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

IN ITS COMMERCIAL DIVISION

COMMERCIAL SUMMARY SUIT NO. 700 OF 2019

Dr. Mansukh Unadkat,
an adult British Citizen and
person of Indian origin, aged 75 years,
having his address at 257 Waldegrave Road,
Strawberry Hill, Twickenham, Middlesex TW1
4SY, U.K. and presently at
B 22/23 Seema Apartments,
Bullock Road, Bandstand, Bandra (West),
Mumbai 400 050. .. Plaintiff

Vs.

1. Kohinoor Cargo & Industrial Park Pvt. Ltd.,
a Private Ltd. Company incorporated in India
under the Companies Act, 1956, having its
registered office at 102 ICC Trade Tower, 1st Floor,
Senapati Bapat Road, Pune 411 016 and,
inter-alia, also at 6th floor, J.K. Chambers,
Sector 17, Vashi, Navi Mumbai 400 705.

2. Mr.Praveen T. Sankpal,
an Indian Inhabitant,
having his place of business at 6th floor,
J.K. Chambers, Sector 17, Vashi,
Navi Mumbai 400 705 and residing at
RH 12, Jimmy Tower, Sector 4, Vashi,
Navi Mumbai 400 703.

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Ms.Bharati Narichania a/w. Mr. Vinayak Narichania i/b Vibha Juris Consult Co. for plaintiff.
None for defendant.

CORAM : N.J. JAMADAR, J.

DATE : 1st APRIL 2022

ORDER :

1. This commercial division summary suit is instituted for recovery of a sum of Rs.5,37,32,631/- alongwith future interest @ 18% per annum from the date of the institution of suit till payment and/or realization.

2. The plaintiff is a British Citizen and person of Indian origin. The defendant No.1 is a Private Limited Company incorporated under the Companies Act, 1956. The defendant No.1 is engaged in the business of construction and builders. The defendant No.2 is the Director of defendant No.1 and is in complete charge and control of the business affairs of defendant No.1.

3. In the year 2012, relying upon the representation made by defendant No.2 that the plaintiff would get handsome returns on the investment in the projects undertaken by the defendant No.1, the plaintiff agreed to make investments in the building projects of the defendants. In order to raise the funds, the plaintiff mortgaged his residential flat at Bandra with Future Capital Holdings Ltd. (now known as Capital First Ltd.) and availed a loan of Rs.2,42,40,000/-. The plaintiff remitted a sum of Rs.1,75,00,000/- to the account of the defendant No.1 by RTGs on 4th April 2012. The defendants committed default in payment of return on investment, as promised. Over a period of March 2015 to June 2015, the defendants paid an aggregate amount of Rs.13,50,000/-

which was adjusted against the outstanding interest.

4. Despite repeated demands, the defendants committed default in payment of the principal amount and agreed returns thereon. After a lot of persuasion, by executing an acknowledgment, on 1st April 2012, the defendant No.2 acknowledged the liability to pay the sum of Rs.1,75,00,000/- alongwith compound interest @ 18 % and agreed to pay the same by 8th April 2016. This was followed by another writing executed on a stamp-paper of Rs.500/- denomination, dated 13th April 2016, wherein, the defendant No.2 admitted the liability to pay 1,75,00,000/- alongwith compound interest minimum guaranteed profit of 18% or compensate the plaintiff in the form of developed portion of the property. The defendants, however, did not honour any of those promises. In fact, a cheque drawn by the defendant No.2 for a sum of Rs.45,00,000/- payable on 7th December 2016 towards discharge of the liability in part, was returned unencashed on account of insufficiency of funds. Hence, the plaintiff was constrained to institute this suit for recovery of the said amount of Rs.1,75,00,000/- alongwith the compound interest @ 18% p.a. thereon and future interest.

5. The defendant Nos.1 and 2 did not appear, despite service of writ of summons. By an order dated 17th January 2020, it was declared that the summons was duly served upon defendant No.2. Hence, the suit was taken up for ex-parte decree.

6. The plaintiff subsequently amended the plaint. The plaintiff was again directed to serve the amended plaint on the defendant Nos.1 and 2. As the notices were again returned unserved, the plaintiff took steps to publish in the newspaper the notice incorporating the fact that the plaint has been amended. Yet, none appeared for the defendants.

