

II And Fs Financial Services Limited vs Serveall Constructions Private ... on 22 May, 2020

Author: N. J. Jamadar

Bench: N.J. Jamadar

nmcdl-1939-2019.J-18-5.

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

NOTICE OF MOTION IN COMMERCIAL DIVISION MATTERS
LODGING NO.1939 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO.238 OF 2019

Serveall Constructions Private Limited
In the matter between :

...Applicant

IL & FS Financial Services Limited
A Company incorporated under the Provisions of
the Companies Act, 1956 and having its
registered office at the IL & FS Financial
Centre, Plot C-22, G-Block, Bandra Kurla
Complex, Bandra (East), Mumbai - 400 051
vs.

...Plaintiff

1. Serveall Constructions Private Limited
A-20, Kailash Colony, New Delhi - 110 048.

2. Housing Development & Infrastructure Limited
Having its registered office at : HDIL Towers, 9th
floor Anant Kanekar Marg, Station Road,
Bandra - (East), Mumbai - 400 051.

3. Shri Rakesh Wadhawan
Having his office address at : HDIL Towers, 9th
floor Anant Kanekar Marg, Station Road,
Bandra - (East), Mumbai - 400 051.

4. Shri Sarang Wadhawan
Having his office address at : HDIL Towers, 9th
floor Anant Kanekar Marg, Station Road,
Bandra - (East), Mumbai - 400 051.

...Defendants

WITH

LEAVE PETITION NO. 131 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO.238 OF 2019

IL & FS Financial Services Limited ...Plaintiff
vs.
Serveall Constructions Private Limited
& 3 Ors. ...Defendants

Vishal Parekar

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SUMMONS FOR JUDGMENT NO. 12 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO.238 OF 2019

IL & FS Financial Services Limited ...Plaintiff
vs.
Serveall Constructions Private Limited
& 3 Ors. ...Defendants

Dr. Birendra Saraf, senior counsel a/w. Mr. Rohan Savant, Mr. Sachin Chandarana, Mr. Vijayendra Purohit and Ms. Karina Gandhi i/b. Manilal Kher Ambalal & Co., for the Plaintiff.

Mr. Ashish Kamat a/w. Mr. Subir Kumar, Mr. Chahat Dhingra and Ms. Samiksha Manek, for Applicant/Defendant No. 1.

CORAM : N.J. JAMADAR, J.
ORDER RESERVED ON : 29th JANUARY, 2020
ORDER PRONOUNCED ON : 22nd MAY, 2020

JUDGMENT :

. This Notice of Motion is taken out by the Defendant No. 1 for the rejection of the Plaint under the provisions of Order VII Rule 11 read with section 151 of the Code of Civil Procedure, 1908 (the Code).

2. The background facts necessary for the determination of this Notice of Motion can be stated in brief as under:

The Defendant No.1 applicant is a company registered under the Companies Act, 1956. The Defendant No. 1 had availed two separate loan facilities from the Plaintiff, which is a non banking financial company engaged in the business of finance and advisory services. On 30 th June, nmcld-1939-2019.J-18-5.doc 2015 the Plaintiff had extended a loan facility of Rs. 155 Crores. Pursuant to another sanction letter dated 27th September, 2017 the Plaintiff had extended another loan facility of Rs. 30 Crores. Defendant No.2, a company registered under the Companies Act, 1956, had executed corporate guarantee in respect of the aforesaid advances on 30 th June, 2015 and 27th September, 2017, respectively. Likewise, Defendant Nos. 3 and 4 had executed the personal guarantees.

The Defendants committed default in repayment. The Plaintiff issued event of default notice in respect of the aforesaid two loan facilities, on 6th September, 2018. Ultimately, the Plaintiff issued facilities recall notice on 23rd October, 2018 and called upon the Defendants to pay the outstanding amount. In view of the default on the part of the Defendants to pay the outstanding amount with interest accrued thereon in accordance with the terms of contract, the Plaintiff was constrained to institute the Summary Suit for recovery of the sum of Rs. 2,03,66,31,506/-

due and payable as of 17 th December, 2018 with further interest including additional and penal interest.

3. In response to the service of writ of summons, the Defendants have appeared. The Plaintiff has thereupon taken out the Summons for Judgment.

