Santosh

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

COMM SUMMARY SUIT NO. 27 OF 2021

Vu Technologies Pvt. Ltd. ...Plaintiff
Versus
Converged Data Technologies ...Defendant

Mr. Rishikesh Soni, i/b Ashok Purohit & Co., for the Plaintiff.

CORAM: N. J. JAMADAR, J.
DATED : 15th SEPTEMBER, 2022

ORDER:-

1. This commercial division summary suit is instituted for recovery of a sum of Rs.15 Crore alongwith interest at the rate of 9% p.a. from the date of Inter-corporate Deposit (ICD) till the date of institution of the suit and further interest at the said rate till payment and realization.

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

(a) The plaintiff is a private limited company incorporated under the Companies Act, 1956. It is a leading manufacturer of television sets. The defendant is also a private limited company incorporated under the Companies Act, 1956.

The defendant is engaged in the information technology and software sector business.

(b) In the month of January, 2020, pursuant to request made by the defendant – company, the plaintiff placed ICD of Rs.15 Crore with the defendant. The parties agreed that the ICD will mature for repayment within 60 days of its receipt, the defendant committed default in repayment of ICD, in full, upon its maturity in accordance with the terms of the contract. Despite repeated assurances, the defendant continued to commit defaults in repayment of ICD.

(c) Eventually by notice dated 21st July, 2020, the plaintiff called upon the defendant to forthwith clear the ICD along with interest thereon. In response thereto, the defendant whilst admitting and acknowledging its liability to repay the ICD, expressed its inability, on account of financial crunch. Hence, the plaintiff was constrained to institute the suit for recovery of the said amount along with interest.

3. The writ of summons was served on the defendant on 6th July, 2021. An affidavit of service is filed by Mr. Vyankatesh Paramshivam, the bailiff and clerk, attached to the office of Sheriff of Mumbai to the effect that the writ of summons was duly served on the defendant, on 6th July, 2021. Bailiff report is appended to the affidavit of service.

4. None appeared for the defendant. In view of the provisions contained in Order XXXVII Rule 2(3), in the event of failure to enter appearance on the part of the defendant within the stipulated period, the averments in the plaint are required to be presumed to be admitted and the plaintiff becomes entitled to a judgment. Nonetheless, I have considered the applicability of the provisions contained in Order XXXVII of the Code to the plaintiff's claim and its justifiability.

5. The plaintiff has filed an affidavit in lieu of examination-in-chief of Mr. Harish Desai (PW-1), it's Director and Authorised Signatory, an affidavit of documents and compilation of the documents.

6. The claim of the plaintiff that the plaintiff had placed an ICD with the defendant is evidenced by the communication dated 10th January, 2020 (Exhibit-P1/2), which records that on 10th January, 2022, a sum of Rs.15 Crore was paid towards ICD, and the defendant was called upon to acknowledge the receipt. Vide communication dated 13th January, 2022 (Exhibit-P1/3), the defendant acknowledged the receipt of the said amount by way of ICD and the period of its maturity, with an assurance that the defendant would pay the said amount alongwith interest on due date. The claim of the plaintiff is further supported by the ledger account maintained by the defendant. The learned Counsel for the plaintiff has also tendered a copy of plaintiff's bank account maintained with ICICI Bank, which indicates that a sum of Rs.15 Crore was credited to the account of defendant on 10th January, 2020.

7. The notice dated 21st July, 2020 (Exhibit-P1/4) addressed by the plaintiff to the defendant narrates the failure on the part of the defendant to repay the amount of ICD upon maturity. The defendant was thus called upon to pay the said amount alongwith interest at the rate of 9% p.a. from the date of the deposit. The reply thereto dated 28th July, 2020 (Exhibit-P1/5) acknowledges, in the clear and unequivocal terms, that the defendant had paid TDS till March, 2020. However, the defendant was not in a position to immediately repay the amount as it was unable to raise finances from banks and other entities. The defendant thus sought an extension of six months period for repayment, with an assurance that they would pay interest including arrears thereof.

8. The aforesaid material thus fully substantiates the plaintiff's claim. There are documents which evidence the advance of Rs.15 Crore to the defendant. In addition, there are documents which contain explicit and unambiguous acknowledgment of the liability to repay the ICD and interest thereon. The liability is thus an admitted liability. In any event, the plaintiff's claim and documents in support thereof, have gone unimpeached.

9. Hence, I am impelled to pass a decree. Thus, the following order:

: O R D E R :

(i) The suit stands decreed.

(ii) The defendant do pay the sum of Rs.15 Crore alongwith interest at the rate of 9% p.a. from 10th January, 2020 till the date of institution of the suit and further interest at the said rate on the principal sum of Rs.15 Crore from the date of the suit till payment and/or realization.

(iii) The defendant do pay the costs of the suit to the plaintiff.

(iv) The plaintiff is entitled to refund of Court-fees, if any, in accordance with Rules.

(v) Decree be drawn and sealed expeditiously.

[N. J. JAMADAR, J.]