IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 62 OF 2021

IN

COMMERCIAL SUMMARY SUIT NO. 71 OF 2021

Umadevi Rajendra Agarwal … Applicant

vs.

Ahuja Properties and Associates & 2 Ors … Respondent

Mr. Girish Kedia a/w. Mr. Manoj Agre for the Plaintiff.
Mr. Naved Chaudhary for the Defendants.

CORAM : A. K. MENON, J.
DATED : 20th APRIL, 2022

P.C. :

1. The plaintiff has filed the present suit on the basis of a dishonoured cheque for a sum of Rs.1,30,24,141/-. The plaintiff also claims interest on the principal sum of Rs. 85,00,000/- @ 12% p.a. In other words the plaintiff is not seeking to recover interest on the amount of the cheque at the statutory rate of 18% p.a. The plaintiff has restricted his claim to 12% p.a. in the suit.

2. Mr. Kedia on behalf of the plaintiffs points out that monies were advanced by the plaintiff to the defendant and by way of repayment several part payments were made. After giving credit to the part payments it is contended that amount of Rs.1,30,24,141/- and interest thereon remains due and payable.

2. The defendant has acknowledged liability by issuing the suit cheque of Rs.1,30,24,141/-. The issuance of the cheque and its subsequent dishonour is not in dispute. After the cheque was dishonoured for insufficient funds on two occasions viz. 4th January, 2021 and 3rd March, 2021 and a notice was issued on 11th May, 2021 demanding a sum of Rs.1,30,24,141/- and interest of @12% on Rs.85,,00,000/-. The demand notice has been served on the defendant, however there is no compliance and there is no reply as a result the Suit has been filed.

3. The defendant has filed affidavit in reply which sets outs various reasons why no amount is due and payable for reasons that the suit is not maintainable as a Commercial Suit since it does not fall under the preview of Section 2(1)(c) of the Commercial Court Act, 2015. The loan was advanced as a friendly loan and the Suit could not be instituted as a Commercial Summary Suit. The Suit is allegedly not based on a written contract or upon any enactment or on guarantee and therefore not covered under Order XXXVII of the Civil Procedure Code, 1908. The Bills of exchange referred to in the suit are not stamped adequately. The other defence is that the plaintiff is a money lender and carrying on money lending business without valid license.

4. I have called upon learned counsel for the defendant to demonstrate how the suit is based on bill of exchange since it is amply clear that the suit is based on a dishonoured cheque. First notice was issued to which there is

no reply. The contention that being a friendly loan a Commercial Summary Suit cannot be filed is only stated to be rejected. It is admitted that several part payments in a sum of Rs. 38,53,750/- have already been made. There is no explanation that why such large amount was paid, if no money due and payable from defendants to the plaintiff. That apart the contention that the rate of interest @ 12% p.a is exorbitant has no basis whatsoever for a claim in the suit . The cheque having been issued for total sum of Rs.1,30,24,141/- there is absolutely no defence to the claim that the plaintiff has made. In view thereof the defence I find is entirely moonshine. Accordingly I pass the following order :

(i) Upon deposit of a sum of Rs. 1,34,49,141/- within a period of four weeks from today defendant is granted leave to defend the suit.

(ii) If deposit is made on or before 18th May, 2022 written statement shall be filed not later than 15th June, 2022.

(iii) If deposit is not made list the suit for ex-parte decree on 22nd June, 2022 subject to plaintiffs Advocate obtaining certificate of non-deposit.

(iv) Summons for Judgment disposed in the above terms.

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(A. K. MENON, J.)