IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	11.04.2022
Order pronounced on	08.06.2022

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Application No.4248 of 2021
in
Civil Suit(Comm. Div.) No.318 of 2020

NORTHERN ARC CAPITAL LIMITED,
Rep. by its authorised signatory
Veda Raguraj.J
Having office at
10th Floor, Phase I,
IIT Madras Research Park,
Kanagam Village, Taramani,
Chennai – 600 113. ... Applicant/Plaintiff

vs.

1.Sambandh Finserve Private Limited
Rep. by its Director
DCB – 820/821/822,
8th Floor, DLF Cyber City,
Chandaka Industrial Estate, Patia,
Chandrasekharpur, Bhubaneswar – 751 024,
Odisha.

2.Mr.Deepak Kindo

3.Mr.Livinus Kindo ... Respondents/Defendants

This Application is filed under Order XIV Rule 8 of the Madras High Court original side Rules, 1956 r/w Order XIII-A of CPC praying to pass a judgment and decree and directing the first and second Respondents to pay the entire suit claim of Rs.38,16,45,711/-, jointly and severally to the Applicant herein.

For Applicant : M/s.Anirudh Krishnan
Mr.Adarsh Subramanian
Mr.Shiva

For Respondents : Mr.Rahul M.Shankar
for Mr.Supriyo Ranjan Mahopatra
for D-1

M/s.Prashant Rajagopal
for T.M.Mano for D-2

O R D E R

The Plaintiff has filed this application for summary judgment. By such application, the Plaintiff seeks a judgment and decree for the suit claim of Rs.38,16,45,711/-, jointly and severally, against the first and second Respondents/Defendants.

2. The Applicant/Plaintiff submits that the first Defendant borrowed money from the Plaintiff under multiple facility agreements.

These loans were guaranteed by the second and third Respondents/Defendants. On 07.10.2020, the then Chief Financial Officer and other senior employees of the first Defendant issued a communication stating that the first Defendant does not have sufficient liquidity to service its debt obligations and had defaulted in repayment since 30.09.2020. The Applicant/Plaintiff also relies upon an email of 15.10.2020 from the second Defendant to the Plaintiff enclosing a letter dated 13.10.2020. In such letter, the first Defendant informed the Chief Executive Officer of the Plaintiff that members of the senior management team of the first Defendant had committed financial irregularities. The first Defendant also conceded therein that it is facing liquidity issues. The third communication that the Applicant/Plaintiff relied upon is an email of 17.10.2020 from the Assistant Manager, Finance, of the first Defendant, and, in particular, the Management Organizational Book Debt Certificate dated 01.10.2020 (the Book Debt Certificate), which was attached to the above mentioned email. The Certificate is to the effect that the aggregate principal outstanding of the first Defendant to the Plaintiff, by reckoning all the term loans, is Rs.40,56,00,000/- as on 01.10.2020. A further communication dated 17.10.2020 from the first Defendant to the Plaintiff whereby the first

Defendant referenced an aggregate principal exposure of INR 40.56 crores is also relied upon.

3. The Plaintiff states that the suit was filed in the above facts and circumstances claiming a sum of Rs.38,16,45,711/- along with interest on the said amount at the rate of 18% per annum from 04.11.2020 till the date of repayment. About 91 documents were filed along with the plaint. These documents include the Facility Agreements, Deeds of Guarantee and Hypothecation Agreements. The above mentioned correspondence was also annexed. At paragraph 11 of the plaint, the Applicant/Plaintiff has set out details of amounts borrowed by the first Defendant under various term loan agreements, including amounts due and payable, including interest, in respect thereof. In paragraph 13, the details of the personal guarantees provided by the second Defendant in respect of these term loans are set out. In paragraphs 24 and 25, an admission of liability by the first Defendant and the second Defendant are referred to. The suit claim of Rs.38,16,45,711/- is made on such basis.

4. In the written statement filed by the first Defendant, at paragraph 31, the contents of paragraphs 8 to 14 of the plaint are said to be matters of record. Although the contents of paragraph 24 are denied, the first Defendant does not state the basis of denial except to the extent of stating that it cannot be construed as a clear admission of the debts.

