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

COMMERCIAL SUMMARY SUITS NO. 90 OF 2021

Paras Bharat Chheda ....Plaintiff
v/s.
Piyush Gangji Chheda ....Defendant

...

Mr. Amrut Joshi a/w. Mr. Maulik K. Tanna for the Plaintiff

None for the Defendants.

...

CORAM : KAMAL KHATA, J.

DATED : 31ST JULY 2023.

P.C. :

1. The Plaintiff has filed this Commercial Summary Suit seeking a decree and direct the defendant to pay to the plaintiff of Rs. 4,81,02,500/- (Rupees Four Crores Eighty One Lakhs Two Thousand Five Hundred only). The principal loan amount of Rs.3,55,00,000/- (Rupees Three Crores Fifty-Five Lakhs Only) is due with simple interest @ 12% p.a. thereon from 1st April, 2018 till 28th February, 2021 amounting to Rs. 1,26,02,500/- (Rupees One Crore Twenty Six Lakhs Two Thousand Five Hundred Only). In addition, interest is claimed @ 12% p.a. from 1st March 2021 till actual payment and realisation.

2. The defendant carries on various business activities under the brand name style of "Prince" such as Prince Industries Pvt.

Ltd., Prince MFG Industries Pvt. Ltd., Prince SWR Systems Pvt. Ltd., Prince Properties LLP. In or around March, 2014, the defendants sought a loan from the plaintiff repayable on demand along with simple interest thereon to the plaintiff. The terms and conditions agreed to by the defendant for the loan were: (i)a promissory note to be duly executed by the defendant in favour of the plaintiff and (ii) the defendant shall provide certain cheques towards discharge of the defendant's said liability and repayment of the said loan amount. Since the defendants agreed, the plaintiff lent and advanced to defendant a total sum of Rs. 3,65,00,000/- (Rupees Three Crores Sixty Five Lakhs Only) (i) Rs. 25,00,000/- by way of a RTGS on 25th March 2014, (ii) Rs. 40,00,000/- by way of RTGS on 21st July, 2015 (iii) Rs. 2,00,00,000/- by way cheque bearing no. 000168 dated 21st September 2016 and (iv) Rs. 1,00,00,000/- by way of cheque bearing no. 000170 dated 21st September 2016 drawn on HDFC Bank, Mulund (W) Branch.

3. On receiving the loan amount, the defendants duly signed and executed four promissory notes dated 25th March 2014, 21st July 2015, 21st September 2016 and 21st September 2016 i.e. one promissory note for each of the aforesaid loan amounts thereby acknowledging and admitting the loan transaction and the interest payable @ 1 % per month i.e. 12% per annum from time to

time. Apart from the promissory note, the defendants issued an undated cheques to the plaintiff with a clear and unequivocal condition that upon demand made by the plaintiff for repayment of the said loan amounts, the defendant shall put dates on the respective cheques to be deposited by the plaintiff and that the said cheques shall be honoured upon presentation with the plaintiff's bank.

4. The defendants paid simple interest @ 12% p.a. on the aforesaid loan amounts to the plaintiff from time to time and last such simple interest payment was made to the plaintiff on 22nd March 2018 being interest upto 31st March, 2018. The Defendant paid an amount of Rs. 10,41,400/- on 17th August 2015 out of which an amount of Rs. 41,400/- was appropriated towards accrued interest and balance Rs. 10,00,000/- towards part repayment of principal amount of Rs. 3,65,00,000/- thereby leaving Rs. 3,55,00,000/- as the balance principal amount outstanding. It is stated that the plaintiff has been maintaining proper and regular books of accounts reflecting the entries of the amount lent advanced to and received from the Defendant from time to time. The bank statement also reflects the authenticity of the transaction. It is stated that the defendants executed confirmation of accounts duly signed acknowledging and

confirming the amounts due and payable by the defendants to the plaintiff with interest @ 12% p.a. It is stated that the plaintiff has maintained the ledger account of defendant in the books of the plaintiff for the period 25th March 2014 to 31st March 2014, from 1st April 2014 to 31st March 2015, from 1st April 2015 to 31st March 2016, from 1st April 2016 to 31st March 2017 and from 1st April 2017 to 31st March 2018.

