B" and "D" to the plaint. It is further stated that the defendant also executed Bills of exchange on 22nd March, 2017 and 31st May, 2017 for amounts of Rs. 50,00,000/- payable on demand. Notice of dishonour waived. However, the plaint proceeds on the basis that the cause of action is the dishonour of the cheques, the amounts of which exceeded arrangements.
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> 3. It is submitted by Dr. Chandrachud, learned counsel for the plaintiff that in email correspondence annexed at

Exhibit F-1 to F-4 the defendant company had not denied liability. The correspondence annexed reveals that there was some attempt on part of the defendant to contend that one of the directors who was responsible for the same was no longer with the company. On the other hand one of the directors of the respondent is seen to have agreed to make attempts to repay the amounts.

4. On behalf of the defendant an affidavit in reply has been filed in the summons for judgment. Affidavit of Mr. Varun Kakria, Manager who deposed with the authority of the board of directors of the respondent company has admitted receipt of the monies and the issuance of the cheques. But according to the deponent the cheques were undated and were to be deposited only after a period of 30 months from the dates on which the amounts of the two installments of Rs. 50,00,000/- each were remitted. In this background in paragraph 8 it is stated that the defendant company has "definite program to make the repayment of the amounts credited by the Plaintiff Company, on the maturity of the repayment 2 of 3 53SJ732018 term i.e. 30 months ". This period of 30 months is said to have been orally agreed between the defendant company and the plaintiff. There is no mention in the affidavit as to the persons who had entered into any such oral agreement. This in my view is just an attempt to avoid liability. The defence is moonshine and in my view the defendant is not entitled to leave to defend the suit except on condition of securing the plaintiff claim. In the circumstances I pass the following order:

(i) Defendant shall deposit in Court a sum of Rs. 1,21,71,243/- within a period of eight weeks from today.

(ii) If such deposit is made, defendant will be entitled to file a written statement within the aforesaid period of 8 weeks.

(iii) If the amount is deposited, the same shall be invested in a fixed deposit of a Nationalised Bank for one year and one day and shall be renewed from time to time till further orders.

(iv) If a written statement is filed, parties shall exchange affidavit of documents within four weeks of filing written statement.

(v) Discovery and inspection to be completed forthwith thereafter.

(vi) List the suit for framing issues on 26th November, 2018."

5. The Learned Advocate for the Plaintiff tenders the Evidence Affidavit today of Ravi Agarwal, the Vice President and Company Secretary of the Plaintiff. He is present in Court. He confirms the correctness of what is stated in his Evidence Affidavit. He has also filed an Affidavit of Documents and Compilation of Original Documents. The documents of the Plaintiff are taken on record and marked in evidence as Exhibit "P1". The originals are returned and authenticated copies in the compilation are retained on record.

6. The suit is accordingly decreed against the Defendant in the amount of Rs.1,21,71,243.00 with further interest on the principal amount of Rs.1 crore at the rate of 12% per annum from the date of the suit till payment or realisation.

7. This being a Commercial Suit the Plaintiff is also entitled to a decree for costs under amended Section 35 of the Code of Civil Procedure 1908 ("**CPC**"). The Plaintiff has paid the Court fees of Rs.1,70,000/-. I estimate the reasonable litigation costs thereafter at Rs.3.5 lakhs. The Plaintiff will be entitled to a decree on costs without interest in the amount of Rs.5.20 lakhs.

8. Drawn up decree expedited.

9. The Plaintiff is at liberty to move in execution without awaiting sealing of the decree.

(G. S. PATEL, J)