5. By relying on the pleadings, the Applicant/Plaintiff contended that the Defendants have no real prospect of successfully defending the suit claim. The Applicant/Plaintiff asserted that the defences raised by the first Defendant to the application for summary judgment are untenable. By referring to the counter of the first Defendant, the Applicant pointed out that the first Defendant raised four defences. The first defence was that the prayer for summary judgment is contrary to the Prudential Framework for Resolution of Stressed Assets dated 07.06.2019, which is a statutory circular issued by the Reserve Bank of India, and prescribes that a lender cannot initiate separate legal proceedings after entering into an inter-creditor agreement with other lenders. The Applicant stated that this contention was rejected by this Court while deciding an application filed by the first Defendant under Order VII Rule 11(d) of the Code of Civil Procedure, 1908

(the CPC). The second defence was that the suit and application for summary judgment amount to preferential payment in terms of Section 43 of the Insolvency and Bankruptcy Code, 2016 (the IBC). According to the Applicant, this contention was also considered and rejected by this Court. The third defence was on the basis of the dismissal of the earlier application under Order XII Rule 6 CPC. The Applicant asserted that the present application is liable to be allowed notwithstanding the dismissal of the application under Order XII Rule 6 CPC because the scope of Order XIII-A is wider than Order XII Rule 6 CPC. With regard to the fourth defence, namely, that the Facility Agreements were not duly stamped, the Applicant contended that the Facility Agreements are duly stamped because these agreements come within the residuary clause in Article 5 of the Schedule to the Indian Stamp Act, 1899 (the Stamp Act). As such, the stamp duty of Rs.100/- is adequate. Even otherwise, the Applicant contended that the application is sustainable even without reference to the Facility Agreement.

6. In support of these contentions, the Applicant referred to and relied upon the following judgments:

(i) *Jaspal Kaur Cheema and Ors. v. Industrial Trade Link and Others, AIR 2017 SC 3995* ***(Jaspal Kaur Cheema),*** wherein the Hon'ble Supreme Court held, at paragraph 7, that the failure to specifically deny statements in the plaint amounts to an admission under Order VIII Rule 5 of CPC.

(ii) *Dhulabhai and others v. The State of Madhya Pradesh and other, AIR 1969 SC 78****, (Dhulabhai),*** wherein the Hon'ble Supreme Court held that the ouster of the jurisdiction of a civil court should not be readily inferred.

(iii) *Syrma Technology Pvt. Ltd. v. Powerwave Technologies Sweden AD and Another, (2020) 4 LW 238* ***(Syrma Technology),*** wherein the Division Bench of this Court held that Order XIII-A subsumes the remedy under Order XII Rule 6 of CPC.

(iv) *Su-Kam Power Systems Ltd. v. Kunwar Sachdev and another, 2019 SCC Online Del 10764* ***(Su-Kam Power Systems),*** wherein the Delhi High Court considered the scope of Order XIII-A of CPC by referring extensively to judgments of the English and Canadian Courts.

(v) *Apollo Health and Lifestyle Limited and others v. Anupam Saraogi of Indian Inhabitant 2017 (4) ALD 176,* wherein a Division Bench

of the High Court of Judicature at Hyderabad considered the law relating to unjust enrichment.

(vi) *Hope Plantation Ltd. v. Taluk Land Board, Peermade and another (1995) 5 SCC 590,* wherein the doctrine of *res judicata* was illustrated.

7. The first Respondent/first Defendant refuted the contentions of the Applicant/Plaintiff. According to the first Respondent/first Defendant, the present application is liable to be dismissed because it is based on the same cause of action as the earlier application under Order XII Rule 6 of CPC. By drawing reference to the averments in support of the two applications, the first Respondent/first Defendant pointed out that the averments are virtually identical. By relying on the judgment in *Venezia Mobile (India) Pvt. Ltd. v. Ramprastha Promotors & Developers Pvt. Ltd., 2019 SCC Online Del 7761* and, in particular, paragraphs 34 to 36 thereof, the first Respondent / first Defendant pointed out that the Delhi High Court concluded that the basis for summary judgment and judgment on admission is the same, i.e. that there is no triable issue which arises for consideration. Similarly, the first Respondent/first Defendant relied on the judgment in