4. As the proceeding thus stood, Defendant No. 1 has taken out this nmcld-1939-2019.J-18-5.doc Notice of Motion for rejection of the Plaint and/or dismissal of the Suit under the provisions of Order VII Rule 11 read with 151 of the Code, principally on the following three grounds:

a] Firstly, the transaction between the parties has taken place at Delhi and the loan agreement as well as guarantees have been executed at Delhi and in the absence of the leave having been obtained under clause 12 of the Letters Patent, this Court can not entertain, try and determine this Suit. Therefore, the suit deserves to be dismissed.

b] Secondly, the loan agreements dated 30th June, 2017 and 20 th September, 2017 and corporate and personal guarantees have also been executed at Delhi. On the one hand, in view of the provisions contained in section 19 of the Maharashtra Stamps Act, 1958 ('The Stamp Act, 1958'), the instruments are required to be charged with the duty in accordance with schedule I appended to the Act on the instruments being received in the State of Maharashtra. On the other hand, the instruments which constitute the basis of the suit have not been adequately stamped in conformity with the provisions contained in Article 5 (h)(A) (vi) of the Schedule I of the Stamp Act 1958. Consequently, the instruments being inadequately stamped are not admissible in evidence and can not be acted upon in view of the interdict contained in Section 34 of the Act, 1956.

c] Thirdly, Union Bank of India had filed a Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code 2016), nmcdl-1939-2019.J-18-5.doc being Company Petition No. 1061 of 2017, against Guruashish Construction Private Limited before the National Company Law Tribunal. The said Company is a corporate guarantor for the loan taken by Defendant No.1 and the said corporate guarantor is under going insolvency resolution process, in the said petition. The Plaintiff herein has lodged its claim against Guruashish Construction Private Limited to the tune of Rs. 154 Crores. The said claim, thus, constitutes a bar against institution and continuation of the instant suit.

5. The Defendant No. 1 further contends that the claim lodged by the Plaintiff is approved by the committee of creditors and the resolution plan awaits adjudication before the N.C.L.T. In the event, the resolution plan is adjudicated, the liability of Defendant No. 1 would be diminished to the extent of Rs. 154 Crores. Hence, on this count as well the plaint in the instant Suit deserves to be rejected.

6. An affidavit in reply is filed by the plaintiff. The Plaintiff has assailed the tenability of the Notice of Motion. The Plaintiff asserts that the Notice of Motion is taken out with an ulterior motive to delay the disposal of the Summary Suit. It constitutes an abuse of the process of law. The challenge to the territorial jurisdiction of this Court is stated to be dishonest. The Defendants have signed balance confirmation statement at Mumbai on 22nd March, 2018. The office of the Defendants is situated at Mumbai. In fact, writ of summons was also served on the Defendants nmcdl-1939-2019.J-18-5.doc at Mumbai. Thus, material and essential cause of action has arisen in Mumbai.

7. As regards the ground of inadequacy of the stamp duty on the instruments in question, the Plaintiff asserts that the said ground is not available to the Defendants in Summary Suit. The provisions of the Stamp Act, 1958 being a measure to secure the revenue to the State, a dishonest litigant like Defendants can not derive an undue advantage on the count of inadequacy of the stamp as a weapon of technicality to meet the case of the Plaintiff.

8. The ground of submission of resolution plan before N.C.L.T. is also stated to be of no assistance to Defendant No. 1. The Plaintiff asserts that the resolution plan is opposed by the Plaintiff and in any event the same awaits adjudication. The pendency of the resolution plan according to the Plaintiff does not bar the institution and continuation of the Suit.

9. I have heard Mr.Subir Kumar, the learned counsel for the Applicant/ Defendant No. 1 and Dr. Birendra Saraf, the learned Senior Counsel, for the Plaintiff at some length.

10. Though the ground of this Court having no territorial jurisdiction to entertain, try and decide the suit has been taken in the Notice of Motion, nmcdl-1939-2019.J-18-5.doc yet, as recorded by this Court, in the order dated 17 th October, 2019, the challenge came to be restricted principally to the insufficiency of the Stamp duty on the instrument in question and the pendency of the proceeding before the N.C.L.T. under the Code, 2016.

