IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

SUMMONS FOR JUDGMENT NO.82 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO.1252 OF 2019

Poonam Kausshal Bagadia .. Applicant-Plaintiff
Vs.
Jayesh Vidhani .. Defendant

Mr. Rohan Sawant, with Mr. Jayesh Ashar, Mr. Arshan and Ms. Sapna Sharma, i/by K. Ashar & Co., for the Applicant-Plaintiff.
Ms. Ankita Singhania, with Ms. Samridhi Lodha, i/by Kanga & Co., for the Defendant.

CORAM : A. K. MENON, J.
DATE : 15TH JUNE, 2022.

P.C. :

1. By this Summons for Judgment, the applicant-plaintiff seeks a decree in a sum of Rs.2,36,38,112/-, comprising a sum of Rs.2,17,95,141/- outstanding as of 1st January 2019, along with interest @ 18% p.a. aggregating to Rs.18,42,971/- from the date of filing of the suit till payment or realization. The plaint proceeds on the basis that the plaintiff had advanced a sum of Rs.2.90 crores at the request of the defendant some time in June, 2015 as a bridge loan on the assurance that the same will be repaid by 31st July 2015. The defendant was to execute a promissory note, issue post-dated cheque(s) and provide security by way of rights in immovable property. It is the case of the plaintiff that the defendant failed and neglected to repay the amount, as promised, and as a result, interest continued to accrue and as of 31st October 2017, a

sum of Rs.4,17,46,000/- was due and payable towards the principal sum of Rs.2.90 crores + interest @ 18% p.a., as set out in paragraph 8 of the plaint. The parties had several meetings, as a result of which part payments amounting to Rs.2,54,25,000/- has been made. Interest is being claimed @ 18% p.a. from the date of the first payment i.e. 11th June 2015 and thereafter the balances due after giving credit for each of the six installments, by which the amount of Rs.2,54,25,000/- paid.

2. The suit is based on admission of liability and a written agreement to pay, as incorporated in the correspondence prior to the suit. Surprisingly, the correspondence prior to the suit referred to by the plaintiff is not as between the parties but between the Advocates. Mr. Sawant in support of the Summons for Judgment submits that there is an unconditional acknowledgment of the fact that amount of Rs.2.90 crores was paid. Equally, the plaintiff admitted that a sum of Rs.2,54,25,000/- was paid back; however interest is overdue and the plaintiff claims interest @ 18% p.a. On a query from the court, Mr. Sawamt fairly states that there is no agreement to pay interest @ 18% p.a., however, the defendant at all material times was obliged to pay interest at the said rate of 18% p.a. The plaintiff therefore relies on the acknowledgment and the correspondence. It is further contended that even in the affidavit-in-reply, there is a clear admission to the extent of Rs.35.75 lakhs as being due and payable to the plaintiff, but the defendant seeks to make that conditional upon some other aspects of business arrangement between the parties being tied up. He therefore submits that as regards the sum of Rs.35.75 lakhs is concerned, there is a clear admission and that sum should be therefore paid over.

3. On behalf of the defendant, Ms. Singhania has invited my attention to the affidavit-in-reply dated 6th December 2019, in which the defendant has stated that the amounts in question were indeed received by the defendant, however those amounts pertain to a series of transactions as between the plaintiff and the defendant. My attention is invited to Exhibit-1 to the affidavit, which is the extract of the Register of Ministry of Corporate Affairs disclosing the Company Master Data, which inter alia reveals names of all the directors. The plaintiff is seen to be one of the directors of a company called Nitin Developers Pvt. Ltd. Exhibit-2 is yet another extract in respect of Calvin Trade and Developers Pvt. Ltd. Both the companies are limited by shares and in which the plaintiff is a director. It is contended by Ms. Singhania that there are several transactions as between the plaintiff on one hand and the defendant and Calvin Trade and Developers Pvt. Ltd. and Nitin Developers Pvt. Ltd. and that the admission of the balance sum of Rs.35.75 lakhs is not unconditional. It is conditional upon the other transactions being squared off. In effect, it is contended, as set out in paragraph 14 of the reply, that subject to a sum of Rs.26 lakhs remaining to be paid to the defendant company Vidhani Tex (P) Ltd. (VTPL) from the aforesaid Calvin and Nitin and return of certain negotiable instruments said to be issued by the company VTPL, the defendant would be in a position to pay the balance sum of Rs.35.75 lakhs. Ms. Singhania states that there is no agreement whatsoever to pay interest, a fact that Mr. Sawant has already conceded, however the plaintiff does not press for interest for the present Summons for Judgment.

4. Be that as it may, the record indicates that the plaint does not disclose any of

these transactions and the fact that the plaintiff as a director of the two companies did not receive benefits of the remittances made by the defendant. These remittances are reflected in the statement of accounts, which have been annexed to the affidavit-in-reply and in particular at Exhibit-3. As and by way of an example, it is seen that a sum of Rs.40 lakhs has been paid over to the defendant on 11th June 2015. It is said to have been transferred in two tranches of Rs.10 lakhs and Rs.30 lakhs to a different account and that different account pertains to the said Vidhani Tex (P) Ltd. Vidhani, in turn, is seen to have transferred the amount of Rs.40,00,056/- and Rs.50,00,056/- to the said Calvin Trade – a company of which the plaintiff is admittedly a director. A sum of Rs.50,00,056/- lakhs is sought to be explained as bank charges. Thus, there is substance in the defence to the effect that the amount of Rs.40 lakhs shown as a loan by the plaintiff to the defendant does not appear to be correct. The admissions are not unconditional.

5. Although Mr. Sawant has relied upon the decisions of the Supreme Court in *IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.*[1], *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Ors.*[2] and *Jyotsna K. Valia Vs. T.S. Parekh and Co.*[3] in support of his contention that liability to the extent admitted in a sum of Rs.35.75 crores is required to be secured, I am not satisfied that the admissions are unconditional. There appears more than meets the eye since there are several transactions between the parties and the plaint does not disclose these transactions as between Calvin and VTPL. That relationship cannot be denied also due to the fact that

1 *(2017) 1 SCC 568*

2 *(1974) 1 SCC 242*

3 *2007 (4) Mh.L.J. 517*

the very first notice of demand, forming the backbone of the plaintiff's claim is dated 16th January 2019, which, according to Mr. Sawant, is one of the agreements in writing between the parties acting through their Advocates. This demand notice is addressed not only to the present defendant but also to the said VTPL alleging joint and several liability.

6. In these circumstances, I am of the view that several triable issues arise. In view thereof, I pass the following order :-

(i) Unconditional leave is granted to the defendant.

(ii) Written statement to be filed within eight weeks from today.

(iii) Summons for Judgment is disposed in the above terms.

(A.K. MENON, J.)