Indus Cityscapes Constructions Pvt. Ltd. v. Karismaa Foundations Pvt. Ltd., 2019 (6) CTC 652, wherein, at paragraphs 93 to 95, the Division Bench of this Court examined Order XIII-A and Order XII Rule 6 of CPC and concluded that Order XIII-A subsumes the remedy under Order XII Rule 6 of CPC. The first Respondent/first Defendant also contended that the principle underlying Order II Rule 2 of CPC that a person should not be vexed twice in respect of the same cause of action is squarely applicable regarding this application. For such purpose, the first Respondent/first Defendant relied on the judgment in *Deva Ram and another v. Ishwar Chand and another (1995) 6 SCC 733* (paragraphs 12 to 14 and 16) and *Vurimi Pullarao v. Vemari Vyankata Radharani & another* (2020) 14 SCC 110 (paragraph 16). The first Respondent/first Defendant also contended that the earlier order of this Court rejecting the application under Order XII Rule 6 CPC operates as *res judicata* because the said order was pronounced after considering the same documents on which the present application is founded. In this regard, reliance was placed on *Satyadhyan Ghosal and others v. Deorjin Debi and another, AIR 1960 SC 941* and, in particular, paragraph 8 thereof. In substantiation of the defence that inadequately stamped documents are inadmissible in evidence, the first Respondent/first

Defendant relied upon *Hindustan Steel Limited v. Messrs Dilip Construction Company (1969) 1 SCC 597* ***(Hindustan Steel Limited)***.

8. The second Respondent/second Defendant did not file a written statement within the maximum time limit of 120 days. Consequently, the said Defendant forfeited its right to file the written statement. However, the second Respondent/second Defendant filed a counter to this application. The second Respondent compared the application under Order XII Rule 6 of CPC and the present application, and pointed out that both applications are based on the same documents. Therefore, the second Respondent/second Defendant contended that the order passed in the Order XII Rule 6 application is binding on the Applicant/Plaintiff. In support of this contention, the second Respondent/second Defendant relied on the judgment of the Hon'ble Supreme Court in *Himani Alloys Limited v. Tata Steel Limited (2011) 15 SCC 273* **(*Himani Alloys*)** to the effect that an admission should be categorical to claim relief under Order XII Rule 6 of CPC.

9. In view of the rival contentions, the principal preliminary objection that arises for consideration is whether the present application is liable to be rejected on account of the dismissal of Application No.3217 of 2020. Application No.3217 of 2020 was filed by the Plaintiff under Order XII Rule 6 of CPC. By order dated 05.07.2021, this Court rejected the application after examining the three documents on which the said application was founded. While rejecting the application, in the operative paragraph 7, this Court held as under:

> *"At the outset, three admissions which are relied upon by the applicant does not in fact admit the suit claim. They are all the general admissions regarding the outstanding and the liability of the first defendant company. The admission that fraud has been committed per se will not entail the plaintiff for a decree as claimed in the suit. Whatever claimed in the suit has to be proved through evidence in the manner known to law and the portions of the admission relied by the plaintiff/applicant is a general admission of fact regarding liability of the first defendant company and its inability to pay his creditors. The general admissions of fact cannot be construed as admission of suit claim to pass a*

judgment and decree. Hence, this application is dismissed. No order as to costs."

10. Both the Respondents/Defendants relied on the fact that the application for a judgment on admissions was rejected after considering the same documents which are relied upon by the Applicant to support the present application under Order XIII-A of CPC. The Applicant/Plaintiff, on the other hand, contended that the scope of inquiry under Order XIII-A of CPC is different. Therefore, this issue should be addressed. Order XII Rule 6 of CPC is set out below:

6. Judgment on admissions.

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

11. On perusal of Order XII Rule 6 CPC, it is clear that a party to a suit may apply under this provision, or, the court may act *suo moto,* if admissions of fact were made either in the pleading or otherwise. The text of Order XII Rule 6(1) indicates that such admission may be made orally or in writing. By taking into account the fact that Order XII Rule 6 CPC enables the Court to pronounce a judgment on admissions at any stage, including at the pre-trial stage, the Hon'ble Supreme Court and various High Courts have consistently interpreted Order XII Rule 6 as being applicable only if the admission is clear, categorical, unambiguous and unequivocal. To put it differently, any ambiguity or lack of clarity would result in the rejection of the application. ***Himani Alloys,*** which was cited at the bar, illustrates the above proposition.