11. The learned counsel for the Defendant No. 1 urged that indisputably the loan and the guarantee agreements have been executed at Delhi. The loan agreement has been executed on a paper on which stamp duty of Rs. 150/- is paid. Likewise a stamp duty of Rs. 150/- is paid on the guarantee agreement. In view of the provisions contained in Article 5(h)(A)(vi)(b) of Schedule I of the Act, 1958, the appropriate stamp duty is 0.2% of the amount agreed in the contract. Resultantly, the provisions contained in section 19 and section 34 of the Act, 1958, come into play. Thus, the instruments cannot be acted upon and the suit based on such instruments is infirm.

12. To bolster up these submissions, the learned counsel for the Defendant No. 1 placed a strong reliance upon the judgment of this Court in the case of Yogendra Patwardhan vs. Khandelwal Hermann Electronics Ltd.¹ In the said case, the learned single judge of this Court had observed that in a Summary Suit, if the document itself is not admissible or cannot be acted upon for want of proper stamp duty, no Summary Suit can lie. It was further observed that, if the document 1 1989 Mh.L.J. 310 nmcdl-1939-2019.J-18-5.doc suffers from any defect for want of requisite stamp or any other inaction, evidence has to be led on the original consideration. In that case it ceases to be a summary suit. The learned single Judge, on the aforesaid premise, held that, the Court could not have acted on insufficient stamped instrument in view of the provisions contained in section 34 of the Bombay Stamp Act, 1958 and thus, the Defendant was granted unconditional leave to defend the said suit.

13. Reliance was also sought to be placed on a recent judgment of the Supreme Court in the case of Garware Wall Ropes Ltd. vs. Coastal Marine Constructions & Engineering Limited². Emphasis was laid on following observations in para 29 of the said judgment.

"When an arbitration clause is contained "in a contract", it is significant that the agreement only becomes a contract if it is enforceable by law. We have seen how, under the Indian Stamp Act, an agreement does not become a contract, namely, that it is not enforceable in law, unless it is duly stamped. Therefore, even a plain reading of Section 11(6A), when read with Section 7(2) of the 1996 Act and Section 2(h) of the Contract Act, would make it clear that an arbitration clause in an agreement would not exist when it is not enforceable by law. This is also an indicator that SMS Tea Estates (supra) has, in no manner, been touched by the amendment of Section 11(6A)."

14. Support was sought to be drawn from another judgment of learned single judge in the case of Karan Trehan and Anr. vs. Devan Mehta³ wherein the learned single judge of this Court had proceeded to impound the document while granting an unconditional leave to defend the suit to 2 2019 SCC Online SC 515.

3 Summons for Judgment No. 24 of 2014 dated 10-08-2015.

nmcdl-1939-2019.J-18-5.doc the Defendants.

15. In opposition to this, the learned senior counsel for the Plaintiff would urge that the aforesaid the defence of insufficiency of the stamp duty on the instrument in question is not a defence in the strict sense of the term within the contemplation of order 37. Amplifying the submission Dr. Saraf would urged that by a catena of decisions, it has been consistently held that the Defendant in summary suit can not be heard to urge the defence of insufficiency of the stamp even in support of a prayer for grant of leave to defend the suit much less for rejection of the Plaintiff. It was further submitted that the instruments which are insufficiently stamped can be admitted in evidence once the deficit stamp duty along with penalty is paid. Therefore, the claim of the Defendant No. 1 that the plaintiff is liable to be rejected on the ground of insufficiency of the stamp on the instruments is preposterous, urged Dr. Saraf.

16. To lend support to the aforesaid submission Dr. Saraf, placed reliance on the judgments of the Supreme Court in the cases of Hindustan Steel Ltd. vs. Messers Dilip Construction Company 4 and SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited⁵, and this Court in the cases of Rupinder Singh Arora vs. Kapil Puri⁶, Morpheus Media Ventures Private Limited vs. 4 (1969) 1 Supreme Court Cases 597.

5 (2011) 14 Supreme Court Cases 66.

6 2016 SCC OnLine Bom 12517.

nmcdl-1939-2019.J-18-5.doc Anthony Maharaj⁷, and IREP Credit Capital Pvt. Ltd. vs. Tapaswi Mercantile Pvt. Ltd. and Another⁸.