7. The plaintiff has filed affidavit of evidence and tendered original documents.

8. I have heard Ms.Bharati Narichania, the learned counsel for the applicant. I have perused the averments in the plaint, affidavit of evidence and the original documents.

9. In view of the default in entering appearance on the part of the defendants, the allegations in the plaint are required to be deemed to be admitted and the plaintiff becomes entitled to a decree, in terms of sub-rule (3) of Rule 2 of Order XXXVII of the Code of Civil Procedure, 1908. There does not seem to be any impediment in passing the decree. Nonetheless, I proceed to consider the justifiability of the claim.

10. The claim of the plaintiff that he had paid a sum of

Rs.1,75,00,000/- to the defendant No.1 on 4th April 2012, based on the representation of the defendant No.2 that the plaintiff would get handsome return on the investment, finds support in the extract of the account of the plaintiff with the Union Bank of India. It indicates that on 4th April 2012, a sum of Rs.1,75,00,000/- was transferred to the account of defendant No.1. There are documents on record in the form of multiple communications (Exhibit D to Exhibit F-1) to show that the plaintiff had been making demands to defendant Nos.1 and 2 and Mr. Mukesh Rekahni, who was the go-between.

11. The letter addressed by defendant No.2, dated 31st March 2016 (Exhibit G) records a clear acknowledgment of the liability. It reads as under :

> *"Received Rs.1.75 Cr from dr. Mansukh Unadkat on 1/4/2012.*
>
> *I agree to pay him the interest of 18% (Compound) on this amount of Loan. I also agree to repay the Full amount plus the accrued interest by 8th April 2016. Failure to do so will result in the Penalty of Rs.1 Lac per week."*

12. The writing executed by the defendant No.2 on 13th April 2016 (Exhibit H) seals the issue. The defendant No.2 acknowledged in clear and explicit terms that a sum of Rs.1,75,00,000/- was received from the plaintiff towards investment in the proposed development projects at Pune and Airoli, Navi Mumbai. The defendant No.2 further acknowledged the liability to repay the said amount with compound interest minimum guaranteed profit of 18% or compensate the plaintiff in the form of developed portion of the property. It reads as under :

> *“….. that I have received from Dr. Mansukh Unadkat the aggregate sum of Rs.1.75 Crore (One Crore Seventy Five Lacs only) towards investment in proposed development at Poona and Airoli (Navi Mumbai).*
>
> *I further confirm that the investment made by Dr. Mansukh Unadkat shall be repaid with compound interest minimum guaranteed profit of 18% or compensate him in the form of developed portion of the property.”*

13. The further claim of the plaintiff that the defendant No.2 had drawn a cheque for Rs.45,00,000/- towards part discharge of the liability on 7th December 2016 and the said cheque was dishonoured is substantiated by cheque return memo (Exhibit K).

14. The position which, thus, emerges is that there are documents of unimpeachable character to show that the plaintiff had advanced a sum of Rs.1,75,00,000/- to the defendants. The defendants had promised a return of minimum guaranteed profit of 18% per annum thereon. The defendants committed defaults in payment of the return on investment, as agreed. Eventually, the defendant No.2 acknowledged the liability by executing writings, dated 31st March 2016 and 13th April 2016.

15. Indisputably, the loan was advanced on 4th April 2012. However, the writing executed on 13th April 2016, apart from constituting a written contract, also constitutes a clear and unequivocal promise to pay the time barred debt. It acknowledges the receipt of the sum of Rs.1,75,00,000/-, the purpose for which the said sum was received and a promise to repay the said amount with compound interest minimum guaranteed profit of 18% or compensate the plaintiff in the form of developed portion of the property. Thus, the suit instituted on 10th April 2019 is well within the period of limitation.

16. Hence, the following order :-

O R D E R

(i) The suit stands decreed with costs.

(ii) The defendant Nos.1 and 2 jointly and severally do pay a sum of Rs.5,37,32,631/- alongwith further interest @ 9 % per annum on the principal amount of Rs.1,75,00,000/- from the date of the suit till payment and/or realization.

(iii) The plaintiff is also entitled to refund of Court fees, if any, in accordance with the rules.

(iv) The decree be drawn up and sealed expeditiously.

[N.J. JAMADAR, J.]