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

COMM SUMMARY SUIT NO. 24 OF 2022

Tarapur Transformer Ltd. ...Plaintiff
Versus
Bairagra Builders Pvt. Ltd. ...Defendant

Mr. Girish Kedia, a/w Mr. Manoj Agre, for the Plaintiff.
None for the Defendant.

CORAM: N. J. JAMADAR, J.
DATED : 29th AUGUST, 2022

ORDER:-

1. This commercial division summary suit is instituted for recovery of a sum of Rs.3,31,05,384/- along with further interest on the principal amount of Rs.2,35,00,000/-.

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

(a) The plaintiff is a company incorporated under Companies Act, 1956. It deals in the business of transformers and ancillary products. The defendant is also a company incorporated under the Companies Act, 1956. The defendant is engaged in the business, *inter alia,* of Builders and Developers.

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(b) Pursuant to the request of the defendant, the plaintiff claims to have advanced a sum of Rs.2,85,00,000/- to the defendant during the period of 7th February, 2011 to 2nd December, 2014. The defendant has agreed to repay the sum on demand along with interest at the rate of 12% p.a. The defendant did pay interest at the rate of 12% p.a. and deducted tax at source (TDS) from the interest component paid to the plaintiff. TDS was duly reflected in Form No.26-AS while submitting returns to the Income Tax Authorities. The defendant has repaid a sum of Rs.50,00,000/- on 10th May, 2013.

(c) The plaintiff thus avers that a sum of Rs.2,35,00,000/- remained outstanding towards the principal amount. The defendant has acknowledged the liability to pay the said amount and the interest accrued thereon in the audited balance-sheet and Income Tax Returns. The defendants have also executed balance confirmation letters and acknowledged the liability to pay the said amount along with accrued interest thereon as of 31st March, 2019 to the tune of Rs.2,47,69,000/-.

(d) As the defendant did not pay heed to repeated requests of the plaintiff, a legal notice was addressed on 13th January, 2022 calling upon the defendant to pay the outstanding amount along with accrued interest thereon. In response thereto, the defendant has falsely claimed that out of the claim amount of Rs.2,85,00,000/- a sum of Rs.2,08,52,732/- has already been repaid in full and final settlement of the plaintiff's claim by unjustifiably including the amount which was paid towards the interest. It was, *inter alia,* contended that the plaintiff's claim was barred by law of limitation as the last tranch of advance was allegedly paid on 2nd December, 2014. Hence, the plaintiff was constrained to institute this suit for recovery of the aforesaid amount along with interest.

3. Writ of summons was duly served on the defendant on 19th May, 2022. Mr. Yadav, Bailiff attached to the office of Sheriff at Bombay has filed an affidavit of service affirming that the writ of summons has been duly served on the defendant.

4. Defendant has not entered appearance.

5. In view of the failure on the part of the defendant to enter appearance, within 10 days of the service of writ of summons, in accordance with the provisions contained in Order XXXVII Rule 2(3) of the Code of Civil Procedure, 1908 ("the Code"), the averments in the plaint are required to be presumed to be admitted, and the plaintiff becomes entitled for a decree.

Nonetheless I have considered the applicability of the provisions contained in Order XXXVII of the Code and the justifiability of the claim of the plaintiff.

6. The plaintiff has tendered an affidavit of Mr. Chandrashekhar N. Trivedi (PW-1) and an additional affidavit of the said witness. The plaintiff has also tendered compilation of documents in support of the claim.

7. I have heard Mr. Kedia, the learned Counsel for the plaintiff, at some length. I have also perused the averments in the plaint, documents annexed with it, affidavits in support of the claim and the documents tendered in proof thereof.

8. The claim of the plaintiff that it had advanced a sum of Rs.2,85,00,000/- to the defendant, through banking channels, is substantiated by the copies of the statements of accounts of the plaintiff maintained with Canara Bank, Mumbai Overseas Main Branch, (Exhibit-P1/3 Coll.) and the statements of accounts of Bank of Baroda, Malad (West) Branch, Federal Bank, Malad (West) Branch, Corporation Bank, Malad (West) Branch and Canara Bank, SPCL ARM Branch (P1/4 Coll.). The entries in the aforesaid statements of accounts lend support to the claim of the plaintiff that the money was advanced to the defendant through the banking channels on the various dates, indicated in paragraph 2 of the plaint. Thus, the factum of advance of the various amounts aggregating to Rs.2,85,00,000/- stands proved beyond the pale of controversy. Additionally, it is imperative to note that, the reply to the demand notice proceeds on the premise that the defendant had repaid an amount of Rs.2,08,52,732/-, as and by way of full and final settlement. This stand of the defendant contains an implicit admission of the receipt of a sum of Rs.2,85,00,000/- from the plaintiff by way of a financial facility.

