IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.1905 OF 2010

M/s. SBI Global Factors Ltd. … Plaintiff
versus
M/s. Bhagavathi Textile Mills … Defendant

Ms. Kajal Malkan i/by K. Ashar and Co., for Plaintiff.

CORAM: N.J.JAMADAR, J.

DATE: 19th DECEMBER 2022

P.C.:

1. This is a suit for recovery of a sum of Rs.19,40,54,113.82 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 H-1 and hypothecated movable properties set out in Exhibit C-9, 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 is a sole proprietary concern of R. Manoharan. It deals in the business of manufacture of yarns. Pursuant to the request of the Defendant, the Plaintiff had extended trade finance facilities vide sanction letter dated 16 May 2008. In consideration thereof, the Defendant had executed a number of documents

including demand promissory note dated 20 May 2008 for a sum of Rs.15 Crores, letters of undertaking, letter of hypothecation of receivables, letter of guarantee and memorandum of deposit of title deeds dated 24 July 2008 and Affidavit cum declaration dated 24 July 2008 in favour of the Plaintiff. 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, to repay the outstanding trade finance facility extended by the Plaintiff, the Defendant committed persistent default. Even the cheques drawn by the Defendant 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.16,31,39,629/-. The recall notice was followed by two legal notices dated 15 March 2010 and 17 March 2010. As the Defendant failed to comply with the demands, the Plaintiff was constrained to institute the present Suit.

5. Defendant did not appear despite being served. Hence, thus, the Suit proceeded ex-parte.

6. Notice of Motion No.2964 of 2010 taken out by the Plaintiff for interim relief was made absolute in terms of prayer clause (a), except the words bracketed in red, (b) and (f) except the words bracketed in red. In respect of immovable properties mentioned in prayer clause (a), the Court Receiver came to be appointed.

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 has also tendered documents (Exhibits P-1/2 to P/1-34).

7. The averments in the Plaint, thus, find support in the documents, especially the sanction letter dated 16 May 2008 (Exhibit P-1/4), Demand Promissory Note dated 20 May 2008 (Exhibit P-1/5), Letter of Undertaking dated 20 May 2008 (Exhibit P-1/6), Global Accounts Receivable Management Agreement dated 20 May 2008 (Exhibit P-1/12), letter of Hypothecation dated 20 May 2008 (Exhibit P-1/13), Memorandum of deposit of title deed dated 24 July 2008 (Exhibit P-1/22) and Affidavit cum Declaration dated 24 July 2008 (Exhibit P-1/23).

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-1/28) and the legal Notices (Exhibits (P-1/29 and P-1/30). The extract of accounts (Exhibit P-1/32) 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 the Plaintiff is substantiated by 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 costs of the Suit quantified at Rs.5 Lakhs.

(iv) Decree be drawn accordingly.

(v) Pending Applications, 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.)