

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

SUMMONS FOR JUDGMENT NO.23 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.56 OF 2022  
WITH  
INTERIM APPLICATION NO.4013 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.56 OF 2022

SJS Trading and Holding Company Pvt. Ltd.

Through its Director and Authorized

Signatory Mr. Akshay Ruia

: Applicant/Org. Plaintiff

In the matter between

SJS Trading and Holding Company Pvt. Ltd.

: Plaintiff

Versus

Crown Builders and Developers and ors.

: Defendants.

WITH  
INTERIM APPLICATION (L) NO.27228 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.56 OF 2022

Crown Builders and Developers & ors.

:Applicants/Org.Defendants

In the matter between

SJS Trading and Holding Company Pvt. Ltd. , Plaintiff

Versus

Crown Builders and Developers and ors. , Defendants.

ALONG WITH  
 SUMMONS FOR JUDGMENT NO.24 OF 2022  
 IN  
 COMMERCIAL SUMMARY SUIT NO.50 OF 2022  
 WITH  
 INTERIM APPLICATION NO.4005 OF 2022  
 IN  
 COMMERCIAL SUMMARY SUIT NO.50 OF 2022

Special Paints Limited

Through its Director and Authorized

Signatory Mr. Akshay Ruia

, Applicant/Org. Plaintiff

In the matter between

Special Paints Limited

, Plaintiff

Versus

S. D. Bhalerao Constructions Pvt. Ltd.

, Defendants.

WITH  
 INTERIM APPLICATION (L) NO.27141 OF 2022  
 IN  
 COMMERCIAL SUMMARY SUIT NO.50 OF 2022

S. D. Bhalerao Constructions Pvt. Ltd.

,Applicant/Org.Defendant

In the matter between

Special Paints Limited , Plaintiff  
Versus  
S. D. Bhalerao Constructions Pvt. Ltd. , Defendant.

ALONG WITH  
SUMMONS FOR JUDGMENT (L) NO.29561 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.66 OF 2022  
WITH  
INTERIM APPLICATION NO.4014 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.66 OF 2022

Shree Laxmi Enterprises  
Through its Director and Authorized  
Signatory Mr. Akshay Ruia , Applicant/Org. Plaintiff

In the matter between

Shree Laxmi Enterprises , Plaintiff  
Versus  
S. D. Bhalerao Associates and ors. , Defendants.

WITH  
INTERIM APPLICATION (L) NO.30389 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.66 OF 2022

S. D. Bhalerao Associates and ors. ,Applicants/Org.Defendants

In the matter between

Shree Laxmi Enterises

. Plaintiff

Versus

S. D. Bhalerao Associates and ors.

. Defendants.

ALONG WITH  
SUMMONS FOR JUDGMENT (L) NO.29560 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.67 OF 2022  
WITH  
INTERIM APPLICATION NO.4011 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.67 OF 2022

SJS Trading and Holding Company Pvt. Ltd.

Through its Director and Authorized

Signatory Mr. Akshay Ruia

. Applicant/Org. Plaintiff

In the matter between

SJS Trading and Holding Company Pvt. Ltd.

. Plaintiff

Versus

S. D. Bhalerao Associates and ors.

. Defendants.

WITH  
INTERIM APPLICATION (L) NO.30301 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.67 OF 2022

S. D. Bhalerao Associates and ors.

.Applicants/Org.Defendants

In the matter between

SJS Trading and Holding Company Pvt. Ltd. : Plaintiff  
Versus  
S. D. Bhalerao Associates and ors. : Defendants.

ALONGWITH  
SUMMONS FOR JUDGMENT NO.25 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.43 OF 2022  
WITH  
INTERIM APPLICATION NO.3094 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.43 OF 2022

Nakul Agarwal : Applicant/Org. Plaintiff

In the matter between

Nakul Agarwal : Plaintiff  
Versus  
S. D. Bhalerao Associates and ors. : Defendants.

