

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

COMMERCIAL SUMMARY SUIT NO.579 OF 2019

ALONG WITH

INTERIM APPLICATION NO.102 OF 2020

Rajesh V.
Chittewan
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by Rajesh V.
Chittewan
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IL & FS Financial Services Ltd. ... Plaintiff
Versus
Pralay Infrastructure Pvt. Ltd.
And Others ... Defendants

.....

Ms. Purvi Joshi a/w Ms. Saloni Shah i/b DSK Legal for the
Plaintiff/Applicant.

.....

CORAM : S.C. GUPTE, J.

DATE : 4 JANUARY 2021

P.C. :

. Learned Counsel for the Plaintiff informs the court that writ of summons could not be served on Defendant Nos.1, 4, 5, 6 and 8. The packets of services came back with remarks either that addressees had left or were not known. Learned Counsel accordingly seeks an order of substituted service. So far as Defendant Nos.3 and 7 are concerned, learned Counsel submits that they have been duly served with the writ of summons and the Suit can be proceeded against them as *ex parte* for not having filed vakalatnama or entered appearance.

2 So far as Defendant Nos.2 and 9 are concerned, they appear

through Advocate. They have been served with the Summons for Judgement, but have not so far filed their application for leave to defend. They seek time to do so. They have, to that end, filed an interim application, being Interim Application No.102 of 2020.

3 So far as Defendant Nos.1, 4, 5, 6 and 8 are concerned, the Plaintiff is granted leave to serve the writ of summons through substituted service. The Plaintiff may, accordingly, publish a notice in two local newspapers, one in English and one in Hindi, circulating in Mumbai. The returnable date of the writ of summons be communicated as '1 February 2021'. In addition to newspaper notice, the Plaintiff is permitted to paste the writ of summons at the last known addresses of Defendant Nos.1, 4, 5, 6 and 8, which are reflected in the cause title of the Commercial Summary Suit.

4 So far as Defendant Nos.3 and 7 are concerned, the Commercial Summary Suit to proceed against them as an undefended Suit.

5 As for the Interim Application of Defendant Nos.2 and 9, which seeks condonation of delay of 21 days in filing their application for leave to defend, the Defendants have sought to explain the delay by submitting that signatories of the application for leave to defend were unavailable after Summons for Judgement was served on them, since they were traveling due to urgent business commitments. In the premises, in the interest of justice, the Defendants deserve an order

condoning the delay, but they will have to bear the costs of such application.

6 Accordingly, Interim Application No.102 of 2020 in the Commercial Summary Suit is allowed in terms of prayer clauses (a) and (b), subject to Defendant Nos.2 and 3 paying costs of Rs.50,000/- (Rs. Fifty Thousand Only) each to the Plaintiff. Such costs shall be paid within four weeks from today and shall be condition precedent for accepting the application for leave to defend. The application for leave to defend may be filed within four weeks weeks with payment of costs. The Interim Application is disposed of accordingly.

7 The Commercial Summary Suit is stood over to 1 February 2021 for directions.

(S.C. GUPTE, J.)