IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
SUMMONS FOR JUDGMENT NO.71 OF 2021
IN
COMM. SUMMARY SUIT NO.33 OF 2021

Hasmukh Chinubhai Sheth ... Plaintiff
Versus
Rajendra Developers and Ors. ... Defendants

Mr. Piyush Shah with Mr. Dishang Shah, Mr. Chirag Unadkat, for Plaintiff.
Mr. Ashok Bhatia, for Defendant Nos.1 and 2 and 4.

CORAM: N.J.JAMADAR, J.

DATE: 19th SEPTEMBER, 2022

P.C.:

1. This commercial division Summary Suit is instituted for recovery of a sum of Rs.3,11,03,053/- along with further interest on the principal sum of Rs.2,00,00,000/- at the rate of 12% p.a. from the date of the institution of the Suit till payment and/or realization.

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

2.1 The Plaintiff deals in diverse businesses. Defendant No.1 – M/s. Rajendra Developers is a registered partnership firm. Defendant Nos.2 to 4 are the partners of Rajendra Developers. Defendant Nos.2 to 4 had approached the Plaintiff to advance a loan for the business activities of Defendant No.1, which was dealing inter alia in development of real estate.

2.2 Pursuant to the representations of the Defendant Nos.2 to 4 that they would repay the amount along with interest @ 12% p.a., the Plaintiff had advanced a sum of Rs.2 Crores to the Defendant No.1 via RTGS on 13th June, 2014. Rajendra Developers duly admitted and acknowledged its liability to repay the loan amount along with interest thereon by confirming the accounts for the year 2014-15.

2.3 Rajendra Developers paid interest on the loan amount as promised till 31st March, 2017. Thereafter, Rajendra Developers committed default in payment of interest. Rajendra Developers , however, continued to acknowledge the liability by executing balance confirmation for the years 2015-16, 2017-18 and 2018-19 and deducted the tax at source.

2.4 The Plaintiff repeatedly called upon the Defendants to repay loan amount along with accrued interest thereon. As the Defendants paid no heed, the Plaintiff addressed a legal notice on 19th December, 2019. In reply, Rajendra Developers took a false and malafide defence that the said amount paid by the Plaintiff was to be utilized to finance a joint business by the Plaintiff and Defendants with Pallavi Dealers Pvt. Ltd., who were then trading in metals and the said sum was so utilized. Hence, the Plaintiff was constrained to institute the Suit for recovery of the loan amount along with the outstanding interest till the date of the institution of the Suit and further interest.

3. The Writ of Summons was duly served on Defendant Nos.1 to 4.

Defendant Nos.1, 2 and 4 entered appearance. Thereupon, the Plaintiff has taken out the Summons for Judgment.

4. Defendant Nos.1, 2 and 4 have filed an Affidavit in Reply seeking an unconditional leave to defend the Suit. At the outset, the suit was stated to be bad for mis-joinder of parties as Defendant No.3 – Kantilal Shah is not a partner of Defendant No.1 firm and has been unjustifiably roped in. The tenability of the suit under the provisions of Order XXXVII of the Code of Civil Procedure, 1908 was also assailed on the ground that it is neither based on a written contract nor on any negotiable instrument. The suit is also stated to be barred by the provisions contained in Section 13 of the Maharashtra Money Lending (Regulation) Act, 2014. Adverting to the advances made by the Plaintiff to the Defendants and other entities as well as by the son of the Plaintiff to the father of the Defendant No.2, the Defendant Nos.1, 2 and 4 contend that the Plaintiff has been dealing in the business of illegal money lending.

5. On merits, without controverting the fact that a sum of Rs.2 Crores was paid by the Plaintiff to Rajendra Developers, Defendant Nos.1, 2 and 4 have set out another transaction towards which the said amount was allegedly paid. According to Defendant Nos.1, 2 and 4 a sum of Rs.2 Crores was paid by the Plaintiff as an advance to be utilized by the Plaintiff and the Defendants to finance a joint business with M/s. Pallavi Dealers Private Limited, which was trading in metals. M/s. Pallavi Dealers Pvt. Ltd., utilized the said funds for carrying out the business till the year 2016 and,

thereafter, ceased its operations. Resultantly, the said business came to a standstill. Defendant Nos.1, 2 and 4, thus, offered to refund the said amount as and when funds are received from M/s. Pallavi Dealers Pvt. Ltd.

6. The alleged confirmation of accounts, which apparently form the basis of the suit, are stated to be untrustworthy in as much as none of the confirmation of accounts has been executed by Defendant No.1 or its partners. Moreover, the intrinsic evidence of the confirmation of accounts would indicate that no reliance can be placed on those documents. Therefore, according to Defendant Nos.1, 2 and 4, they have a strong defence to the Plaintiff's claim and deserve an unconditional leave to defend the Suit.

7. An Affidavit in Rejoinder is filed on behalf of the Plaintiff controverting the contentions in the Affidavit in Reply. It was contended that the Defendants have raised a patently false defence of a different transaction between the parties.