ALONG WITH  
SUMMONS FOR JUDGMENT NO.26 OF 2022  
IN  
COMMERCIAL SUMMARY SUIT NO.48 OF 2022  
WITH  
INTERIM APPLICATION NO.4016 OF 2022  
IN

**COMMERCIAL SUMMARY SUIT NO.48 OF 2022****Special Paints Limited****Through its Director and Authorized****Signatory Mr. Akshay Ruia****: Applicant/Org. Plaintiff****In the matter between****Special Paints Limited****: Plaintiff****Versus****S. D. Bhalerao Constructions Pvt. Ltd.****: Defendants.****ALONG WITH****SUMMONS FOR JUDGMENT NO.42 OF 2022****IN****COMMERCIAL SUMMARY SUIT NO.73 OF 2022****WITH****INTERIM APPLICATION NO.4799 OF 2022****IN****COMMERCIAL SUMMARY SUIT NO.73 OF 2022****Special Paints Ltd.****Through its Director and Authorized****Signatory Mr. Akshay Ruia****: Applicant/Org. Plaintiff****In the matter between****Special Paints Ltd.****: Plaintiff****Versus****S. D. Bhalerao Associates and ors.****: Defendants.**

ALONG WITH  
 SUMMONS FOR JUDGMENT NO.45 OF 2022  
 IN  
 COMMERCIAL SUMMARY SUIT NO.75 OF 2022  
 WITH  
 INTERIM APPLICATION NO.4793 OF 2022  
 IN  
 COMMERCIAL SUMMARY SUIT NO. 75 OF 2022

Karan Agarwal : Applicant/Org. Plaintiff

In the matter between

Karan Agarwal : Plaintiff

Versus

S. D. Bhalerao Associates and ors. : Defendants.

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Mr. Kushal Amin a/w Mr. Smeet Savia & Mr. Kunjan Makwana i/by S. K. Srivastav  
& Co. for the Plaintiffs in all the matters

Mr. Mandar Limaye i/by Mr. Saurabh Oka for the Defendants in all the matters.

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CORAM : ARIF S. DOCTOR, J.

Reserved on : 22<sup>nd</sup> February 2023

Pronounced on : 4<sup>th</sup> May 2023

**COMMON P.C. :**

1. All the captioned Suits are for recovery of amounts lent and advanced by

the various Plaintiffs to Defendant No. 1. The Defendants are the same in all the Suits. The only difference is that in four of the eight captioned Suits ( i.e. Commercial Summary Suit Nos.56/2022, 50/2022, 66/2022 and 67/2022) (“the First Group”) the parties thereto had entered into a Memorandum of Understanding (“MOU”) which contained an arbitration clause. The Defendants in those Suits have thus taken out Interim Applications under Section 8 of the Arbitration and Conciliation Act, 1996 seeking that those Suits be referred to Arbitration. It is to this limited extent that the facts would differ in those four Suits and the other four Suits ( i.e. Commercial Summary Suit Nos.43/2022, 48/2022, 73/2022 and 75/2022) (“the Second Group”). However since learned counsel were in agreement that the arguments in the First Group would cover the disputes between the parties and defenses taken by the Defendants in the Second Group as well, all the above Commercial Summary Suits, Summons for Judgments and Interim Applications were by consent of the learned counsel heard together and are being disposed of by this common order.

2. For the sake of convenience Commercial Summary Suit No.56 of 2022 is treated as the lead matter. The facts necessary to be cited for adjudication of the above Suits/Summons for Judgment/Interim Applications are therefore taken from the said Commercial Summary Suit No.56 of 2022 and the proceedings filed therein i.e. Interim Application No.4013 of 2022, Interim Application (L) No.27228 of 2022 and Summons for Judgment No.23 of 2022.

### **A brief background**

3. The Plaintiff is a company engaged in the business of investing in the stock market and dealing in Real Estate. Defendant No.1 is a partnership firm and Defendant Nos. 2 to 5 are its partners. The Defendants carry on business of builders and developers. The Plaintiff had since the year 2014 pursuant to representations, assurances and promises made by the Defendants been investing in various construction projects carried out by the Defendants. The modality of the investment was that the Defendant would draw up and execute a Memorandum of Understanding ("the MOU") for each investment which inter-alia also provided the rate of interest to be paid to the Plaintiff on the sum advanced. The Defendant would then (a) issue letters of allotment to the Plaintiff in the Defendants' projects and (b) also issue postdated cheques for the amount advanced. Pursuant to this mechanism the Plaintiff made several investments with the Defendants and the Defendants' sister concerns. These investments were to the tune of several crores of Rupees. The Defendants initially returned the amounts invested along with interest but subsequently failed and neglected to do so. It is thus that the captioned Commercial Suit came to be filed.

