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

COMMERCIAL SUMMARY SUIT NO. 28 OF 2021

Navin Ratanshi Gada .. Plaintiff
v/s.
M/s Paras Gopal Enterprise and Ors. .. Defendants

...

P. M. Bhansali a/w. Ms. Dharini Jain for the Plaintiff.

None for the Defendants.

...

CORAM : KAMAL KHATA, J.

DATE : 21ST JUNE 2023.

P.C. :

1. This commercial suit is instituted for recovery of an amount of ₹ 1,73,15,109/- along with interest at the rate of @ 18% per annum on ₹. 1,16, 42,500/- from the defendants who had taken a friendly loan.

2. The Plaintiff disbursed a friendly loan by way of RTGS transfer to the Defendant No. 1 on 1st November 2014. The defendant No. 4 as a partner of defendant No. 1 acknowledged by issuing a writing recording the understanding that the Defendants shall pay interest @ 1% per month on the said amount till repayment. The Defendant paid interest and even deducted TDS. The Defendant issued a balance confirmation statement every

year on 1st April. Subsequently the parties agreed that the Defendant shall enhance the interest to 1.5% per month. During the period 1st April 2016 to 31st March 2017 the Defendant paid interest @ 1.5% per month as well as issued a letter titled confirmation of accounts dated 1st April 2017 and 1st April 2018.

3. On 1st April 2018 since the Defendants failed to pay the interest, the Plaintiff recalled the entire principal along with outstanding interest amount from the Defendants.The Defendant No. 4 issued a cheque bearing no. 780651 dated 3rd May 2018 for an amount of ₹ 1,11,91,000/- drawn on Canara Bank, Dadar Branch, Mumbai which on presentation was dishonoured for the reasons "funds insufficient" evinced by the memo dated 5th May 2018.

4. A legal notice was issued on the Defendants as also a Criminal Complaint came to be filed under section (u/s) 138 of the Negotiable Instruments Act being S/0702010/2018. The Defendants responded by their Advocates letter dated 21st June 2018 duly admitting receipt of ₹ 1,00,00,000/- and claimed the interest rate to be high. By the said letter the Defendants claimed that the cheque was not to be deposited without giving prior intimation.

5. The Plaintiff has filed the Affidavit of Claim dated 20th December 2022, Affidavit of evidence in lieu of examination in chief dated 11th January 2023, compilation of documents dated 21st December 2022 and Affidavit of service on Defendant No. 1 to 4 dated 23rd August 2021 and on Defendant No. 5 dated 10th January 2022 with postal acknowledgements evincing writ of summons.

6. None appeared for the Defendants on the various dates that the matter was listed on board.

7. In view of the provisions contained in Order XXXVII Rule 2(3) of the Code of Civil Procedure, 1908, in the event of default on the part of the defendants to enter appearance, the averments in the plaint are required to be deemed to be admitted and the Plaintiff becomes entitled to a decree.

8. I have heard Mr. Bhansali with whose assistance I have examined the original documents tendered by the Plaintiff in support of his claim. It is apparent from the averments and the documents that the Defendants who admitted receipt of ₹ 1,00,00,000/- as well as their liability to repay the same have failed to pay on the ground that they were to negotiate a lower interest rate on account of their financial constraints. Plaintiffs are thus entitled to a decree.

9. Hence, the following order:

(a) The suit stands decreed against the Defendants.

(b) Defendants do pay the sum of ₹ 1,73,15,109/- along with further interest @ 18 % from 1st April 2018 till 14th December 2020 being the sum of ₹ 56,72,609/- (Exhibit H)

(c) Defendants do pay interest @ 18% per annum on the principal sum of ₹ 1,16,42,500/- from the date of the decree till payment or realization.

(d) Defendants to pay costs of the suit estimated at ₹ 1,00,000/-

(e) Refund of Court fees in accordance with High Court Rules and the shortfall shall form the additional component of the costs.

(f) Decree to be drawn up expeditiously.

(g) The Plaintiffs are at liberty to move in execution without awaiting the sealing of the decree.

(KAMAL KHATA, J.)