SWAROOP SHARAD PHADKE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.2428 OF 2010

M/s. SBI Global Factors Ltd. … Plaintiff
versus
M/s. Paranthaman Spinning and Weaving Mills (P) Ltd. And Ors. … Defendants

Ms. Kajal Malkan i/by K. Ashar and Co., for Plaintiff.
Mr. S.K.Dhekale, Court Receiver, present.

CORAM: N.J.JAMADAR, J.

DATE: 19th DECEMBER 2022

P.C.:

1. This is a suit for recovery of a sum of Rs.25,78,62,613.86 along with further interest and declaration that the aforesaid debt is duly secured by a valid and subsisting mortgage on the immovable properties described in Schedule Q-2, with further consequential reliefs.

2. The Plaintiff, formerly known as Global Trade Finance Limited, is a subsidiary of State Bank of India and a limited Company originally incorporated and registered under the Companies Act, 1956.

3. The Defendant No.1 is a private limited Company. It was engaged in the business inter alia of manufacture, sale and trading of yarn and spinning. Pursuant to the request of the Defendants, the Plaintiff had extended trade finance facilities vide various sanction letters. In consideration thereof, the Defendants had executed a number of documents including demand promissory notes dated 23 January 2008 and

19 March, 2008 for a sum of Rs.10 Crore each, letters of undertaking, letter of hypothecation of receivables, letter of guarantee and memorandum of deposit of title deeds dated 23 January 2008, Letters of Guarantee dated 23 January 2008 and Affidavit cum declaration dated 3 June 2008 in favour of the Plaintiff. Defendant Nos.2 and 3 have guaranteed the repayment of the trade Finance facility by executing several letters of guarantee. The sanction letters were modified from time to time at the request of the Defendant. Consequent to the modification, the Defendant executed further documents.

4. Despite repeated assurances and guarantee to repay the outstanding trade finance facility extended by the Plaintiff, the Defendants committed persistent default. Even the cheques drawn by the Defendants towards discharge of the liability were dishonoured on presentment. The Plaintiff, was thus, constrained to issue a recall notice dated 10 July 2009 and call upon the Defendant to pay the then outstanding amount of Rs.23,22,40,644/-. The recall notice was followed by two legal notices dated 15 March 2010 to Defendant No1, and Defendant Nos.2 and 3 respectively. As the Defendants failed to comply with the demand, the Plaintiff was constrained to institute the present Suit.

5. Defendants did not appear despite being served. Thus, the Suit, proceeded ex-parte.

6. In order to substantiate the averments in the plaint, the Plaintiff has

examined Priyanka Parab (P.W.1) its Executive (Legal), who has filed Affidavit in lieu of Examination in Chief (P-1/1). The Plaintiff also has tendered documents (Exhibits P-1/2 to P/1-60).

7. The averments in the Plaint, thus, find support in the documents, especially Letters of Sanction (Exhibit P-1/4, P-1/20, P-1/27 to P-1/30, P-1/32 to P-1/34, P-1/39 to P-1/42), the Letters of Undertaking dated 23 January 2008 (Exhibits P-1/7, P-1/8, to P-1/9 to P-1/12, P-1/17), Certificate of Borrowing dated 23 January 2008 (Exhibit P-1/9), Demand Promissory Note dated 23 January 2008 and 19 March 2008 (Exhibits P-1/6 and P-1/23), Global Accounts Receivable Management Agreement dated 23 January 2008 (Exhibit P-1/16), letter of Hypothecation dated 3 June 2008 (Exhibit P-1/31), Memorandum of deposit of title deed dated 23 July 2008 (Exhibit P-1/36) and Affidavit cum Declaration dated 24 July 2008 (Exhibit P-1/37) and the letters of guarantee (Exhibits P-1/18 and P-1/19).

8. The fact that the Plaintiff had extended Trade Finance Facility is, thus, evidenced by the aforesaid documents. The facts that, the amount remained outstanding and the Plaintiff had recalled the facility are substantiated by the Recall Notice dated 10 July 2009 (Exhibit P-1/54), and legal Notices (Exhibits (P-1/55 and P-1/56). The extract of accounts (Exhibit P-1/58) evidences the outstanding amount.

9. In the instant case, the Defendant chose not to appear despite service. In view of the provisions contained in Order VIII Rule 5 of the Code of Civil

Procedure, 1908, where the Defendant does not file pleadings, the Court is empowered to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under disability. In any event, the claim of Plaintiff is substantiated by the documents of unimpeachable character. Thus, I do not find any impediment in passing a decree against the Defendant.

10. Hence, the following order :

ORDER

(i) The Suit stands decreed in terms of prayer clauses (a) to (d).

(ii) For the purpose of prayer clause (c), 30 June 2023 shall be the date for making the payment of the decreetal amount.

(iii) The Defendant do pay cost of the Suit quantified at Rs.5 Lakhs.

(iv) Decree be drawn accordingly.

(v) Pending Application(s), if any, stand disposed.

(vi) The Court Receiver stands discharged without passing accounts. The Counsel for the Plaintiff undertakes on behalf of the Plaintiff that the Plaintiff will pay the Court Receiver's Charges within two weeks of receiving the communication from the Court Receiver.

(N.J.JAMADAR, J.)