### **The facts shorn of unnecessary details**

4. In or about 2016, in keeping with the aforesaid modality of investment the Plaintiff and Defendant No.1 entered into an MOU dated 28<sup>th</sup> April 2016 by which the Plaintiff invested a sum of Rs.1,00,00,000/- (Rupees One Crore only) in the Defendants' project known as "Satyam CHS Ltd." (the said project). The Defendant also (i) issued an undated cheque for Rs.1,00,00,000/- drawn in favour of the Plaintiff and (ii) two allotment letters in respect of two flats in the Defendants' said project. The MOU provided for interest to be paid to the Plaintiff at the rate of 22% per annum, payable at quarterly rests. The Defendants thereafter infact paid certain amounts the Plaintiff towards interest.

5. The Defendants thereafter failed and neglected to make payment of interest as agreed as also called upon the Plaintiff not to deposit the cheque of Rs.1,00,00,000/- issued towards the principal sum under the MOU. The Plaintiff sets out that the Defendants promised the Plaintiff to pay the entire principal amount along with interest at the rate of 22% per annum in one single installment on or before 3<sup>rd</sup> April 2017. The Defendants thereafter issued to the Plaintiff the following two Balance Confirmation of Accounts viz (i) dated 1<sup>st</sup> April 2017 for the period 2016-17 (the First Confirmation of Accounts) and (ii) dated 1<sup>st</sup> April 2018 for the period 2017-18 (the Second Confirmation of Accounts). Both the said Balance Confirmation of Accounts confirmed and acknowledged that a sum of Rs.1,00,00,000/- was due and payable to the Plaintiff. The balance

confirmation admittedly did not however have any provision for the payment of interest.

6. Since despite issuing the Balance Confirmation of Accounts and being called upon, no payments were made by the Defendant. The Plaintiff thereafter learnt that the said project had come to a standstill. Though not strictly relevant, the Plaintiff thereafter lodged a complaint with Economic Offences Wing (EOW) and also a Complaint with the Crawford Market Police Station against Defendant Nos. 2 and 3 under the relevant provisions of the Indian Penal Code inter-alia for cheating since the Plaintiff learnt that the Defendants had created third party rights in respect of which allotment letters had been issued to the Plaintiff.

7. The Plaintiff thereafter by their Advocate's letter dated 20<sup>th</sup> March 2020 invoked arbitration under the MOU. Defendant Nos.1 to 3 and 5 by their Advocate's letter dated 10<sup>th</sup> August 2020 resisted the invocation of arbitration under the MOU and inter alia contented that the invocation of arbitration was illegal, invalid, non-est and unjustified and was liable to be withdrawn forthwith for the reasons more particularly set out in the said letter..

8. It was the backdrop of the aforesaid facts that captioned Commercial Suit came to be filed. In the Suit, the following applications were filed:- (i) the Plaintiff filed Summons for Judgment No.23 of 2022; (ii) the Defendants filed Interim Application (L) No.27228 of 2022 under Section 8 of the Arbitration and Conciliation Act, 1996) ("the Arbitration Act") and (iii) the Plaintiff filed Interim

Application No.4013 of 2022 under the provisions of Order XXXVII Rule 5 of the Code of Civil Procedure.

**Submissions of Mr. Amin, on behalf of the Plaintiff**

9. At the outset Mr. Amin, Learned Counsel for the Plaintiff, submitted that the Suit was based on Confirmation of Accounts and not on the MOU. He submitted that reliance by the Defendants upon the MOU was entirely misconceived and malafide. He submitted that the said MOU was part of the fraud perpetrated upon the Plaintiff as the same was unstamped and undated. He then invited my attention to the Confirmation of Accounts and pointed out that the same was duly stamped and signed by on behalf of Defendant No. 1. He submitted that by the same, the Defendant had unequivocally accepted and admitted that the Defendant owed the Plaintiff the sum of Rs.1,00,00,000/- (Rupees One Crore only). He therefore submitted that it was based on this Balance Confirmation that the present Summary Suit had been filed. In support of his contention that a Summary Suit would lie on a balance confirmation of accounts and that such Balance Confirmation of Accounts would constitute a written contract with the implied promise to pay amount confirmed he placed reliance upon a full bench judgment of this Court in the case of *Jyotsna K Valia vs. T. S*

