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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision : 8th April, 2022***

\+ CS(OS) 453/2020, I.A.12644/2020 (u/O.XXXVIII R.5 of CPC), I.A. 9579/2021 (u/O.VIII R.10 of CPC) & I.A. 13317/2021 (for directions)

SUPREME KAR SCANNERS PRIVATE LIMITED ..... Plaintiff

Through: Mr. Abhishek Gupta, Advocate.

versus

YOGESH GUPTA & ANR. ..... Defendants

Through: None for defendant No.1.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

I.A. 765/2022 (u/O-VIII R-10 of CPC)

1. The present application has been filed on behalf of the applicant/plaintiff under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC) for striking off the defence of the defendant No.l and for passing a decree as prayed for in the plaint.

2. Notice was issued in the application on 17th January, 2022.

3. As per the report from the Registry, notice has been served on the defendant No.1.

4. However, none appears on behalf of the defendant No.1.

5. The written statement is yet to be filed, though the prescribed period for filing the same is long over.

6. The defendant No.1 was represented through counsel on the first hearing of the suit on 24th December, 2020 and the defendant No.1 appeared in person on 13th August, 2021 before the Joint Registrar. However, thereafter, none has appeared on behalf of the defendant No.1. Today, also, despite notice of the present application, none appears on behalf of the defendant No.1.

7. In view of the aforesaid facts and taking into account the fact that the defendant No.1 has chosen to not contest the present suit, the counsel for the plaintiff Company submits that no useful purpose would be served by directing the plaintiff Company to lead *ex parte* evidence. Reliance in this regard is placed by counsel for the plaintiff Company on ***Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd.***, 2013 SCC OnLine Del 508.

8. The plaint has been duly verified and is also supported by the affidavit of the plaintiff Company. Therefore, no useful purpose would be served by directing the plaintiff Company to lead evidence.

9. Therefore, I have heard the counsel for the plaintiff Company on merits *qua* the reliefs claimed in the plaint.

10. The plaintiff, in the plaint, has made the following prayers:

> *"(a) pass a decree in favour of the plaintiff and against defendant No.1 in the sum of Rs.2,25,19,280/- (Rupees Two Crore Twenty Five Lacs Nineteen Thousand Two Hundred and Eighty only);*
>
> *(b) award interest, pendente lite and future at the rate of 10% per annum;*
>
> *(c) award costs of the suit; and*

> (d) *grant any other and further relief, to which the plaintiff may be found entitled, in the circumstances of the case."*

11. The facts, which emerge from a reading of the plaint, are as follows:

(i) The defendant No.1 had obtained a personal cash credit facility in the sum of Rs.2,00,00,000/- in his name from the defendant No.2, Punjab National Bank (PNB) on 6th September, 2016, and in this regard, an A/c No.0115008700002417 was opened by the defendant No.2 PNB in the name of the defendant No.1.

(ii) The aforesaid cash credit facility was provided by the defendant No.2 PNB against the hypothecation of the immovable property being S-17, UPSIDC, Site-IV, Sahibabad, Industrial Area, Ghaziabad, Uttar Pradesh, standing in the name of the plaintiff Company, as collateral/primary security.

(iii) By Demand Notice dated 5th July, 2017 issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), the defendant No.2 PNB informed the plaintiff Company that the aforesaid account had been notified as a 'Non-Performing Asset' on 4th April, 2017 and demanded the payment of Rs.1,55,03,415/- on the plaintiff Company.

(iv) Upon receipt of the aforesaid notice, the plaintiff Company vide Reply dated 8th September, 2017 requested the defendant No.2 PNB to close the cash credit limit and release the collateral security upon the payment by the plaintiff Company of the entire limit along with interest.

(v) The defendant No.2 PNB issued a Possession Notice dated 21st September, 2017 so as to take possession of the collateral security, as aforesaid.

(vi) Between 1st December, 2017 and 1st January, 2018, the plaintiff Company paid an amount of Rs.1,74,34,282.51/- in instalments to the defendant No.2 PNB so as to discharge the defendant No.1's liability.

(vii) On 26th November, 2018, the defendant No.2 PNB issued a No Dues Certificate in favour of the plaintiff Company.

12. The plaintiff Company, along with the plaint, has, *inter alia* filed the following:

a. Power of Attorney dated 17th December, 2020 and Board Resolution dated 15th December, 2020 authorizing Sh. Hemant Jain to file and institute the present suit on behalf of the plaintiff Company.

b. Sanction letter dated 6th September, 2016 sanctioning the cash credit facility of Rs.2,00,00,000/- in favour of the defendant No.1.

c. Notice dated 5th July, 2017 issued by the defendant No.2 PNB under Section 13(2) of the SARFAESI Act.

d. Reply dated 8th September, 2017 to the aforesaid notice on behalf of the plaintiff Company.

e. The Possession Notice dated 21st September, 2017 issued by the defendant No.2 PNB.

f. Reply dated 30th November, 2017 on behalf of the plaintiff Company to the aforesaid notice.

g. No Dues Certificate dated 26th November, 2018 issued by the defendant No.2 Bank stating that the amount of Rs.1,74,34,282.51/- has been deposited by the plaintiff Company in the loan A/c

No.0115008700002417 and no further amounts are outstanding in respect of the same account.

13. Based on the aforesaid pleadings, the plaintiff Company seeks the recovery of the principal amount of Rs.1,74,34,282/-, along with interest @ 10% per annum from 1st January, 2018 to 1st December, 2020 of Rs.50,84,998/-, amounting to a total of Rs.2,25,19,280/-.

14. The counsel for the plaintiff Company has drawn attention of this Court to the written statement filed on behalf of the defendant No.2 PNB, wherein the aforesaid facts as stated in the plaint have been confirmed.

15. In my view, based on the averments in the plaint, the documents filed along with the plaint, and the written statement filed on the behalf of defendant No.2 PNB, the plaintiff has made out a case for recovery of the amount of Rs.2,25,19,280/-, along with grant of pendente lite and future interest. It is clear that it was the plaintiff Company, which repaid the outstanding amounts due to the defendant No.2 PNB from the defendant No.1, as the property of the plaintiff Company was given as the collateral/primary security. The same can be confirmed from the No Dues Certificate dated 26th November, 2018, which the defendant No.2 PNB has issued.

16. Accordingly, a decree is passed in favour of the plaintiff Company and against the defendant No.1 for a sum of Rs.2,25,19,280/-, along with pendent lite and future interest @ 10% per annum.

17. Let the decree sheet be drawn up.

AMIT BANSAL, J.

APRIL 08, 2022/dk