



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

**SUMMONS FOR JUDGMENT NO. 58 OF 2022
IN
SUMMARY SUIT NO. 2 OF 2022**

Anjali Sales Corporation	]	
Through Its Proprietor	]	
Mr. Ashvin Kanji Mange	]	
Having Office At : 517 Reena	]	
Complex, Ramdev Nagar Road,	]	
Vidyavihar (W), Mumbai-400 077	]	.. Plaintiff
V/s.		
Binaykumar B. Shrivastava	]	
Proprietor Of Shiva Rubber	]	
An Adult Aged About 49 Years	]	
Occupation : Business	]	
Having Office Address At: A-55	]	
M.I.D.C., Nangoan Path, NH-6,	]	
Amravati-444901, Maharashtra	]	.. Defendant

...

Mr. Anil Dubey a/w. Ms. Veenu Dubey for the Plaintiff.

Mr. Omprakash Singh for the Defendant.

...

**CORAM : KAMAL KHATA, J.
RESERVED ON : 24TH JULY 2023
PRONOUNCED ON : 29TH AUGUST 2023**

JUDGMENT:

1. The plaintiff has filed this Summary Suit under the provisions of Order XXXVII, Rule 2 of the Code of Civil Procedure (CPC) Seeking a decree from the defendant in the sum of Rs.1,49,54,224/- along with interest @ 24% per annum on the

principal amount of Rs.69,00,000/- from the date of the loan till payment and/or realization thereof. The particulars of claim are set out at Exhibit I of the plaint.

2. The claim is based on a friendly loan for an amount of Rs.69,00,000/-. The loan was given in installments, which is more particularly mentioned in paragraph 5 of the plaint. To secure this said loan, the defendant has executed four promissory notes, more particularly described in paragraph 6 of the plaintiff. The amounts were acknowledged year after year by the defendant who executed confirmation of accounts.

3. On 3rd May 2017, the defendant paid an interest of Rs.2,00,000/- against the due amounts. On account of non-payment of the dues, the present suit was filed.

4. The writ of summons was served on the defendant upon which the defendant entered appearance and thereafter, the plaintiff filed the summons for judgment to which there is a reply and a rejoinder.

5. In reply, the defendant denies that this was a friendly loan. According to him, the amounts were transferred for supply of machinery as the plaintiff wanted to establish a factory to manufacture rubber tyres at Mumbai. The defendant contends that upon receipt of the monies, the same were paid to the various

companies who in turn transferred the machinery to his factory premises and upon receiving these machines, the defendant requested the plaintiff to arrange the collection thereof. The defendant contends that instead of collecting the machinery, the plaintiff demanded the refund of money and since he had already purchased the machinery for the plaintiff, it was impossible for him to return the money. The defendant contended that Rs.2,00,000/- that was paid to the plaintiff was against the raw material supplied for the manufacture of tyre and not towards interest as contended by the plaintiff. The defendant contends that at the time of receiving the money, he issued the promissory notes only for security to ensure the supply of machinery and not for the payment of money. The learned counsel for the defendant submits that the defendant has a vast experience in manufacturing of rubber products and is also having a factory for manufacturing at M.I.D.C. Amravati. After the plaintiff's had approached the defendant in 2014-15 for the purpose of setting up such a business, the defendant had accepted the proposal subject to payment of Rs,8,00,000/- as their fees for helping the plaintiff to establish such business.

6. The plaintiff, accordingly, transferred money and the defendant organized purchase of machinery which he brought to

his factory premises at Amravati. The learned counsel submitted that the plaintiff changed his mind and accordingly, instead of collecting the machinery, sought to demand the money. The machinery remained idle and has got rusted. The learned counsel submitted that the defendant was willing to deliver the machinery and plaintiff was free to take the machinery whenever he chose to. According to him, this is a dispute which cannot be determined at the interim stage and evidence would be required to determine the correctness of the statements. He accordingly submitted that he has a good case on merits and this is not a case which is within the scope of a summary suit. He therefore urged that the suit be dismissed. However, the counsel for the plaintiff submits that the plaintiff would never part with such a huge amount without entering into a written contract.

7. In my view, there is absolutely no defense to the Summary Suit. The defense is neither plausible or probable but a complete moonshine defense. The defendant has failed to give any response as to why the defendant had signed confirmation of accounts for the period 1st April 2015 to 31st March 2016 and from 1st April 2016 to 31st March 2017. I am unable to accept as to why the plaintiff would pay the defendant's monies to buy machineries and not get the machineries delivered at the address that the plaintiff

would choose. It is not the case of the defendant and nor could the defendant substantiate a case that the plaintiff had chosen to get the machinery delivered at the premises of the defendant. The defendant has failed to place on record any agreement entered into between the parties to the suit for purchase of any machinery as alleged. There is no material on record to prove that the plaintiff had directed the defendant to get the machineries delivered at the defendant's address. There is also no documentary evidence to show that the defendant wrote any written communication to the plaintiff after receiving these machineries to collect the same, assuming that the plaintiff had directed the defendant to purchase the machinery for him. In view of the fact that the machineries are still at the premises of the defendant and he has not even bothered to either return it or resell it when according to him demands were made by the plaintiff clearly goes to show that the defense is a bogey. The defendant has also failed to substantiate the basis on which he claims that the plaintiff had supplied raw material against which he has issued the cheque of Rs.2,00,000/- to the plaintiff.

8. I am not convinced that a party who can pay a sum of Rs.69,00,000/- for the purchase of machinery would not have the wherewithal to contact the company himself to get these

machineries directly delivered at the address he chooses. Secondly, the plaintiff would have ordinarily paid the companies the money for purchase of these machineries directly and there was absolutely no reason for him to pay the monies and installments to the defendant. The defendant's contention that he immediately purchased the machineries upon receipt of the monies has no relevance. As the defendant may choose to do what he wants to do with the loan which is offered to him by the plaintiff. Thus, I see no defense which is either probable or plausible.

9. In my view, the Summons for Judgment deserves to be made absolute and the plaintiff is entitled to a decree forthwith.

10. The Summons for Judgment is made absolute for the sum of Rs.1,49,54,224/- along with interest @ 24% per annum on the principal sum of Rs.69,00,000/- from the date of the loan till payment or realization thereof.

11. The costs of the suit in my estimation would be Rs.1,50,000/-.

12. The plaintiff would also be entitled in addition to these costs, the amount of the deficit of the court fees.

13. The plaintiff would also be entitled to refund of court fees.

14. The decree to be drawn up expeditiously.

15. The plaintiff is at liberty to move in execution without awaiting sealing of the decree.

16. In view of the aforesaid the Summons for Judgment and the Summary Suit are disposed of in the above terms.

(KAMAL KHATA, J.)