8. I have heard Mr. Shah, learned counsel appearing for the Plaintiff and Mr. Bhatia, learned Counsel for the Defendants. With the assistance of the learned Counsels, I have perused the averments in the plaint, documents annexed thereto, Affidavit in Reply and the Rejoinder thereto.

9. The learned Counsel for Defendant Nos.1, 2 and 4 invited the attention of the Court to a deed of partnership executed on 24th January, 2013, which indicates that Rajendra Developers was formed by two partners – Pankaj A. Shah – Defendant

No.4 and Mr. Jitendra Shah – Defendant No.2. The said partnership deed, thus, lends support to the contention of the Defendant Nos.1, 2 and 4 that Defendant No.3 is not a partner of Rajendra Developers. Conversely, apart from a bald assertion in the plaint that Defendant Nos.2 to 4 are the partners of Rajendra develpers, the Plaintiff has not taken any pains to substantiate the said claim by placing credible material on record.

10. A clear and unequivocal admission in the Affidavit in Reply that the Plaintiff had paid a sum of Rs.2 Crores to Rajendra Developers and that Defendant Nos.1 and 2 had also paid interest thereon to the Plaintiff till 31st March, 2017 [albeit, allegedly, in good faith and without prejudice] cuts the defence of the Defendants in two ways. Firstly, it completely negates the case of the Defendants that the transaction was one of illegal money lending. The Defendant Nos.1, 2 and 4 categorically asserted that the said amount of Rs.2 Crores was paid for being utilized as a corpus for financing a joint business with M/s. Pallavi Dealers Pvt. Ltd. This defence simply implies that it was not a case of money lent on interest. If the transaction between the parties was that of investing the amount by way of capital for joint business with a third entity, as alleged, by no stretch of imagination, Defendant Nos.1, 2 and 4 can contend that the advance falls within the mischief which the Maharashtra Money Lending (Regulation) Act, 2014 seeks to do away i.e. dealing in the business of lending money, on interest, sans a valid license.

11. Secondly, the aforesaid admissions also militate against the Defendants' case that the confirmation of accounts are untrustworthy. The receipt of a sum of Rs.2 Crores through banking channels, is indubitable. Likewise, the Defendants claimed to have paid interest on the said amount upto March, 2017. The confirmation of accounts as of 1st April, 2015 and 1st April, 2016 evidence these twin facts. They indicate the principal amount plus accrued interest, as agreed. Viewed in this backdrop, the endeavour on the part of the Defendant Nos.1, 2 and 4 to seek unconditional leave by contending that the balance confirmations have not been duly executed on behalf of Defendant No.1 and/or its partners, does not merit acceptance unreservedly.

12. Mr. Bhatia made an endeavour to demonstrate that the intrinsic evidence of the confirmation of accounts as of 1st April, 2018 and 1st April, 2019 especially the identity of the executant thereof, raises a triable issue about the genuineness, and truthfulness of the contents. Had there been no clear and explicit acknowledgment of receipt of the said amount, and payment of interest at the agreed rate, the aforesaid submission would have carried some conviction. In the face of clear and explicit admissions, the submission does not merit countenance.

13. The issue which, however, warrants consideration is the quantum of the amount for which the accounts were confirmed as of 1st April, 2018 and 1st April, 2019. Evidently, Rajendra Developers confirmed the accounts to the extent of the principal

amount of Rs.2 Crores only as of 1st April, 2018 and 1st April, 2019.

14. Mr. Shah attempted to salvage the position by inviting the attention of the Court to an endorsement in handwriting on the confirmation of account (Exhibit C-2) dated 1st April, 2019 that the interest has not been applied from 1st April, 2016 to 31st March, 2019. It was further submitted that since Defendant Nos.1 and 2 admitted that they have paid interest upto March, 2017, the omission to include interest in the confirmation of accounts, does not detract materially from the Plaintiff's case.

15. I find it rather difficult to accede to these submissions. Two perspectives clearly emerge. First, since Rajendra Developers had paid interest @ 12% p.a., in the absence of any agreement to the contrary, Rajendra Developers would be liable to pay interest at the same rate beyond 31st March, 2017 as well. Second, since confirmation of accounts was freezed at the principal sum of Rs. 2 Crores for two consecutive financial years 2017-18 and 2018-19, it could be legitimately urged that the parties agreed not to charge and claim interest on the said amount and the liability stood crystalized. This, in my view, raises a triable issue.

16. Hence, the following order.

ORDER

(i) The defendant nos.1, 2 and 4 are granted leave to defend the suit on the condition of deposit of a sum of Rs.2,00,00,000/- within a period of six weeks from the date of this order.

(ii) If the aforesaid deposit is made within the stipulated period, this suit shall be transferred to the list of Commercial Causes and the defendants shall file their written statement within a period of four weeks from the date of deposit.

(iii) If this conditional order of deposit is not complied with, within the above stipulated period, the plaintiffs shall be entitled to apply for an *ex-parte* decree against the defendants after obtaining a non-deposit certificate from the Prothonotary and Senior Master of this Court.

(iv) The Summons for Judgment accordingly stands disposed.

(N.J.JAMADAR, J.)