5. The Defendant has also issued to the Plaintiff certain TDS certificates dated 8/5/2014, 15/1/2015, 11/5/2015, 14/10/2015, 17/1/2016, 19/5/2016, 20/1/2017, 5/6/2017, 22/1/2018 and 10/5/2018 towards TDS deducted and paid to the Income tax authorities from interest amounts paid to the Plaintiff from time to time. It is stated that the plaintiff demanded repayment of the aforesaid loan amounts in or about January/February 2021. The undated cheque was filled up with the date 15th February 2021 and presented to the bank which was dishonoured and returned with the endorsement "Funds Insufficient". It is stated that the notice dated 27th February 2021 under Section (u/s.) 138 of the Negotiation Instruments Act, 1881 (for short "NI Act") was dispatched vide Registered Post Acknowledgment Due (RPAD) to both defendants on the last known addresses. Whilst said notice has been duly delivered and acknowledged by defendants on 1st

March, 2021 at their Dadar address, the notice was returned unserved with the remark “unclaimed” from Matunga address.

6. It is stated that the plaintiff was constrained to adopt proceeding u/s. 138 of the Negotiable Instruments Act by filing a complaint before the Magistrate. It is stated that by a notice dated 1st March 2021, the plaintiff’s advocate called upon the defendants to pay a sum of Rs. 4,81,02,500/- being repayment of the outstanding principal amount of Rs. 3,55,00,000/- and interest @ 12% p.a. thereon from 1st April, 2018 till 28th February, 2021 amounting to Rs.1,26,02,500/- and in addition thereto claimed simple interest @ 12% p.a. from 1st March 2021 till repayment and realisation of the entire balance outstanding. It is stated that the notice dated 1st March 2021 was dispatched to the defendants by registered post on both their last known addresses. The notices were duly received and acknowledged by the defendants. However, the defendants failed and neglected to either repay or comply with the requisitions made in the said notice.

7. It is stated that the plaintiffs learnt that the defendants had huge financial liabilities payable to various financial institutions, banks and private investors and therefore were compelled to file

the present suit against the defendants and seek a decree and/or direction against the defendants for the outstanding dues payable. The plaintiff filed this suit on 16th March 2021 as a commercial summary suit under the provisions of Order XXXVII of the Code of Civil Procedure, 1908. He referred to the following judgments in support of the contention that the suit ought to be decreed in the aforesaid circumstances i) ***R. Kumar & Co. v/s. Chemicals Unlimited***[1] more particularly in paragraph no.14. and ii) ***Jatin Koticha v/s. VFC Industries Pvt. Ltd.***[2] more particularly paragraph nos. 6, 8, 9 and 13.

8. The Defendants have not entered appearance despite due service of writ of summons and consequently this suit proceeds *ex parte* as recorded in this court's order dated 25th January 2023.

9. Order XXXVII Rule 2 sub rule (3) lays down that in default of entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree.

10. The Plaintiff have filed the following:

(i) an affidavit in lieu of examination-in-chief of the plaintiff dated 13th January 2023,

1 2001(1) Mh.L.J. 687
2 2007 SCC OnLine Bom 1092 : (2008) 2 Bom CR 155 : (2008) 4 BC 330

(ii) an affidavit of documents along with original documents referred to and relied upon in the plaint along with the particulars of claim and

(iii) an affidavit of service dated 28th October 2021 filed on 30th October 2021.

11. I have perused the papers and proceedings filed on the court records and am of the view that the Plaintiff's averments in the plaint deserve to be accepted, I find no reason to disbelieve it and is consequently entitled to a decree as envisaged for a suit filed as a summary suit in the commercial division under order XXXVII Rule 2 of the Code of Civil Procedure 1908. I accordingly pass the following order.

12. The Defendant to pay the Plaintiff a sum of ₹ 4,81,02,500/- upto 28th February 2021 and simple interest @ 12% per annum on the principal sum of ₹ 3,55,00,000/- from 1st April 2018 to 28th February 2021 and further simple interest @12% per annum from 1st March 2021 till payment and realisation.

13. The costs of the suit in addition to the amount deducted from the court fees refunded, I estimate at ₹ 1,50,000/-.

14. Refund of court fees in accordance with the High Court Rules.

15. Decree to be drawn and sealed expeditiously.

(KAMAL KHATA, J.)