***Parekh and Co.***<sup>1</sup> in which this Court held as follows, viz.

*“29 Insofar as the 'settled account is concerned,' it is no doubt true as noticed by the learned single Judge, that the various judgments adverted to, for holding that the summary suit would lie on a settled account, either of the Privy Council or of the Supreme Court did not arise from suits filed as summary suits. However, after the judgment of the Privy Council (Elvira L. Rodrigues) Sequeira (supra) which has been considered by the Supreme Court in Hiralal & Ors. (supra), a summary suit on a settled account, duly confirmed by the Defendant is maintainable as it is an acknowledgment by the Defendant in the ledger in which mutual accounts have been entered and the accounts settled between them. Such settling of accounts gives rise to a written contract on a fresh cause of action, with an implied promise to pay the amount settled. A summary suit would therefore lie on 'Settled accounts duly confirmed by the defendants. Issue (1) is answered accordingly.”*

10. Learned Counsel then submitted that Interim Application taken out by the Defendants seeking that the present Suit be referred to arbitration was a patently dishonest Application. He invited my attention to the Defendants’ letter dated 10<sup>th</sup>

1 2007(4) Mh.L.J. 517

August 2020 by which the Defendants had in terms resisted the invocation of arbitration by the Plaintiff by inter alia contending that the invocation of arbitration was illegal invalid, non-est and unjustified and was liable to be withdrawn forthwith. He submitted that in view of the stand taken by the Defendants in the letter dated 10<sup>th</sup> August 2020, the Defendants were now estopped from taking a contrary stand. In support of his contention that when a party to an arbitration agreement gives up and/or resists arbitration, a vested right accrues in the counter party to take recourse to such other remedies that are available in law he placed reliance upon a judgment of the Karnataka High Court in the case of *Ramakrishna Theatre Limited, Rep. By Chairman, Udupi vs M/s. General Investments and Commercial Corporation Limited, Rep. By its Director, Udupi*<sup>2</sup>

11. Learned Counsel then without prejudice to the above submitted that the Interim Application filed by the Defendants was also liable to be rejected on the ground that there was no existing dispute between the parties which required adjudication since the Defendant had admitted its liability under the Balance Confirmation of Accounts based upon which the present Suit was filed. Learned Counsel therefore submitted that there was infact no subject matter which could be referred to arbitration. He submitted that the Interim Application filed by the

2 ILR 2003 KAR 3463

Defendants was therefore entirely frivolous and meaningless and had been filed only with the intention of delaying the matter. He placed reliance upon a judgment of the Delhi High Court in the case of *M/s. Fenner (India) Ltd. vs. M/s. Brahmaputra Valley Fertilizer Corporation Ltd.*<sup>3</sup> in support of his contention that Courts would normally frown upon frivolous and meaningless litigation between the parties when the facts on the face of it showed that there was no scope for any adjudication left.

12. He then to highlight the malafides of the Defendants pointed out that the Defendants did not dispute that the MOU was unregistered and undated and, yet on the other hand sought to invoke arbitration under the same MOU after having initially resisted arbitration. He took pains to point out that the Defendants had not taken any steps to either pay the deficit stamp duty or register the said MOU. He submitted that this conduct spoke volumes of the intention of the Defendants which was only to defeat and delay the hearing of the present Suit and nothing more.

13. Learned Counsel then submitted that though the Plaintiff had in the particulars of claim and consequently in the prayer clause claimed interest at the rate of 22%, per annum the Plaintiff was giving up its claim for interest at the rate

of 22% per annum and was confining its claim only to the amount of Rs.1,00,00,000/- (Rupees One Crore only) as stated in the Balance Confirmation of Accounts and such a reasonable rate of interest as this Court deems fit. In support of his contention that a Plaintiff was entitled to give up a part of its claim unilaterally without necessarily taking out a formal application, he placed reliance upon a Full Bench Judgment of this Court in case of ***SICOM Ltd vs. Prashant S. Tanna and others***<sup>4</sup>

14. In the backdrop of the aforesaid facts, he submitted that the Plaintiff was entitled to a decree for the sum of Rs.1,00,00,000/- together with interest at whatever rate this Court deemed appropriate. He submitted that the Defendant had not raised any triable issue, much less a genuine triable issue and that the defense taken in the Reply to the Summons for Judgement was not only entirely frivolous and vexatious but dishonest. He, thus, submitted that in terms of the guidelines laid down by the Hon'ble Supreme Court in the case of ***IDBI Trusteeship Services Limited vs Hubtown Limited***<sup>5</sup> the Defendant was not entitled to leave to defend and that the Plaintiff was entitled to a decree for a principal sum together with interest at such reasonable rate as this Court deems fit.