9. The plaintiff's claim that the defendant had repaid a sum of Rs.50,00,000/- towards the principal amount, on 10th May, 2013, is also reflected in the account extract of the plaintiff maintained with Bank of Baroda, Malad (West) Branch. It seems that on 8th May, 2013, an amount of Rs.50,00,000/- came to be credited to the account of the plaintiff through banking channels.

10. As regards the component towards which various amounts were paid by the defendant to the plaintiff, as shown in paragraph 3 of the reply dated 4th February, 2022, Mr. Kedia, the learned Counsel for the plaintiff banked upon the extract of the TDS Certificate (Exhibit-P1/4) which indicates that the said amount was paid towards interest and the defendant had

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deducted 10% of the interest component by way of TDS. The entries in Form No.26-AS correspond with the amounts which the defendant claimed to have repaid to the plaintiff. The fact that different sums of money were paid by the defendant to the plaintiff over a period of time, and they were, in turn, shown to have been paid towards interest and tax was also deducted thereon, as shown by the defendant, cumulatively render the claim of the plaintiff that the said amounts were paid towards interest worthy of acceptance. It is interesting to note that the reply to the legal notice baldly asserts that such payment was made towards full and final settlement of the plaintiff's claim, without indicating the circumstances in which the plaintiff agreed to take a cut of almost Rs.80,00,000/- towards principal component alone.

11. The Court was anxious to consider the aspect of the bar of limitation as the last tranch of advance was in the year 2014. Mr. Kedia, the learned Counsel for the plaintiff, would urge that in the intervening period, for the Financial Year 2016 – 2017, 2017 – 2018 and 2018 – 2019, the defendant had shown the outstanding debt in the audited balance-sheet. Inviting the attention of the Court to the entries in the audited balance-sheet, submitted along with the return of income, wherein, the

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plaintiff was shown the creditor, Mr. Kedia would urge that the audited balance-sheet wherein the liability is acknowledged, satisfy the requirements of Section 18 of the Limitation Act.

12. Reliance was also placed on a judgment of the Supreme Court in the case of ***Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal and Another***[1]. In the said case, the Supreme Court after adverting to previous pronouncements and the provisions contained in the Companies Act enunciated that several judgments of the Supreme Court have indicated that an entry made in the Books of Account including the balance-sheet, amounts to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act.

13. In the case at hand, the balance-sheets for the Financial Year 2015 – 2016, 2016 – 2017 and 2017 – 2018 clearly record the amount due and payable to the plaintiff in the respective financial years. The audited reports appear to have been filed in compliance with the statutory requirement contained in Section 44AB of the Income Tax Act, 1961. It would be contextually relevant to note that in the balance confirmation letter dated 1st April, 2019 (P1/6) the defendant has clearly acknowledged the outstanding balance of Rs.3,04,09,000/- as of

1(2021) 6 Supreme Court Cases 366.

1st April, 2019. The entries therein are supported by the Ledger Account (Exhibit-P1/8) maintained by the plaintiff. Institution of the suit on 29th March, 2022 thus appears to be within the statutory period of limitation.

14. To conclude, the documents on record namely the Tax Deduction Certificate (TDS), the audited balance-sheet, balance confirmation letter, if read cumulatively, lead to a legitimate inference that the plaintiff has succeeded in establishing that the plaintiff had advanced the amount to the defendant and the latter had agreed to pay interest at the rate of 12% p.a. thereon. After repayment of a part of principal sum i.e. Rs.50,00,000/-, and the payment of interest, as evidenced by the TDS Certificates, as of 1st April, 2019, a sum of Rs.2,47,69,000/- remained due and payable. As the plaintiff's claim and documents have gone unimpeached, there is no other go but to pass a decree.

15. Hence, the following order:

: **O R D E R** :

(i) The Suit stands decreed.

(ii) The defendant do pay a sum of Rs.3,31,05,384/- along with further interest on the amount of

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Rs.2,35,00,000/- at the rate of 12% p.a. from the date of the institution of the suit till realization.

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

(iv) Court-fee refund, if any, be made as per Rules.

(v) Decree be drawn and sealed expeditiously.

[N. J. JAMADAR, J.]

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