

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

COMMERCIAL SUMMARY SUIT NO.83 OF 2017

IFCI Factors Ltd.

.. Plaintiff

Vs.

Multi-Flex Lami-Print Ltd. and Anr.

.. Defendants

Ms. Anubha Rastogi, with Ms. Rachita Padwal and Ms. Shikha Nambiar, for the Plaintiff.

None for the Defendants.

CORAM : A. K. MENON, J.

DATE : 15TH JUNE, 2022.

P.C. :

1. By this Suit, the plaintiff seeks a decree in a sum of Rs.8,51,70,836.46. The aforesaid sum is claimed as amount under an agreement in writing executed by and between the parties styled as Agreement for Factoring of Receivables. The agreement is filed in original. It is seen to be signed by both the plaintiff and the defendants, being item no.1 of compilation of documents. Further documents, such as supplemental factoring agreement along with demand promissory note, delivery letter duly executed by the defendant no.1-company with its common seal on 1st August 2012 and other allied documents, are all on record. The suit is thus listed for ex-parte decree and the defendants had not entered appearance despite served with the writ of summons. The writ of summons, it is seen, has been served by way of substituted service by publication. Affidavit-of-service is on record. Publication was pursuant to an order of the court dated 26th November 2018.

2. In view of the above, on 17th July 2018, this court noted that the defendant no.1-company was initially ordered to be wound-up, but by an order dated 5th February 2015 passed in Company Application No.119 of 2017 in Company Petition No.700 of 2014, the order of winding-up of the 1st defendant-company had been recalled. Thereafter fresh writ of summons was sought to be served. However, upon inability of the plaintiff to complete service, this court has since permitted the defendants to be served by substituted service.

3. The 2nd defendant is also absent on call. The 2nd defendant is the guarantor, having undertaken to pay the amounts due under the Agreement for Factoring of Receivables. Perusal of the guarantee reveals that on 1st August 2012, the 2nd defendant has unconditionally agreed to pay the amounts to the extent of Rs.7.50 crores with interest and that the guarantee has been invoked by a letter dated 18th May 2015 addressed to the guarantor – defendant no.2.

4. This court has already recorded in its order dated 26th November 2018 that defendant no.2 had been served. Thereafter on 19th March 2019 and thereafter the defendants have not appeared. On 27th April 2022, once again both the defendants have found to be absent on call and hence the suit has been taken up today, as directed by that order.

5. Having perused the plaint and documents on which the suit is based and having heard learned counsel for the plaintiff, I am of the view that the plaintiff is entitled to judgment and decree. Accordingly, I pass the following order :-

- (i) Suit is decreed in terms of prayer clauses (b) and (c); however interest from the date of the suit shall be payable @ 6% p.a.
- (ii) Both the defendants shall jointly and severally pay the decreed amount and interest, as aforesaid, till payment or realization.
- (iii) Suit is disposed in the above terms with costs.
- (iv) Refund of court fees as per rule.

(A.K. MENON, J.)