15. He then submitted that being a Commercial Summary Suit, the Plaintiff

4 2004(2) Mh.L.J.292

5 (2017) 1 SCC 568

was also entitled to costs. In support of his contention submission, he placed reliance upon a judgment of this Court in the case of *Dashrath B. Rathod and others vs Fox Star Studios India Pvt. Ltd and others*<sup>6</sup>

**Submissions of Mr. Limaye, on behalf of the Defendants.**

16. The primary and only real defense of Mr. Limaye, Learned Counsel for the Defendants was that the agreement between the parties was the MOU. He submitted that the money advanced was paid under the said MOU and that therefore the rights and obligations between the Parties were therefore governed by the MOU alone. He submitted that since the MOU contained an arbitration clause all disputes and differences between the Parties pertaining to the monies advanced under the MOU would necessarily have to be referred to arbitration. Learned Counsel submitted that the Defendants had in the Affidavit-in-Reply to the Summons for Judgment itself had specifically pleaded that the disputes and differences between the parties were governed by the MOU and thus in terms of clause 9 of the MOU ought to be referred to arbitration. He submitted that therefore the Defendants had at the first instance itself taken the plea of the existence of an arbitration agreement between the parties and had sought reference to arbitration in terms thereof. In support of his contention that the filing of the Affidavit-in-Reply to the Summons for Judgment did not constitute

6 2018 (1) Mh. L. J. 474

submission to the Judgment of this Court since the contention of arbitration was squarely taken he placed reliance upon a judgment of this Court in case of ***Drive India Enterprise Solutions Ltd vs Haier Telecom (India) Pvt. Ltd***<sup>7</sup> in which, this Court held as follows:-

*"17. It is clear from the foregoing discussion that the expression "first statement on the substance of the dispute" refers to the submission of the party to the jurisdiction of the judicial authority by offering to defend the suit and thereby, waiving his right to invoke the arbitration clause. If the affidavit opposing the summons for judgment and seeking leave to defend objects to the jurisdiction of the Court to hear the suit and indicates that the defendant does not want the Civil Court to adjudicate upon his rights or liabilities, but wants the domestic forum to decide that, then mere filing of a reply to the summons for judgment does not amount to making a "first statement on the substance of the dispute," even if such affidavit contains various other defences. In every other case, the affidavit can well be said to be the "first statement on the substance of the dispute" within the meaning of Section 8. In such other case, what the defendant essentially wants is to have the matter heard by the Civil Court and to that*

<sup>7</sup> In Summons for Judgment No.51 of 2017, dated 06 and 12 March 2018

*end, after indicating the bonafides and probability or plausibility of his defence, seeks leave of the Court, so that he may resist the plaintiff's claim before it. No application can be moved under Section 8 after filing of such affidavit seeking leave."*

17. Learned Counsel then submitted that the said MOU being unstamped and undated would not by itself constitute sufficient ground to reject the Interim Application filed under Section 8 of the Arbitration Act. He submitted that the said MOU could always be impounded and sent for stamping. He then pointed out that under the said MOU the Plaintiff was at liberty to take steps to transfer to the name of the Plaintiff the said flats in respect of which the Plaintiff had been issued allotment letters. He submitted that the Plaintiff had not taken any steps for realizing the security given or nor had the Plaintiff called upon the Defendants to execute the necessary agreements to transfer the said flats to the Plaintiffs name. He therefore submitted that the suit was not maintainable as a Summary Suit. Learned Counsel did not dispute that certain amounts were paid by the Defendants to the Plaintiff as set out in the Plaint. He however disputed that the said amounts were paid towards interest or that they were paid at the rate of 22% per annum. In so far as Balance Confirmation of Accounts was concerned, he denied the same. He therefore submitted that all these facts gave rise to triable issues and thus the Defendants were entitled to unconditional leave to defend the

Suit, in the event the same was not referred to arbitration.

18. I have heard learned counsel, perused a copy of the papers and proceedings in all the captioned Applications and considered the case law cited. After a careful consideration of the same, I have no hesitation in holding (a) that the Interim Application (L) No.27228 of 2022 deserves to be dismissed and (b) that the Plaintiffs are entitled to a decree based on the Balance Confirmation of Accounts for the following reasons viz.

