

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

SUMMONS FOR JUDGMENT NO.106 OF 2018

IN

COMMERCIAL SUMMARY SUIT NO.57 OF 2010

(Under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908)

SBI Global Factors Ltd.] .. Plaintiff–Applicant

Vs.

1. Global Hi–Tech Industries Ltd.	]
2. Narayan Prasad Tekriwal	]
3. Ashok Maskara	]
4. Rohit Maskara	] .. Defendants

Mr. Dhaval Patil, i/by K. Ashok & Co., for the Plaintiff–Applicant.

Mr. Satish Raut for the Official Liquidator.

CORAM : A. K. MENON, J.

DATE : 21ST APRIL, 2022.

P.C. :

1. The plaintiff–applicant has filed the present suit against four defendants. Defendant no.1 is a company, presently in liquidation. Plaintiff–company is said to have obtained leave under Section 446 of the Companies Act, 1956, a fact that Mr. Raut admits.

2. The 1st defendant being in liquidation, the Liquidator has filed an affidavit–in–reply dated 15th February 2019. In para 9 of that affidavit, the Liquidator has stated that leave having been granted, the plaintiff–company was directed to deposit Rs.2 lakhs with the Official Liquidator for the

expenses. That has since been done and that is how the matter proceeds. As far as the merits of the case are concerned, Mr. Raut submits that the transactions prior to the winding up were in time and the Liquidator has no knowledge of the same. In effect, there is no defence at all on merits.

3. That brings me to consider the case against defendants 2, 3 and 4, who are directors of the 1st defendant. The suit is based on written agreement between the parties dated 21st February 2008 styled as a Global Accounts Receivable Management Agreement. The agreement is in writing and it is executed as between the plaintiff and defendant no.1. Defendants 2, 3 and 4 have guaranteed payments of the amounts due to the plaintiff by executing Letters of Guarantee, all dated 21st February 2008. The defendants 2, 3 and 4 are therefore sought to be held liable under these suit guarantees.

4. The plaintiff-company has claimed a total sum of Rs.36,28,86,525=45, as per particulars of claim annexed to the plaint. After service of summons upon defendants 2, 3 and 4, they caused appearance to be entered through M/s. ALMT Legal, Advocates, who thereafter withdrew appearance for want of instructions. Mr. Patil submits that no reply was filed to the Summons for Judgment although directions were issued on 16th January 2019, when the Liquidator was represented. The defendants 2, 3 and 4 did not remain present on that date, although they had been appearing in the matter through Advocates prior to the date they were granted discharge by the Prothonotary and Senior Master viz. 13th December 2018.

5. The record indicates that all the defendants had executed vakalatnama in favour of M/s. ALMT Legal, Advocates. That was prior to the 1st defendant-company being ordered to be wound up. In that sense, the defendants were all aware of the claim against them and having engaged an Advocate, they had notice of the suit. Yet, they have not made attempts to have representation entered after M/s. ALMT Legal, Advocates, were granted discharge. The record further indicates that the Summons for Judgment may not have been served, but Mr. Patil submits that having caused Advocates to enter appearance, the defendants were bound to ensure that the suit was defended after leave was obtained. They have failed to do so.

6. In view of the fact that no attempts were made to enter appearance, by order dated 10th March 2022, this court directed the plaintiff's Advocate to intimate defendants 2 to 4 of the fact that the suit will proceed ex-parte if appearance is not entered, since their earlier Advocates were granted discharge. Mr. Patil points out that only defendant no.2 could be served. As far as the other defendants are concerned, he submits that the packets have been returned unserved. Mr. Patil states that the original documents have been filed in the Metropolitan Magistrate's court, where a criminal complaint is pending. He has filed certified copies of the relevant documents in this court.

7. Defendant no.2 is absent on call. Mr. Patil tenders affidavit-of-service today. The same is taken on record. The suit claim has not been disputed. The

defendants had notice of the fact that the guarantees were invoked upon filing of the suit. They have not tendered any defence. They have not obtained leave to defence. In my view, therefore, the suit is liable to be decreed. Accordingly, I pass the following order :-

- (i) Summons for Judgment is made absolute.
- (ii) Suit is decreed in a sum of Rs.36,28,86,525.45 along with further interest thereon @ 6% p.a. from the date of suit till payment or realisation.
- (iii) Refund of court fees, if any, as per rules.
- (iv) Summons for Judgment is disposed in the above terms.

(A.K. MENON, J.)