12. Order XIII-A is a provision introduced in the CPC by amendment and made applicable only to commercial disputes. Order XIII-A enables either the plaintiff(s) or the defendant(s) to apply for summary judgment at any time after the summons has been served on the defendant(s) but before issues are framed in the suit. Thus, in contrast to Order XII Rule 6, an application for summary judgment cannot be filed once issues are framed. The second difference between the two provisions is that an application under Order XII Rule 6 of CPC can only be filed on the basis of admissions, whether in the pleadings or otherwise, and whether made orally or in writing, whereas, an admission is not a necessary pre-condition for an application for summary judgment, although such application is also maintainable on the basis of admissions by the counter party. The third difference is that the Court may act on its own motion to pronounce a judgment on admission, whereas an application by one of the parties is mandatory under Order XIII-A. The grounds for summary judgment, which are set out in Rule 3 of Order XIII-A, are as under:

"3. Grounds for summary judgment.

The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that--

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence."

On examining the above grounds, it is evident that two requirements should be satisfied for the grant of a summary judgment. The first requirement is that the applicant should establish that the counter party has no real prospect of successfully defending the claim, if the applicant is the plaintiff, or, if the applicant is the defendant, of succeeding on the claim. The second requirement is that there is no other compelling reason why the claim should not be disposed of before recording oral evidence. Since the conjunction "and" is used between the first and second requirements, the two requirements should be construed as cumulative.

13. Rules 4 & 5 of Order XIII-A deal with the procedure and evidence with reference to an application for summary judgment. Both parties are required to set out the grounds on which the application is being prosecuted or defended, as the case may be, and all documents proposed to be relied upon for such purpose. Although Rules 4 & 5 provide for the filing of evidence, including documentary evidence, by both parties, as in the case of any other application, the burden of proof is on the applicant. In other words, the general principle under the law on evidence, which is enshrined in Section 103 of the Indian Evidence Act, 1872, that the burden of proof lies on the person who makes an assertion applies to an application under Order XIII-A CPC also. Consequently, the applicant should establish that the counter party has no real prospect of defending the claim or succeeding on the claim, as the case may be. The expression "no real prospect" was interpreted by the Court of Appeals (Civil Division) in *Terence Paul Swain v. T Hillman (Male) and T C Gay, (1999) ECWA Civ 3053* ***(Terence Paul Swain),*** wherein the Court interpreted paragraph 24 of the Civil Procedure Rules (CPR) of the United Kingdom which deals with summary judgment. CPR 24.2 prescribes the grounds for summary judgment and reads as under:

"The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if-

(a) it considers that-

(i) that claimant has no real prospect of succeeding on the claim or issue; and

(ii) that defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other reason why the case should be disposed of at a trial."

On perusal of CPR 24.2, there is no doubt that the provision is substantially similar to Rule 3 of Order XIII-A CPC. Paragraph 7 of the judgment in ***Terence Paul Swain*** is as under:

"7. Under part 24.2, the court now has a very salutary power, both to be exercised in a claimant's favour or, where appropriate, in a defendant's favour. It enables the court to dispose

summarily of both claims or defences which have no real prospect of being successful. The words "no real prospect of being successful or succeeding" do not need any amplification, they speak for themselves. The word "real" distinguishes fanciful prospects of success or, as Mr. Bidder submits, they direct the court to the need to see whether there is a "realistic" as opposed to a "fanciful" prospect of success."

14. Thus, the Court of Appeals held that the word "real" is used in contrast to the word "fanciful". In ***Su-Kam***, the Delhi High Court surveyed the precedents on summary judgment. The Delhi High Court referred to the judgment of the Supreme Court of Canada in *Robert Hryniak v. Fred Mauldin, 2014 SCC Online Can SC 53,* wherein it was held that an application for summary judgment could be allowed if the court is in a position to reach a fair and just determination on the merits of the case without proceeding to trial, and that, if so, summary proceedings would be a proportionate, expeditious and less expensive means of achieving a just

result. It should be noticed, however, that Rule 20 of the Ontario Rules of Civil Procedure prescribes that a summary judgment may be granted,"*if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence*". Hence, Rule 3 of Order XIII-A adopts the standard of no real prospect of success, whereas the Ontario Rules of Civil Procedure, which were interpreted in the above mentioned judgment, adopt the standard of no genuine issue requiring a trial.