17. In the backdrop of the nature of controversy, I deem it superfluous to delve deep into this aspect of the matter. The pronouncements on which reliance has been placed on behalf of the defendants, were in the context of prayer for grant of unconditional leave to defend the suit on the ground that the instruments on the strength of which the summary suit was instituted were insufficiently stamped. In the case at hand, Defendant No. 1 seeks rejection of the Plaintiff on the said count. These two aspects are completely distinct and warrant altogether different consideration.

18. It is trite law that a prayer for rejection of the Plaintiff is in the nature of a plea of demurrer. While considering the prayer for rejection of the Plaintiff on the count that the Plaintiff does not disclose a cause of action or is otherwise barred by any law, what is to be looked into is the averments in the Plaintiff. Undoubtedly, the averments in the Plaintiff are required to be read in a meaningful manner to ascertain whether the Plaintiff read as a whole either does not disclose a cause of action or is barred by any law.

19. Order VII Rule 11 of the Code reads thus:

"11. Rejection of plaintiff-- The plaintiff shall be rejected in the following cases:--

(a) where it does not disclose a cause of action;

7 2016 SCC OnLine Bom 10040.

8 2019 SCC OnLine Bom 5719.

nmcdl-1939-2019.J-18-5.doc

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaintiff is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule"

In the case at hand, the claim of the Defendant No. 1 rests on clause (d) and to some extent clause (a) of Rule 11.

20. At this stage of consideration of a plea of rejection of the Plaint only the averments in the Plaint are germane. The plea taken by the Defendants in defence is not at all relevant for determination of the said prayer. A profitable reference in this context can be made to the judgment of the Supreme Court in Church of Christ Charitable Trust & Educational Charitable Soc. vs. Ponniamman Educational Trust⁹ In the said case it was, inter alia, observed as under:

"It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) 9 (2012) 8 Supreme Court Cases 706.

nmcdl-1939-2019.J-18-5.doc Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others (2006) 3 SCC 100.

It is also useful to refer the judgment in T. Arivandandam vs. T.V. Satyapal & Anr., (1977) 4 SCC 467, wherein while considering the very same provision, i.e. Order VII

Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:

"5.The learned Munsif must remember that if on a meaningful - for formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them....."

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code."

21. In the backdrop of the aforesaid legal position, reverting to the substance of the challenge, based on the insufficiency of the stamp duty, on the instruments in question, it would suffice to note the text of section 33 and 34 of the Stamp Act, 1958:

S.33: Examination and impounding of instruments (1) Subject to the provisions of section 32-A, every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except nmcdl-1939-2019.J-18-5.doc an officer of police (or any other officer, empowered by law to investigate offences under any law for the time being in force) before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same (irrespective whether the instrument is or is not valid in law).

S.34: Instruments not duly stamped inadmissible in evidence, etc.:

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped (or if the instrument is written on sheet of paper with impressed stamp, such stamp paper is purchased in the name of one of the parties to the instrument).

(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of, -

(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and

(ii) a penalty at the rate of 2 per cent of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument:

Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty]

(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral admission of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid.

22. A conjoint reading of the aforesaid provisions would indicate that the Court or authority before whom the insufficiently stamped instrument is produced, is enjoined to impound the instrument. The instrument, however, can be admitted in evidence and acted upon once the requisite nmcdl-1939-2019.J-18-5.doc or deficit stamp duty thereon along with penalty, if any, is paid. The insufficiency of stamp duty on an instrument is thus a curable defect. The said defect, by no stretch of imagination, can be exalted to such a pedestal as to constitute a bar for the institution of the suit. Therefore, the prayer for rejection of the Plaint on the count of insufficiency of the stamp duty does not merit acceptance.

23. On the second ground of the pendency of the insolvency resolution process before N.C.L.T. in Company Petition, the learned counsel for the Defendant No. 1 strenuously urged that once the resolution plan, which is approved by the committee of creditors, is adjudicated upon and accepted, the liability of the borrower would stand scaled down. According to the learned counsel for Defendant No. 1 the said resolution plan once approved would bind even the creditors. Banking upon the provisions contained in section 31 of the Code, 2016 a strenuous effort was made to demonstrate that the possibility of adjudication of the resolution plan renders proceedings for recovery of the very same amount legally untenable.

