

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUMMARY SUIT NO. 120 OF 2017**

MRH Digital Systems Pvt Ltd	...Plaintiff
<i>Versus</i>	
Varun Industries Ltd & Ors	...Defendants

Mrs Rekha C Shukla, *for the Plaintiff.*

**CORAM: G.S. PATEL, J
DATED: 21st January 2019**

PC:-

1. The suit is for recovery of an amount of Rs.1,31,01,162/- with interest on Rs.1 crore at 18% per annum.

2. The suit is withdrawn as against Defendant No. 1 which has been wound up. Liberty to the Plaintiff to file a claim before the Official Liquidator.

3. The claim arises on the basis of certain bills of exchange as set out in the Plaint. These were drawn by Defendant No. 1 on Defendants Nos. 2 and 3, who are thus the acceptors of the bills of exchange.

4. The Defendants waived notice of dishonour. The Plaintiff states that the amount of each bill of exchange was paid to the Plaintiff by the 1st Defendant's cheques which were dishonoured on presentment. The Plaintiff intimated the dishonour and the Defendant No. 1 promised to repay shortly. The Defendants denied their liability to pay in response to the Plaintiff's Advocate's notice. This is the substance of the claim.

5. The Writ of Summons was issued. There is an Affidavit of Service dated 18th February 2017 of one Suresh Atmaram Nagpal, Constituted Attorney of the Plaintiff. It states that after obtaining an order of substituted service on 24th January 2017, service in this form was effected. There was also a publication in the Free Press Journal and Navshakti. Copies of the advertisements are attached.

6. The Defendants are absent though served. The Plaintiff is thus entitled to an *ex parte* decree. The Plaintiff tenders a Compilation of Documents. This compilation is taken on record and marked **Exhibit "P1" (collectively)** in evidence. The originals will be returned to the Plaintiff in accordance with Rule 306 of the Bombay High Court (Original Side) Rules.

7. In these circumstances, there will be an *ex parte* decree in the suit in the amount claimed, with further simple interest on Rs 1 crore at 18% per annum from the date of the suit till payment or realization.

8. Finally there is the question of costs. Under Section 35 of the Code of Civil Procedure 1908 as amended by the Commercial Courts Act, the Plaintiffs are entitled to reasonable costs including litigation costs. The suit was originally filed as a summary suit. The court fee paid is Rs.2,11,320/-. In addition, I estimate further costs to be in the amount of Rs.1.50 lakhs.

9. Thus, there will be an aggregate decree of costs against the Defendants in the amount of Rs.3,61,320/- but without interest.

10. Refund of court fee in accordance with the Rules. If the Plaintiff obtains a refund, the decree of costs will stand reduced to the amount so refunded.

11. Drawn up decree expedited.

12. Liberty to the Plaintiff to move in execution without awaiting sealing of the decree.

(G. S. PATEL, J)