

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
[*COMMERCIAL DIVISION*]

COMMERCIAL FIRST APPEAL NO.21 OF 2024
ALONG WITH
INTERIM APPLICATION NO.10329 OF 2024
IN
COMMERCIAL SUIT NO.53 OF 2019

1. <i>Suresh Girdharlal Padhiyar</i>	]	
<i>Deleted since Decesaed</i>	]	
1a. Pranav Suresh Padhiyar	]	.. Appellants /
2. Sheetal Suresh Padhiyar	]	Applicants
<i>Versus</i>		
Rakesh Kishorchandra Parekh	]	.. Respondent

Mr. Vikram Walawalkar, i/by Mr. Kamlakant Pandey, Advocates for the Appellants-Applicants.

Mr. Paras N. Vira, Advocate for the Respondent.

Appellant No.2-Ms. Sheetal S. Padhiyar is present in Court.

CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ

DATE : 18TH NOVEMBER 2024.

PC. :

1. Admit.
2. Heard the learned counsel for the parties in view of the short issue involved. The appellants are the original defendants in Commercial Suit No.53 of 2019. The aforesaid suit was filed by the respondent-plaintiff for recovery of an amount of Rs.20,75,000/- with interest. The original

defendant no.1 expired during the pendency of the suit. His legal heir, his son was impleaded as defendant nos.1(a). It appears from the record that despite service of the suit summons, the original defendants failed to appear, due to which an ex-parte order dated 18th August 2023 came to be passed and the suit proceeded ex-parte. At the conclusion of the trial, the learned Judge, City Civil Court, Dindoshi partly decreed the suit holding the plaintiff entitled for a sum of Rs.20,75,000/- with further interest @ 9% p.a. on the principal amount of Rs.20,00,000/-. Being aggrieved, the original defendants have come up in appeal.

3. The learned counsel for the appellants by relying upon the provisions of Section 2(1)(c) of the Commercial Courts Act, 2015 submits that the suit as filed as a Commercial Suit was not maintainable in view of the fact that the suit was filed for recovery of amount of hand loan of Rs.25,00,000/-. He submits that on a plain reading of the plaint, it is clear that the original plaintiff was seeking recovery of the amount advanced as hand loan. Placing reliance on the decisions in *Prime Hitech Textiles LLP Vs. Manish Kumar, 2022 SCC OnLine Cal 2326* and *Glasswood Realty Pvt. Ltd. and Ors. Vs. Chandravilas Kailashkumar Kothari, (2022) 1 Bom CR 527*, it is submitted that the decree as passed in the Commercial Suit was without jurisdiction.

4. The learned counsel for the original plaintiff submits that objection

to the maintainability of the suit ought to have been raised before the Trial Court. The original defendants failed to appear before the Trial Court despite service resulting in an ex-parte decree being passed. He therefore submits that since the original defendants failed to contest the suit and the claim of the plaintiff had been duly proved, there is no reason to interfere with the impugned decree. If an objection as sought to be now raised would have been raised at the initial stage, the plaintiff would have taken steps to prosecute the suit as a Short Cause Suit. In the alternative, he submits that the suit as filed was in fact as a Short Cause Suit. However since an objection was raised by the Registrar while registering the suit, it was converted into a Commercial Suit. The appeal was liable to be dismissed.

5. On the aforesaid rival submissions, the following points arise for consideration :

- (i). Whether the decree as passed in the Commercial Suit
can be said to be legal ?
- (ii) What order ?

6. Perusal of the plaint indicates that it is the specific case of the plaintiff that hand loan of Rs.25,00,000/- had been advanced to the original defendants. Since that amount was not paid, its recovery has been sought by filing a Short Cause Suit initially. However on an objection

being raised, it was converted into a Commercial Suit. A perusal of the provisions of Section 2(1)(c) of the Act of 2015 indicates that a suit for recovery of hand loan cannot be treated as a commercial dispute under the aforesaid provision. The decisions relied upon by the learned counsel for the original defendants supports this position. Though it is urged by the learned counsel for the plaintiff that the suit was converted into a Commercial Suit in view of the objection raised by the Registrar, that cannot be the basis to confer jurisdiction when the claim does not answer the description of Section 2(1)(c) of the Act of 2015.

7. It is however to be noted that the defendants remained ex-parte before the Trial Court. An opportunity to oppose the claim though available was not availed. Failure to raise such objection has definitely caused prejudice to the plaintiff as such objection if raised could have been effectively answered and the defect could have been cured.

8. At this stage, the learned counsel for the original defendants submits that the defendants be permitted to contest the suit on merits subject to terms and conditions which this Court may think fit to impose. In our view, an opportunity deserves to be granted to the plaintiff to convert the suit into a Short Cause Suit and prove his claim on merits. This would also enable the defendants to contest the suit. The points framed are answered accordingly.

9. In view of the aforesaid, the following directions would serve the ends of justice :-

- (a) As a condition to permit the original defendants to contest the suit, they shall pay a sum of Rs.3,00,000/- to the original plaintiff within a period of six weeks from today. This payment would be without prejudice to the rights and contentions of the parties and would abide by the final adjudication of the suit.
- (b) On such payment being made and its receipt being produced before the Trial Court, the proceedings shall be converted into a Short Cause Suit and the same shall be registered accordingly.
- (c) The suit thereafter shall proceed from the stage of filing of written statement by the original defendants. The defendants shall file their written statement within a period of four weeks from the first date of appearance before the Trial Court which shall be 9th December 2024. The proceedings in the Civil Suit are expedited. It is clarified that all points on merits are kept open.

(d) Consequently, the judgment and decree passed in
Commercial Suit No.53 of 2019 dated 18th August
2023 is quashed and set aside.

10. The Commercial First Appeal is allowed in aforesaid terms. The
parties shall bear their own costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]