24. In order to buttress the aforesaid submission, the learned counsel for Defendant No. 1 invited attention of the Court to the provisions contained in section 31 of the Insolvency and Bankruptcy Code. Laying special emphasis on the mandate contained in section 31 to the effect nmcdl-1939-2019.J-18-5.doc that upon approval by the adjudicating authority, the resolution plan shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan, the learned counsel for Defendant No. 1 urged with tenacity that awaiting an adjudication on the resolution plan, approved by the committee of creditors, which would have the effect of crystallizing the liability of the corporate debtor, the summary suit to enforce the said liability cannot be continued.

25. To buttress the aforesaid submission, the learned counsel for Defendant No. 1 placed reliance on the judgment of the Supreme Court in Vijay Kumar Jain vs. Standard Chartered Bank¹⁰. In the said case, the Supreme Court was confronted with a question as to whether the resolution professional is bound to provide all relevant documents including the insolvency resolution plan to the members of the suspended board of directors of the corporate debtors so that they may meaningfully participate in the meeting held by the committee of creditors ? While answering the said question in the affirmative, the Supreme Court adverted to the relevant provisions of the Code, 2016 including section 31 thereof and Insolvency and Bankruptcy Board of India Regulations, 2016. The Supreme Court, inter alia, observed that :

"Section 31(1) of the Code would make it clear that such members of the erstwhile Board of Directors, who are often guarantors, are vitally interested in a resolution plan as such ¹⁰ 2019 SCC OnLine SC 103.

nmcdl-1939-2019.J-18-5.doc resolution plan then binds them. Such plan may scale down the debt of the principal debtor, resulting in scaling down the debt of the guarantor as well, or it may not. The resolution plan may also scale down certain debts and not others, leaving guarantors of the latter kind of debts exposed for the entire amount of the debt".

25. Banking upon the aforesaid observations, the learned counsel for Defendant No. 1 would urge that this Court would be justified in resorting to the provision contained in section 151 of the Code and dismiss the suit as the adjudication of the resolution plan would bear upon the liability of the Defendant No.1.

26 To this end, a strong reliance was placed on the judgment in Shipping Corporation of India Ltd. vs. Machado Brothers and Others¹¹. In the said case, the Supreme Court inter alia considered the question as to whether in exercise of the inherent power under section 151 of the Code, the Court is empowered to dismiss the suit on the count that the suit has lost its cause of action or as otherwise being rendered infructuous. Answering the question in the affirmative, the Supreme Court enunciated the legal position as under:

25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation ¹¹ (2004) ¹¹ Supreme Court Cases 168.

nmcdl-1939-2019.J-18-5.doc has in fact become infructuous or not.

27. The question which comes to the fore is whether the pendency of the resolution plan before the adjudicating authority constitutes such circumstance which would warrant the rejection of the Plaintiff or dismissal of the suit ?

28. Except the fact that the resolution plan has been submitted by the committee of creditors and it awaits adjudication, the Defendant has not placed on record any order passed by the National Company Law Tribunal in the said Petition. It is not the case that the moratorium envisaged by section 14 of the Code 2016 is in operation. Even if the case of Defendant No.1 is taken at par and it is assumed that the liability of Defendant No. 1 as a corporate debtor is scaled down, that would not by itself constitute a bar for the continuation of the suit.

29. In the instant suit, the Plaintiff has relied upon the personal guarantees furnished by Defendant Nos. 3 and 4. The liability of the personal guarantors is co-extensive with the corporate debtor. In the case the Supreme Court has held that provision contained in section 14 and 31 of the Code, 2016 do not insulate the personal guarantor from proceeding for the recovery of the amount due under the guarantee, even if moratorium operates against the corporate 12 (2018) 17 SCC 394.

nmcdl-1939-2019.J-18-5.doc debtor under section 14 of the Code, 2016.

30. Looked from another perspective, in the event, the liability of the corporate debtor is scaled down in the insolvency resolution process awaiting adjudication before N.C.L.T., the said factor can be taken cognizance of by the Court while moulding the relief. However, in the absence of any specific bar to the continuation of the suit for recovery of the said amount neither the plaint can be rejected by resorting to the provisions contained in order VII Rule 11 nor the suit can be disposed of under inherent powers.

31. The conspectus of the aforesaid consideration is that the Notice of Motion does not deserve countenance.

32. Thus, the Notice of Motion stands dismissed.

It is hereby clarified that the observations made hereinabove were for the purpose of determination of the instant notice of motion and the summons for judgment may be considered on its own merits.

(N. J. JAMADAR, J.)