15. In substance, therefore, under Order XIII-A, the issue boils down to whether the counter party has the real prospect of defending or successfully prosecuting the claim, as the case may be, if the suit is carried to trial. If such threshold is met, the Court should also be satisfied that there is no other compelling reason to allow parties to adduce oral evidence before pronouncing summary judgment. Under Rule 3, the counter party need not establish that the claim would certainly be successfully defended or successfully prosecuted, if put through the trial process. In fact, it is not even necessary that the court should conclude that it is probable that the counter party would successfully defend or prosecute the suit, as the case may be. The burden of proof on the applicant is set at the high level of

showing that the counter party does not have the realistic possibility of successfully defending or contesting the suit at trial. Indeed, Rule 7 of Order XIII-A prescribes that a conditional order may be passed if it is possible but not probable that the counter party may successfully defend or prosecute the claim, and Rule 6 sets out, illustratively and not exhaustively, the range of orders that may be passed on an application for summary judgment. The illustrative enumeration includes allowing, dismissing, passing a conditional order or even striking out pleadings.

16. In order to test whether the Applicant has met the above high threshold, the pleadings and documents should be examined. As stated above, the Applicant/Plaintiff pleaded that a sum of Rs.38,16,45,711/- is due and payable by the Defendants by setting out the particulars of the claim at paragraph 11 of the plaint. At paragraph 24 of the plaint, the documents by which the Defendants admitted liability are referred to. These documents include the Book Debt Certificate by which the principal outstanding of Rs.40.56 crore was referred to and the letter dated 17.10.2020 whereby the aggregate principal exposure of Rs.40.56 crore was referenced. On examining the written statement of the first Defendant, the details set out in

paragraphs 8-14, including 11, of the plaint are referred to as matters on record. While the contents of paragraph 24 are denied, the basis of denial is not indicated except to the extent of stating that "the statement relied on by the Plaintiff cannot in any way be construed to be clear admission of the debts owed to the Plaintiff". Under Order VIII Rule 3-A, the denial is required to be in terms of sub- rule 2, 3, 4 and 5. In particular, sub-rule 3 is significant and reads as under:

> *"(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version."*

A proviso was inserted in Rule 5, sub-rule 1. The said proviso is also particularly significant and reads as under:

> *"PROVIDED FURTHER that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability".*

Thus, it is clear that a defendant is required to state the reasons for denial and to put forward the defendant's version of events, if different from the plaintiff's version. As per the proviso, if the denial is not in accordance with Rule 3-A Order VIII, the statements in the plaint should be taken as admitted.

17. Upon examining the pleadings in the light of these provisions, the statements/allegations in paragraph 11,13, 24 and 25 of the plaint should be construed as not denied by the Defendants in the manner mandated by the CPC and, arguably, admitted. Whether such non-denial/admission is sufficient to dispose of the suit summarily is a distinct matter and entails an examination of the implications thereof by referring to the documents referred to and relied upon in the plaint and this application. One of the principal documents relied upon by the Applicant is the Book Debt Certificate. Under each facility agreement, the unencumbered receivables or book debts of the borrower are hypothecated to the lender. The Book Debt Certificate is issued by the borrower to satisfy the lender that the security by way of hypothecation of book debts is sufficient to

secure the amount outstanding under the loan. Therefore, the Book Debt Certificate certifies as under:

> "*We also certify the list of receivables attached for the period ended September 2020 herewith of Rs.42,18,79,545/- against the principal outstanding of Rs.40,56,00,000/-*"

Thus, the Book Debt Certificate is primarily focused on the list and value of receivables and incidentally indicates the principal outstanding as of 30.09.2020. While on this issue, it should be borne in mind that the first Defendant took multiple term loans from the Applicant, of which the suit pertains to about 18 term loans (Loan 10, Tranche A &B and Loans 11-27). Consequently, the amounts disbursed, repaid and outstanding under each loan account would vary.

18. For purposes of this application, the Applicant/Plaintiff has placed before this Court one Facility Agreement and the documents executed in relation thereto but not the others, which, however, are suit documents. The bank statements of the Applicant showing debits and credits from the Applicant's bank accounts, including to and from the first

