

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

COMMERCIAL SUMMARY SUIT NO.602 OF 2017

IFCI Factors Ltd. .. Plaintiff

Vs.

Raj Oil Mills Ltd. and Anr. .. Defendants

Ms. Anubha Rastogi, with Ms. Rachita Padwal and Ms. Shikha Nambiar, for the Plaintiff.

None for the Defendants.

CORAM : A. K. MENON, J.

DATE : 15TH JUNE, 2022.

P.C. :

1. Suit is listed for ex-parte decree. Learned counsel for the plaintiff states that she now proceeds only against defendant no.2 in view of the proceedings pending against the defendant no.1-company before the National Company Law Tribunal. She states that the defendant no.1-company has already made remittance of part of the claim in a sum of Rs.1.10 crores.

2. Defendant no.2 is absent on call. On 11th March 2021, this court allowed the plaintiff to withdraw the suit as against defendant no.1 and recorded that service upon defendant no.2 was complete. Affidavit-of-service was on record. Thereafter, on 27th April 2022, time was granted to file affidavit-of-evidence and original documents. That has accordingly been done.

3. The suit claim is based on an Agreement for Factoring of Receivables dated 8th August 2011. There is also a guarantee by the 2nd defendant, who has undertaken unconditionally to pay all monies due and payable to the plaintiff as a co-applicant in respect of purchase of the said receivables. Ms. Rastogi tendered original documents. The original guarantee is on record so is the original factoring agreement and allied documentation including irrevocable power of attorney. The suit is therefore based on an agreement of contract of guarantee under Section 126 of the Contract Act.

4. The defendant is absent on call. There is no appearance entered and prima facie, there is no defence to the claim.

5. It is submitted that there are criminal proceedings also undergoing and that original documents tendered in these proceedings may be required for those proceedings.

6. Accordingly, I pass the following order :-

- (i) Suit is decreed in terms of prayer clause (b); however the plaintiff shall give credit for the sum of Rs.1.10 crores received from the defendant no.1.
- (ii) The defendants shall jointly and severally pay the decreed amount along with interest thereon @ 6% p.a. from the date of the suit till payment or realization.

- (iii) Decree to be drafted and lodged accordingly within a period of four weeks from today.
- (iv) If an application is made to the Prothonotary and Senior Master for return of original documents, the registry shall mark each document as being subject matter of the decree passed today with an endorsement and return the original documents against true copies of the documents being filed on record along with legible soft copies of the documents duly scanned, indexed and bookmarked.
- (v) Suit is disposed in the above terms.
- (vi) Refund of court fees, if any, as per rules.

(A.K. MENON, J.)