

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 14 OF 2020

IN

COMMERCIAL SUMMARY SUIT NO. 973 OF 2019

Good Value Financial ... Plaintiff
Services Pvt. Ltd.

vs.

Faithfull Developers ... Defendant

Ms. Sheeja John a/w. Ms. Radhika Nair i/b. M/s. M. P. Savla & Co. for the
Plaintiff.

Mr. Paras S. Gosar i/b. Mr. Jayesh R. Vyas for the Defendant.

CORAM : A. K. MENON, J.

DATED : 16th JUNE, 2022

P.C. :

1. At the outset learned counsel for the plaintiff i/b. M.P. Savla & Co.
undertakes to enter appearance by 20th June, 2022.

2. The plaintiff seeks a decree in a sum of Rs. 45,49,67,730/- towards
repayment of loan advanced in a total sum of Rs. 7,08,00,000/-. The
defendant is a partnership firm which has confirmed balance due and
payable from time to time. It is stated that several part payments have been
made for which credit has been given. On behalf of the plaintiff my attention

is invited to the particulars of claim totaling Rs. 46,21,47,495/- in addition

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to interest @ 18% per annum. I am not able to find any agreement between the parties to pay interest @ 18% per annum and the confirmation of account does not disclose 18% per annum much less interest on compounded basis which the plaintiff has claimed.

3. However the confirmation of account placed on record indicates that regularly year on year, the defendant has confirmed the balance due at the end of each financial year. It is seen in Exhibit Z dated 1st April, 2019 balance amount due from defendant to the plaintiff as per statement of account of the plaintiff in the defendant's ledger from 1st April, 2018 to 31st March, 2019 is a closing balance of Rs. 45,49,67,731/-. The entry in the debit column confirms this.

2. There is an affidavit in reply to the Summons for Judgment of Mr. Rubin S. Desai partner of the firm who has contended that the suit is not maintainable. There are disputes pending inter se between the partners. An arbitration is pending. Sole Arbitrator has been appointed. In these circumstances it is contended that unconditional leave be granted. There is absolutely no defence to the claim except to state that there is no agreement to pay interest @ 18 %.

3. In my view there is no reason whatsoever to grant leave except on condition of deposit of the entire principal sum since the affidavit in reply discloses no defence at all. There is an admission of liability confirmed of

the amount which is not disputed and accordingly the defendant must be put to terms. I therefore pass the following order :

(i) Defendant shall deposit a sum of Rs. 45,49,67,731/- within a period of eight weeks from today.

(ii) If the deposit is made the amount shall be invested in a fixed deposit by the Prothonotary and Senior Master initially for a period of one year to be renewed every year pending disposal of the suit.

(iii) If the amount is deposited the defendant shall file written statement within a further period of four weeks of such deposit.

(iv) If the deposit is not made liberty to apply to the plaintiff for a decree along with certificate of non deposit.

(v) This order will be uploaded only after appearance is filed.

(A. K. MENON, J.)