Defendant, were filed as suit documents but the same were not filed in support of this application. Even otherwise, on scrutiny, the said documents appear to be insufficient on a standalone basis to establish the suit claim. Significantly, the statements of account in respect of each term loan are not on record. Turning to the letter dated 17.10.2020, this is a letter authorizing the lender to appoint a person for collection of the receivables of the first Defendant, which are hypothecated to the Applicant/Plaintiff. The letter references the aggregate principal exposure of Rs.40.56 crore across the multiple term loans. It should also be noticed that the amount referenced in this letter and the Book Debt Certificate do not tally with the suit claim. The other documents on which reliance is placed by the Applicant/Plaintiff are letters admitting that the first Defendant is facing liquidity issues and defaulted in servicing loan obligations, albeit without specifying the amount due. Consequently, other than the computation at paragraph 11 of the plaint, which is pleading and not evidence, there is no document on record evidencing the suit claim of about Rs.38.16 crore with further interest thereon. These documents were examined by this Court while considering and dismissing the application under Order XII Rule 6 CPC by holding that the admissions of liability were not unambiguous, categorical and

unequivocal. The said findings of this Court have attained finality since the matter was not carried in appeal to the Supreme Court. As discussed earlier, however, an application for summary judgment is wider in scope and both the applicant and counter party are provided the opportunity to prosecute or defend, as the case may be, such application, including by producing documentary evidence. The Court has also been provided wide latitude in passing orders, including conditional orders, thereon. In my view, given the wider scope of Order XIII-A CPC, the present application warrants consideration and is not liable to be rejected solely because the earlier application under Order XII Rule 6 CPC was rejected. The other defences raised by the Respondents/Defendants are considered next.

19. The Respondents/Defendants raised the defence that the Facility Agreements were not adequately stamped. In response, the Applicant/Plaintiff pointed out that Facility Agreements are loan agreements, which would fall within the residuary clause under Article 5 of the Schedule to the Stamp Act. Therefore, it was contended that the Facility Agreements are adequately stamped. The Applicant/Plaintiff also contended that insufficiency in stamp duty is curable and that the Applicant/Plaintiff is

entitled to the money claim under the equitable doctrine of unjust enrichment even if the Facility Agreements were to be disregarded. Apart from pointing out that stamp duty was paid in Odisha and not in Tamil Nadu, the Respondents/Defendants are unable to point out the basis for the assertion that the stamp duty is inadequate. As held by the Hon'ble Supreme Court at Paragraph 7 of ***Hindustan Steel Limited***, the Stamp Act is a fiscal measure enacted to secure revenue for the state and not to arm a litigant with a weapon of technicality to meet the facts of the case. In any event, only one Facility Agreement is on record as regards this application. The defence that the stamp duty is inadequate is not a valid defence to this application, but may warrant consideration in course of final disposal. The other defence based on the RBI's Prudential Framework for the Resolution of Stressed Assets is also untenable because the said circular relates to the apportionment and recovery of dues and not to the institution of legal proceedings to establish liability. Besides, as held in ***Dhulabhai,*** the exclusion of jurisdiction of a civil court should not be readily inferred. Notwithstanding the rejection of these defences, whether the suit may be disposed of summarily is discussed next.

20. From the perspective of the present application for summary judgment, the question that arises for consideration is whether there is a realistic possibility, if not probability, that the Defendants may successfully defend the suit. If so, the next question would be whether there is any other compelling reason why oral evidence is necessary. Based on the above discussion of the pleadings and evidence on record, in my view, there is no realistic possibility of the Defendants successfully refuting liability but the possibility of realistically disputing the extent or quantum of liability cannot be disregarded. I have drawn this conclusion largely because the monetary claim has not been duly proved by the Applicant by placing on record the relevant statements of account. Ordinarily, in view of the conclusion that there is no realistic possibility of the Defendants successfully refuting liability, a conditional order to deposit money or provide security for the suit claim would have been issued, but such order is not being passed because the application (Application No.2730 of 2020) to furnish security was previously rejected and the first Defendant is under the control of an administrator.

21. In the ultimate analysis, a suit cannot be summarily decreed at the instance of a plaintiff unless such plaintiff satisfies the court that the suit claim stands duly proved. In this case, while oral evidence may not be necessary and the suit may be disposed of expeditiously, further documentary evidence is necessary and the suit cannot be disposed of summarily on the basis of the material on record. As a corollary, let the suit be listed for framing issues and for filing affidavits of admission/denial of documents filed by the counter party on 20.06.2022 along with the pending application. This application is disposed of on the above terms.

08.06.2022

Index : Yes
Internet : Yes
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SENTHILKUMAR RAMAMOORTHY, J

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Pre-Delivery Order in

A.No.4248 of 2021 in
C.S.(Comm. Divi)No.318 of 2020

08.06.2022