

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL SUMMARY SUIT NO. 312 OF 2020

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Dinesh Kumar Agrawal,]
An adult, Indian Inhabitant,]
having his address at 67, Gomes Defence]
Colony, Sugreev Marg, Vaishali Nagar]
Jaipur-302 021.].. Plaintiff

Vs.

1.A] Smt. Malti Jayant Soni,]
An Adult, Indian Inhabitant]
1.B] Bhavin Jayant Soni]
An Adult, Indian Inhabitant]
1.C] Snehal Jatin Dharamshi,]
An Adult, Indian Inhabitant]
1.D] Jagruti Ketan Nagda]
An Adult, Indian Inhabitant]
All having their address at -]
Flat No. 402, Prime Beach Apartment]
11th Juhu-Tara Road, Juhu]
Mumbai-400 049]
AND]
Joy Ashiana, Ground floor,]
North-South Road No.1,]
Near Bhaidas Hall, Juhu, JVPD Scheme,]
Vile Parle West, Mumbai-56].. Defendants

Mr.Girish B. Kedia for plaintiff.

Mr. A. Narula i/b Jhangiani, Narula and Associates for defendants.

CORAM : N.J. JAMADAR, J.

DATE : 13th OCTOBER 2021

JUDGMENT :

1. This commercial division summary suit is instituted for recovery of a sum of Rs.1,55,62,500/- alongwith interest @ 15% per annum on

the principal amount of Rs.1,50,00,000/- from the date of the suit till realization.

2. The material averments in the plaint can be summarized as under :

[a] The plaintiff trades in edible oil. Mr. Jayant V. Soni, the deceased defendant, was carrying on the business in the name and style, M/s. Joy Builders, as a Sole Proprietor thereof. The defendant No.1A to 1D are the legal representatives of the deceased defendant.

[b] At the request of the deceased defendant, the plaintiff had advanced a sum of Rs.1,50,00,000/- to the defendant during the period 17th January 2019 to 7th February 2019 through banking channel. The defendant had agreed to repay the said amount alongwith interest @ 15% per annum. The defendant had acknowledged the liability by executing a balance confirmation letter dated 1st April 2019.

(c) The defendant committed default in

repayment of the loan amount alongwith interest accrued thereon, as agreed. Eventually, the defendant had issued six cheques; three towards repayment of the principal amount of Rs. 50,00,000/- each, and rest three towards repayment of the interest accrued thereon to the tune of Rs.5,62,500/-; all aggregating to Rs.1,55,62,500/-. Those cheques were, however, dishonoured, on presentment.

(d) Despite service of the demand notice, dated 8th February 2020, the defendant committed default in payment of the amount covered by the cheques. Hence, the plaintiff was constrained to institute this suit for recover of the said amount alongwith further interest.

3. The defendant entered appearance in response to the writ of summons.

4. Thereupon, the plaintiff took out a summons for judgment. This Court, by a judgment and order dated 12th February 2021, noted that there was no dispute about the fact that the sum of Rs.1,50,00,000/- was advanced by the plaintiff to the defendant and, thus, the

existence of the debt was admitted beyond the pale of controversy and, therefore, leave to defend was granted, subject to the defendant depositing a sum of Rs.1,50,00,000/-, within a period of six weeks thereof. In the event of non-compliance of the conditional order of deposit within the stipulated period, liberty was granted to the plaintiff to apply for ex-parte decree, after obtaining Non Deposit Certificate from the Prothonotary and Senior Master of this Court.

5. The defendant has not complied with the condition of deposit of the amount, subject to which the leave to defend was granted by this Court by the aforesaid order.

6. By an order dated 5th August 2021, the plaintiff was allowed to bring the legal representatives of the deceased defendant on record. The defendant No.1A to 1D have, thus, been impleaded as party defendants.

7. On 8th October 2021, the learned counsel for the plaintiff has tendered the Non Deposit Certificate and all the original documents.

8. Heard Shri Girish Kedia, the learned counsel for the plaintiff. Perused the affidavit and the documents tendered on behalf of the plaintiff in support of the claim.

9. As indicated above, from the averments in the plaint, it becomes abundantly clear that the suit claim is based on the loan

advanced by the plaintiff to the defendant. In a sense, the fact that an amount of Rs.1,50,00,000/- was advanced by the plaintiff to the defendant is indubitable. The Certificate issued by the plaintiff's banker (Exh. 'A') to the suit evidences the credit of the amount of Rs.1,50,00,000/- in the account of Joy Builders during the period 17th January 2019 to 7th February 2019.

10. The claim of the plaintiff finds requisite support in the cheques (Exh. 'F1' to 'F6'). There is material on record to indicate that the cheques drawn by the defendant for a sum of Rs.1,68,750/- (Exh.F1) and Rs.50,00,000/ (Exh.F2), payable on 12th January 2020, Rs.1,68,750/- (Exh.F3) and Rs.50,00,000/ (Exh.F4), payable on 20th January 2020, and Rs.2,25,000/- (Exh.F5) and Rs.50,00,000/ (Exh.F6), payable on 2nd February 2020 were returned unenchashed, as evidenced by the cheque return memos (Exh. G1 to Exh.G6) dated 4th February 2020. In addition, the defendant has acknowledged the liability by executing balance confirmation (Exh. 'B').

11. In the aforesaid view of the matter, as the claim of the plaintiff has gone uncontroverted, the suit deserves to be decreed. However, the liability of defendant Nos.1A to 1D would be restricted to the extent of the estate of the deceased defendant which devolved upon the defendant Nos.1A to 1D, after the demise of the defendant.

12. Hence, the following order:-

- (i) The suit stands decreed.
- (ii) The defendant Nos.1A to 1D do pay a sum of Rs.1,55,62,500/- to the plaintiff, as per the particulars of claim (Exhibit-I appended to the plaint), along with interest at the rate of 15% p.a. on the principal sum of Rs.1,50,00,000/- from the date of the suit till realization.
- (iii) The defendant Nos.1A to 1D do pay costs of Rs.1,25,000/-, to the plaintiff, quantified under Section 35 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015.
- (iv) The defendant Nos.1A to 1D shall, however, be liable to pay the aforesaid amount to the extent of the estate of the deceased defendant received/receivable by all, one or more of them.
- (v) The plaintiff is also entitled to refund of Court fees in accordance with the rules.
- (vi) The decree be drawn up and sealed expeditiously.
- (vii) The Commercial Suit stands disposed of in above terms.

[N.J. JAMADAR, J.]