

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.128 OF 2018

PRIYA
RAJESH
SOPARKAR

IN

COMMERCIAL SUMMARY SUIT NO.908 OF 2018

Digitally signed by
PRIYA RAJESH
SOPARKAR
Date: 2022.03.08
14:37:27 +0530

Aditya Sunder Raj and anr. ... Plaintiffs/Applicants

VS.

Ravi N. Iyer and ors. ... Defendants

Mr.Prathamesh Kamat a/w. Mr.Yash Oza, Mr.Vishnudutt Mishra and
Mr.Ashish Mishra i/b. Mr.Sanjeet Shukla for the Plaintiffs/Applicants.

None for the defendants.

CORAM : A. K. MENON, J.

DATED : 2nd MARCH, 2022.

P.C. :

1. By this Summons for Judgment the plaintiffs seek a decree in the sum of Rs.3,78,69,480/- and interest 18% p.a. on the principal sum. Mr.Kamat appearing in support of the summons states that Deed of Partnership is the suit claim arises pursuant to an agreement in writing described as Deed of Private Admission dated 1st April, 2012. The agreement records that for consideration of Rs.1,75,00,000/- the defendant would cause to be transferred the 1st defendant's 25% share in the 2nd defendant firm to the plaintiff No.1. The Deed of Private Admission ("DPA") in clause (2) records the agreement to pay Rs.1,75,00,000/- to the defendant and upon payment of the said consideration the plaintiff No.1 was required to be admitted as a

partner of the defendant No.2-Firm.

2. The defendant No.3 is another partnership firm in which the defendant No.1 is a partner. The DPA is not entered into on behalf of the 2nd defendant or 3rd defendant firms but by the 1st defendant in his individual capacity on the terms recorded in the DPA. In breach of the terms agreed the plaintiff has not been inducted as partnership firm as contemplated in the DPA. Equity in the firm not having been transferred in favour of the plaintiff, the plaintiff has sought repayment of the amount. Mr.Kamat therefore submitted that there is no defence at all to this claim and he seeks a decree.

3. The defendant No.1 has filed an affidavit-in-reply. Learned counsel for the defendant has taken me through the affidavit in reply. According to him there is no default by defendant No.1 but in paragraph No.11 of the affidavit, my attention is drawn to the deponent's averment that it was agreed that the plaintiff would join as part of the defendant No.2-Firm by allotting 25% share held by the defendant No.1 but a vague averment is made that under the DAP time was of essence while acquiring the first defendant's share in the firm. However, nothing shown to me records that time was of the essence. On the other hand, there is an admission of liability atleast to the extent of the amount paid over by the plaintiff viz Rs.1,75,00,000/- but

there is no agreement to pay interest at 18% per annum.

4. *Prima facie* there is failure to repay the principal sum despite an admission of liability. The defence set up is moonshine according to me and leave to defend can be granted subject to conditions and accordingly, I pass the following order-

- i. Subject to deposit of Rs.1,75,00,000/- within a period of eight weeks from today conditional leave is granted to the defendants to defend the suit.
- ii. If the deposit is made, written statement shall be filed within a period of four weeks from the date of deposit. The amount deposited shall be invested by the Prothonotary and Senior Master initially for a period of one year in a fixed deposit to be renewed year on year.
- iii. If the amount is not deposited, plaintiff is at liberty to apply for a decree after obtaining a Certificate of Non-deposit but after filing the original Deed of Admission and other supporting documents, if any.
- iv. Summons for Judgment is disposed of in the above terms.

(A.K. MENON, J.)