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

SUMMONS FOR JUDGMENT NO.4 OF 2023
IN
COMMERCIAL SUMMARY SUIT NO.35 OF 2022

Kashmira Bhupendra Saraiya … Plaintiff
Vs.
Vipul Himatlal Shah … Defendant

Mr.Mohan Rao, Advocate for the Plaintiff.
Mr.Nikunj Mehta with Mr.Aniruddha Lad and Mr.Biju Joseph i/by M/s KLT Law Associates, Advocates for the Defendant.

CORAM : ABHAY AHUJA, J.
DATE : 06 NOVEMBER, 2023.

P.C. :

1. This Summons for Judgment seeks judgment for a sum of Rs.1,10,40,000/- with interest at the rate of 1 ¾ % per month on principal amount of Rs.60,00,000/- from April, 2018 till 31st March, 2022 totalling amount of Rs.50,40,000/- and further interest at the rate of 18% p.a. from the date of filing of suit till realization of the decree as per the particulars of claim annexed Exhibit H to the plaint.

2. After the service of the writ of summons, the Defendant entered appearance and the above Summons for Judgment was taken out. The

Summons for Judgment and the affidavit-in-reply has been filed by the Defendant seeking unconditional leave to defend. The Plaintiff has also filed a rejoinder.

3. Mr.Mohan Rao, learned counsel for the Plaintiff would submit that the Plaintiff and the Defendant who are known to each other and had a friendly relationship. That the Plaintiff late Mr. Bhupendra Saraiya was a good friend of the Defendant. Somewhere in the year 2010, the Defendant who had represented to the Plaintiff and her husband that he was into real estate development in and around Mumbai requested Plaintiff and her husband for financial assistance to expand his business and for some personal issues. The Plaintiff and her husband agreed to provide loan at an agreed rate of interest to be paid every month against necessary document in favour of the Plaintiff and her late husband. Accordingly, Plaintiff and late husband advanced a sum of Rs.60,00,000/- to the Defendant as such :

Sr. No.	**Date**	**Amounts (In Rs.)**
1.	10/09/2010	30,00,000/-
2.	10/09/2010	20,00,000/-
3.	11/03/2013	10,00,000/-
4.	TOTAL	60,00,000/-
		(Rupees Sixty Lacs Only)

4. In consideration of the same, the Defendant executed three promissory notes in favour of the Plaintiff and her late husband admitting his legal liability, to repay the amount as and when demanded. The details of the said promissory notes are as under :-

Sr. No.	DATE	AMOUNT (IN RS.)	ON DEMAND PROMISSORY NOTE IN FAVOUR OF
1.	10/09/2010	30,00,000/-	Kashmira Bhupendra Saraiya (Plaintiff)
2.	10/09/2010	20,00,000/-	Bhupendra Maneklal Saraiya (Plaintiff's Late Husband or Kashmira Bhupendra Saraiya (Plaintiff)
3.	11/03/2013	10,00,000/-	Bhupendra Maneklal Saraiya (Plaintiff's Late Husband or Kashmira Bhupendra Saraiya (Plaintiff)

5. Mr.Mohan Rao, learned counsel for the Plaintiff would submit that on 17th January, 2017 the Plaintiff's husband Mr.Bhupendar Maneklal Saraiya expired; that the Defendant was regular in paying the interest amount to the Plaintiff and her late husband during her husband's life time and even after the death of her husband paid interest at the rate of Rs.1,05,000/- per month. The Defendant used to make the payment either though cheque or bank transfer or in cash. However, since April, 2018 the Defendant was irregular in making the payment of monthly interest and started default on the same. It is submitted that the last interest amount paid by the Defendant was in the month

of March, 2018 and the same was paid through any NEFT Bank transfer which is reflected in the bank account statement of the Plaintiff maintained with the State Bank of India.

6. It is submitted that since April, 2018 the Defendant started delaying in making payment of interest on one pretext or another. That after much persuasion the Defendant handed over 8 cheques of Rs.1,05,000/- each towards payment of outstanding interest which were passed in favour of the Plaintiff drawn upon SVC Bank Limited duly signed by the Defendant. When on 21st January, 2022 the Plaintiff deposited the first cheque dated 15th January, 2020, the cheque was dishonoured with the remark "Funds insufficient". Although the Defendant was informed about the dishonoured cheque and requested to make the payment, the Defendant once again started giving excuses and asked the Plaintiff not to deposit the other cheques. Left with no other alternative, in the month of February, 2020 the Plaintiff demanded and asked the Defendant to honour the promissory notes and make payment of Rs.60,00,000/- as promised by the Defendant.

7. In part discharge of his liability of Rs.60,00,000/- the Defendant issued her cheque for an amount of Rs.30,00,000/- but the Plaintiff did not deposit the said cheque as the Defendant requested the Plaintiff not to deposit the same. Thereafter, on several occasions the Plaintiff has requested the Defendant to

make payment of the entire amount of Rs.60,00,000/- as per the three promissory notes alongwith pending unpaid interest amount of Rs.1,05,000/- per month since April, 2018, but despite promises the Defendant had failed and neglected to honour his commitment. It is submitted that after it became clear that the Defendant would not abide by his promises, left with no choice, the Plaintiff has filed the suit. Mr.Rao, learned counsel for the Plaintiff therefore, submitted that the Summons for Judgment be made absolute.