A. First, dealing with the Interim Application (L) No.27228 of 2022 filed by the Defendants, I find that the same is not only not maintainable but is infact patently dishonest. The reason why I have no hesitation in saying so is that while the Defendants have in the said Application specifically pleaded viz.

*“7.The Applicants submit that infact the Plaintiff had invoked Arbitration vide letter dated 20/03/2020 which is annexed at Exh.”G” to the Plaint. The Applicants submit that the Applicants denied the choice of Arbitrator suggested by the Plaintiff and as such the Plaintiff ought to have approached this Hon’ble High Court for appropriate reliefs. It is thus crystal clear that the Arbitration Clause is not disputed and as such this Suit ought to be dismissed.*

The Defendants have in their Advocate's letter dated 10<sup>th</sup> August 2020 (in answer to the Plaintiff's letter of 20<sup>th</sup> March 2020) expressly stated viz.

*"8. .... Our clients therefore state that the invocation of arbitration clauses under the MOU and your notice is illegal, invalid, non-est and unjustified and is liable to be withdrawn forthwith.*

*9. Our clients state that in view of the aforesaid position, there is no cause of action for referring any dispute to the Sole Arbitrator and your notice is defective, illegal and invalid. Therefore there is no question of our clients consenting to the invocation of the arbitration clause and/or appointment of a Sole Arbitrator".*

Thus, what is crucial to note is that not only is the stand taken by the Defendants in the Interim Application diametrically opposite to the stand taken in the letter dated 10<sup>th</sup> August 2020, but also that the Defendants have in the Interim Application suppressed the letter dated 10<sup>th</sup> August 2020. There is no explanation whatsoever from the Defendants as to how the Defendants on one hand have contended that the invocation of arbitration by the Plaintiff under the MOU was illegal, invalid, non-est and unjustified and was liable to be withdrawn forthwith and yet on the other hand now seeking to invoke arbitration under the very same

MOU. It is thus that I say that the said Application is manifestly dishonest.

B. On merit, even assuming that the letter dated 10<sup>th</sup> August 2020 had been annexed or referred to, I find force in the submission of Mr. Amin that the Defendants cannot be permitted to approbate and reprobate their stand qua arbitration. The Defendants have admittedly refused to submit the disputes and differences to arbitration when arbitration was invoked by the Plaintiff. I find force in the submission that once the Defendants had opposed the invocation of arbitration a vested right accrues in the Plaintiff to take recourse to such other remedies as were available in law as has been held by the Karnataka High Court in the case of *Ramkrishna Theatre Limited* (supra). It is well settled that the main object of arbitration is to provide a speedy and efficient mechanism for resolution of disputes while minimizing the intervention of Courts. Therefore had Defendant had even the slightest intention of settling the disputes by arbitration, the Defendants would have agreed to the same when the Plaintiff invoked Arbitration. To now permit or even countenance the submission put forth by the Defendants and that to based upon the very same Agreement under which the Defendant had resisted arbitration would in my view amount to a gross abuse of the process of law. In any event, the present Suit is based upon the balance confirmation of accounts and not on the MOU so the question of submitting the same to arbitration under the MOU does not arise.

C. It is well settled that a Summary Suit is maintainable on a Balance

Confirmation of Accounts as has been held by a Full Bench of this Court in the case of *Jyotsna K. Valia* (supra). A perusal of the record in the First Group of Suits and what is not disputed in the First Group of Suits is that (i) that the Plaintiff and the Defendant had a preexisting relationship where the Plaintiff would advance money to the Defendant (ii) that the Plaintiff advanced an amount of Rs.1,00,00,000/- to Defendant No. 1 (iii) that Defendant No. 1 issued a cheque for Rs.1,00,00,000/- (iv) that Defendant No. 1 made certain payments to the Plaintiff. Similarly in the Second Group of Suits is that (I) the Plaintiff advanced monies by RTGS; (ii) the Defendants issued letters of acknowledgment; (iii) the Defendants issued post dated cheques for the amounts advanced; (iv) the Defendants made payment certain sums to the Plaintiff. Though the Defendant has in the Affidavit in Reply, made a bald denial in respect of the balance confirmation of accounts to my mind such a defense when viewed in the totality of facts to my mind is totally untenable for the following reasons (a) the balance confirmation of account bears the stamp of the Defendant (b) the Defendant has not denied the receipt of the Rs. 1,00,00,000/- (c) the Defendant has not explained for what the payments were made to the Plaintiff (d) the Defendant has not prior to the filing of the Affidavit in Reply ever denied their liability to pay the Plaintiff the said sum of Rs. 1,00,00,000/-. The appreciation of the material on record as a whole does not leave any manner of doubt that there is due and payable by Defendant No. 1 to the Plaintiff the sum of Rs. 1,00,00,000/-. Clearly therefore, the defenses taken in

the Affidavit in Reply to the Summons for Judgment are frivolous and vexatious.

