

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL SUMMARY SUIT NO.368 OF 2019

Mehul Jadavji Shah ...Plaintiff
vs.
Ambe Gopal Developers and Others ...Defendants

Mr. Abhishek Adke a/w. Ms. Vibha Joshi, for the Plaintiff
Mr. Yakshay Chheda, for the Defendants.

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CORAM : N. J. JAMADAR, J.
DATE : SEPTEMBER 12, 2022

P.C.:

1. The suit is listed for ex-parte decree.
2. This suit is for recovery of an amount of Rs. 1,31,70,567/- along with further interest @ 18% p.a. from 16th October, 2018 till payment and/or realization.
3. The plaintiff claimed to have advanced a loan of Rs. 1 Crore to the defendants vide cheque dated 7th February, 2008. Towards the repayment of the said amount, the defendants had allegedly drawn a cheque for a sum of Rs. 1,26,91,345/- on Canara Bank, Dadar (w) Branch payable on 31st July, 2018. The cheque was returned unencashed on account of insufficiency of funds. Thus, Summary Suit came to be instituted under Order XXXVII of the Code of Civil Procedure, 1908 based on the negotiable instrument as well as

balance confirmation.

4. The defendants sought unconditional leave to defend the suit. By an order dated 7th June, 2022, this Court was persuaded to grant leave to defend on the condition of deposit of a sum of Rs. 1,31,70,567/-. Upon deposit, the defendants were permitted to file written statement within a period of two weeks of the said deposit. In the event of non deposit, liberty was granted to the plaintiff to apply for a decree on obtaining a Non-Deposit Certificate.

5. The plaintiff has moved the Court armed with a Non-Deposit Certificate issued by the Prothonotary dated 12th August, 2022.

6. The learned counsel for the defendants submitted that the defendants have neither deposited the amount nor any appeal is preferred against the aforesaid order granting conditional leave to defend the suit. Further, the learned counsel for the defendants fairly submitted that the defendants did not challenge the existence or genuineness of the documents on which the suit is based.

7. In view of the provisions contained in Sub Rule (6) of Rule 3 of Order XXXVII of the Code, upon failure of the defendants to

comply with the condition, subject to which leave is granted, the plaintiff forthwith becomes entitled to a judgment.

Thus, the following order.

ORDER

- 1] The suit stands decreed.
- 2] The defendants do pay an amount of Rs. 1,31,70,567/- to the plaintiff along with further interest @ 18% p.a. on the principal amount of Rs. 1 Crore from the date of institution of the suit till payment and/or realization.
- 2] The defendants do pay the costs of the suit to the plaintiff.
- 3] The plaintiff is entitled to refund of Court fees, if any, in accordance with rules.
- 4] Decree be drawn and sealed expeditiously.

(N. J. JAMADAR, J.)