8. Mr.Nikunj Mehta, learned counsel for the Defendant has opposed the Summons for Judgment and raised primarily three issues. Mr. Mehta would firstly submit that the suit is barred by the law of limitation. Learned counsel draws the attention of this Court to Article 35 of the schedule of the Limitation Act, 1963 and submits that limitation in the case of promissory notes payable on demand is three years from the date of the notes which according to the Defendant in the case of the two promissory notes dated 10th September, 2010 expired in the year 2013 and for the third promissory note dated 11th March, 2013, expired in the year 2016 and therefore, the suit that has been filed in the year 2022 is hopelessly barred by limitation. Learned counsel also submits that a bare perusal of two promissory notes dated 10th September, 2010 and the other dated 11th March, 2013 clearly indicate that the same are forged as the handwriting which contains the name of Plaintiff is different. The handwriting in which the Plaintiff’s name has been written therein is clearly different and

distinct and on this ground the suit ought to be dismissed. Thirdly, learned counsel for the Defendant contends that one promissory note dated 10th September, 2010 and two promissory notes, one dated 10th September, 2010 and the other dated 11th March, 2013 constitute distinct and separate causes of action. The first one is in the name of a Plaintiff but the other two are in the name of the Plaintiff as well the legal heirs of her husband; if they were treated as two separate causes of action, this court would have no pecuniary jurisdiction to entertain the said suit and on this ground the plaint ought to be returned to be filed before the Court having appropriate pecuniary jurisdiction.

9. Mr.Mehta, learned counsel for the Defendant also draws the attention of this court to Section 87 of the Negotiable Instruments Act, 1881 to submit that any material alteration of a Negotiable Instrument renders the same void as against anyone who is a party thereto at the time of making such alternation and does not consent thereto. Learned counsel submits that the Defendant had not consented to the addition of the Plaintiff's name in the two promissory notes and therefore, the same is void.

10. Mr.Mehta has also relied upon the following two decisions of this Court in support of his contention that in the case of a demand promissory note, the limitation would start running from the date of the promissory note and not from the date on which a demand is made for payment :

(i) ***Framroz Edulji Dinshaw Vs. Mahomed Essa and others***[1]

(ii) ***Laxman Krihsnaji Mkustilwar Vs. RameshAmarchand Agrawal and another.***[2]

11. Mr.Mohan Rao, learned counsel for the Plaintiff denies the contentions made on behalf of the Defendant.

12. I have heard the learned counsel and also considered the rival contentions.

13. The transaction of loan by the Plaintiff and her husband with the Defendant has not been disputed. That the promissory notes have been issued by the Defendant is also not in dispute. However, the Defendant has raised an issue of limitation. According to the Defendant in view of Article 35 of the schedule to the Limitation Act, 1963, the suit is time barred as the three years period has to be taken from the date of the promissory notes, which as submitted above, has for two promissory notes expired in 2013 and for one in the year 2016, whereas the suit has been filed in the year 2022 which is of course opposed by the learned Counsel for the Plaintiff submitting that the last payment of interest of Rs.1,05,000/- by the Defendant was on 21st March, 2018.

1 1925 ILR 1925 (Bombay) Volume L 266 : AIR 1926 BOMBAY 241
2 1998 SCC Online Bombay 884

Further, a bare perusal of the promissory notes of 2010 annexed to the plaint *prima facie* does indicate difference in the writing of the name of the Plaintiff. In my view the issue of limitation as well as the issue of forgery do raise triable issues which would need leading of evidence even though the transaction of loan is not disputed. In the circumstances, in view of the law laid down by the Hon'ble Supreme Court in the case of ***IDBI Trusteeship Services Ltd. vs. Hubtown Limited***[3] as well as in the case of ***B. L. Kashyap and Sons Ltd. vs. M/s. JMS Steels and Power Corporation and Anr.***[4] matter, I am inclined to grant conditional leave to the Defendant. Accordingly, the following order is passed :-

ORDER

(i) Leave to defend the present suit is granted to the Defendant subject to depositing a sum of Rs.60,00,000/- within a period of six weeks from the date of uploading of this order.

(ii) If the aforesaid deposit is made within the stipulated period, this suit shall be transferred to the list of Commercial Causes and the Defendant shall file written statement within a period of six weeks from the date of deposit.

3 (2017) 1 SCC 568
4 (2022) 3 SCC 294

(iii) If this conditional order of deposit is not complied with within the aforesaid period, the Plaintiff shall be entitled to apply for an ex-parte decree against the Defendant after obtaining a non-deposit certificate from the Prothonotary and Senior Master of this Court.

(iv) Summons for Judgment stands disposed of in the aforesaid terms.

(ABHAY AHUJA, J.)