

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

COMMERCIAL SUMMARY SUIT NO. 19 OF 2024

TATA INTERNATIONAL LIMITED)...PLAINTIFF

V/s.

NANDA KUMAR RAMANUJALU AND ANR)...DEFENDANTS

Ms.Savani Gupte a/w Mr. Lalit Munshi, Ms. Siddhi Somani, Ms.Palak Singh i/b Samvad Partners, Advocate for the Plaintiff.

None for the Defendants.

CORAM : ABHAY AHUJA, J.

DATE : 16 DECEMBER 2024

P.C. :

1. This Suit has been filed for a decree under the provisions of Order XXXVII of the Code of Civil Procedure, 1908 ("CPC").

2. Ms.Savani Gupte, learned Counsel appears for the Plaintiff and submits that pursuant to an agreement for supply of White Crystal Sugar by one Trident Sugars Limited, advance payments were made to the said Company by the Plaintiff which was guaranteed to be performed and in the event of a failure to perform to be repaid by the Defendants who are not only the Directors of Trident Sugars Limited

but also their promoters. Ms.Gupte, learned Counsel submits that only some supply which was adjusted against the advances was effected however since there was failure to supply the balance despite requests and even the request for refund of advances was not responded, therefore, in spite of correspondence neither the Company nor the Defendant made repayment of the advances, this Suit has come to be filed on the basis of Guarantee Agreements by the Defendants. Ms.Gupte, learned Counsel submits that this Suit has been filed with the following principal prayer :

“a) This Hon’ble Court be pleased to order and decree the Defendants to pay to the Plaintiff an amount of INR 31,52,23,623/- (Rupees Thirty One Crore Fifty Two Lakh Twenty Lakh Twenty Three Thousand Six Hundred and Twenty Six Only), along with interest at the rate of 24% p.a. calculated upto 30th April, 2024, and with further interest at the rate of 24% p.a. from 1st May 2024, till payment and/or realization, as per the Particulars of Claim at ***Annexure – A*** hereto;”

3. Thereafter, a Writ of Summons was issued in the Summary Suit on 30th August, 2024 and Writ of Summons was dispatched to the Defendants by RPAD on 4th September, 2024, however, the same could not be delivered as the addressee had left without instructions. Thereafter, on 22nd October, 2024, the Plaintiff filed an Interim Application seeking substituted service to the Defendants. On 25th October, 2024, this Court permitted service of Writ of Summons by

substituted service under Order V Rule 20(1-A) of the CPC. Thereafter, the said order was executed by publication in two newspapers one in English and the other in Telugu on 15th November, 2024. Affidavit of the said publication was filed on 22nd November, 2024. Ms.Gupte, learned Counsel submits that thereafter this Court on 9th December, 2024, directed that the matter be listed for *exparte decree*.

4. Under Order XXXVII Rule 2(3) of the CPC, it is provided that in default of the Defendant entering appearance the allegations in the Plaint shall be deemed to be admitted and the Plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest.

5. In Rule 2 (1) of Order XXXVII of the CPC it is provided that where a suit to which this Order applies the Plaintiff who desires to proceed may institute a Plaint which shall contain (a) a specific averment to the effect that the Suit is filed under this Order; (b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and (c) the following inscription, immediately below the number of the Suit in the title of the suit namely :—“Under Order XXXVII of the Code of Civil Procedure, 1908”. It is also provided

in Rule 2(2) that the summons of the Suit shall be in the prescribed form.

6. It is observed that Suit has been filed as a Summary Suit on the basis of Guarantee Agreements against the Defendants under Order XXXVII Rule 1(2)(b)(i) of the CPC; that there is a specific averment in the plaint to the effect that the Suit is filed under this Order that there is also an averment that no relief which does not fall within the ambit of this Rule has been claimed also that there is an inscription as required in Order XXXVII Rule 2(1)(c) of the CPC. A perusal of the Affidavit of Service, indicates that the original Writ of Summons is in the prescribed format.

7. Under Order XXXVII Rule 3 of the CPC, it is provided that Defendant may at any time within 10 days of service enter an appearance either in person or by pleader. The Writ of Summons has been published on the 15th November, 2024 by way of substituted service as permitted by this Court. No appearance has been entered on behalf of the Defendants either within the said period of 10 days nor till date.

8. Accordingly, the Plaintiff has become entitled to a decree in as much as upon the failure of the Defendant to enter appearance the allegations in the Plaint have been deemed to be admitted. The Plaintiff is in view of Order XXXVII Rule 2(3) entitled to a decree for a sum of Rs.31,52,23,623/-.

9. Ms. Gupte, learned Counsel has pointed out Paragraph 5.24(ii) of the Plaint which refers to an interest @ 24%. Since all the allegations in the Plaint are deemed to have been admitted by the Defendants, this Court deems it appropriate to award interest @ 24% p.a.

10. In view of the above discussion and, having heard the learned Counsel and considered the submissions, this Court is of the view that the Suit be decreed in terms of prayer clause (a) which reads thus :

“a) This Hon’ble Court be pleased to order and decree the Defendants to pay to the Plaintiff an amount of INR 31,52,23,623/- (Rupees Thirty One Crore Fifty Two Lakh Twenty Lakh Twenty Three Thousand Six Hundred and Twenty Six Only), along with interest at the rate of 24% p.a. calculated upto 30th April, 2024, and with further interest at the rate of 24% p.a. from 1st May 2024, till payment and/or realization, as per the Particulars of Claim at **Annexure – A** hereto;”

11. Drawn up Decree is dispensed with.

12. Refund of Court fees as per rules.

(ABHAY AHUJA, J.)

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