D. Additionally, in Commercial Summary Suit Nos. 43/2022, 48/2022, 73/2022 and 75/2022 while the Defendants have in their Affidavit in Reply essentially proceeded with making bald denials, there is no denial to the factum of issuance of the various letters by which the Defendant No. 1 has unequivocally admitted and acknowledged the various loan amounts advanced by the Plaintiffs to the Defendant No. 1.

19. In light of the aforesaid reasoning, I pass the following order: -

**: ORDER.**

- (i) The Interim Applications (i.e. Interim Application (L) Nos. 27228/2022, 27141/2022, 30389/2022 and 30301/2022) filed under Section 8 of the Arbitration Act by the Defendants are hereby rejected.
- (ii) All the above Summons for Judgments are allowed.
- (iii) All the above Suits stand decreed in the following terms:-
  - (a) **In Commercial Summary Suit No. 56 of 2022**

The Defendants to pay to the Plaintiff the principal sum of Rs.1,00,00,000/- (Rupees One Crore only) with interest on the principal amount at the rate of 12% p.a. from the date of filing of the

Suit till payment and/or realization.

**(b) In Commercial Summary Suit No. 50 of 2022**

The Defendants to pay to the Plaintiff the principal sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) with interest on the principal amount at the rate of 12% p.a. from the date of filing of the Suit till payment and/or realization.

**(c) In Commercial Summary Suit No. 66 of 2022**

The Defendants to pay to the Plaintiff the principal sum of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs only) with interest on the principal amount at the rate of 12% p.a. from the date of filing of the Suit till payment and/or realization.

**(d) In Commercial Summary Suit No. 67 of 2022**

The Defendants to pay to the Plaintiff the principal sum of Rs.2,00,00,000/- (Rupees Two Crores only) with interest on the principal amount at the rate of 12% p.a. from the date of filing of the Suit till payment and/or realization.

**(e) In Commercial Summary Suit No. 43 of 2022**

The Defendants to pay to the Plaintiff the principal sum of Rs.70,00,000/- (Rupees Seventy Lakhs only) with interest on the principal amount at the rate of 12% p.a. from the date of filing of the Suit till payment and/or realization.

(f) **In Commercial Summary Suit No. 48 of 2022**

The Defendants to pay to the Plaintiff the principal sum of Rs.1,40,00,000/- (Rupees One Crore Forty Lakhs only) with interest on the principal amount at the rate of 12% p.a. from the date of filing of the Suit till payment and/or realization.

(g) **In Commercial Summary Suit No. 73 of 2022**

The Defendants to pay to the Plaintiff the principal sum of Rs.60,00,000/- (Rupees Sixty Lakhs only) with interest on the principal amount at the rate of 12% p.a. from the date of filing of the Suit till payment and/or realization.

(h) **In Commercial Summary Suit No. 75 of 2022**

The Defendants to pay to the Plaintiff the principal sum of Rs.70,00,000/- (Rupees Seventy Lakhs only) with interest on the principal amount at the rate of 12% p.a. from the date of filing of the Suit till payment and/or realization.

(iv) The Interim Applications taken out by the Plaintiffs (i.e. Interim Application Nos.4013/2022, 4005/2022, 4014/2022, 4011/2022, 3094/2022, 4016/2022, 4799/2022 and 4793/2022) do not survive and the same are accordingly disposed of.

(v) The Plaintiffs in all the Suits are entitled to refund of Court Fees, if any, as per Rules.

- (vi) Decree in all the Suits be drawn up and sealed expeditiously.
- (vii) The above Summons for Judgments are accordingly disposed of

20. Given the facts that these are Commercial Summary Suits, I find that the Plaintiffs are entitled to costs of Rs.5,00,000/- (Rupees Five Lakhs only) in each of the Suits. Costs to be paid by the Defendants to the Plaintiff within a period of four weeks from the date of this order being uploaded.

**(ARIF S. DOCTOR, J.)**