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

SUMMONS FOR JUDGMENT NO. 1 OF 2015
IN
SUMMARY SUIT NO. 808 OF 2014

M/s. Thakur Shivansh Developers Pvt. Ltd. ... Plaintiff

Vs.

Premabai L. Shenoy and ors. ... Defendants

Mr. Ajit Karwande, Advocate for the plaintiff.
Mr. Vincent D'Silva, Advocate for the defendants.

Coram : Smt. R. P. SondurBaldota, J.
Date : 20th October, 2015.

P.C. :

1. The plaintiff has filed this Summary Suit for recovery of sum of Rs.1,07,00,000/- and taken out the Summons for Judgment against the defendants. At prayer clause (a) of the plaint the plaintiff claims that the actual amount due to the plaintiff is of Rs.1,07,03,066/- but it has rounded the same off to Rs.1,07,00,000/- for the purpose of the suit.

2. The case of the plaintiff in the plaint, stated in brief is that defendant No.1 desired to transfer her business along with tenancy rights in the shop premises to it. Therefore, Deed of Assignment dated 8th October, 2010 was executed between the two. The plaintiff paid a sum of Rs.70,00,000/- to defendant No.1 as the consideration under agreement. However, defendant No.1 was

unable to get the document registered because the landlord was not willing to appear before the Registration Authorities. The plaintiff and defendant No.1 then decided to cancel the Deed of Assignment and executed Deed of Cancellation dated 20th November, 2011 for the purpose. The main clause in the Deed of Cancellation was Clause No.2 under which defendant No.2 herein, the son of defendant No.1 was to be responsible to refund the amount of consideration to the plaintiff. Accordingly, defendant No.2 handed over a post-dated cheque for Rs.87,00,000/- to the plaintiff. The cheque when presented for payment was dishonoured for the reason “funds insufficient”. Thereafter, the plaintiff initiated proceedings under Section 138 of the Negotiable Instruments Act against defendant No.2, which resulted into conviction of defendant No.2 and a direction to him to pay Rs.87,00,000/- as compensation to the plaintiff along with interest thereon at the rate of 9% p.a. from 31st January, 2012 till the payment. When despite the order, defendant No.2 failed to make the payment, the plaintiff by the notice dated 28th August, 2014 demanded payment of Rs.1,37,65,000/- being the principal amount of Rs.87,00,000/- and the interest thereon of Rs.43,06,500/- at the rate of 18% p.a. Since, the notice was not complied with, the plaintiff filed the present suit for recovery of the amount.

3. For styling the suit as a Summary Suit the plaintiff at para 6 of the plaint refers to the Deed of Cancellation as its basis but at para 10 it claims that the suit filed is for recovery of the amount due under the cheque issued by defendant No.2.

4. The affidavit-in-reply to the Summons for Judgment is filed by defendant No.2 on behalf of himself and defendant No.1, described as an elderly lady of 90 years, who is sick and infirm. Defendant No.2 states that he personally knows Mr. Ambrish Singh Ganga Singh Thakur, the Managing Director of the plaintiff Company and his son Mr. Raja Thakur, who is a practicing advocate. They had cordial relations between them in the past.

5. According to defendant No.2 the correct facts of the case are as under. Ambrish Singh Thakur and his family had advanced a sum of Rs.2,60,00,000/- to the defendants and their family for the purpose of settling certain disputes on account of which the family was facing criminal proceedings. Since then from time to time defendant No.2 had paid them a sum of Rs.43,00,000/- in cash during a period of two years as per the request of Ambrish Singh Thakur. No receipts were issued for the payments. In order to secure the money advanced by the plaintiff, Ambrish Singh Thakur and his family members, a Memorandum of Understanding dated 11th October, 2010 was executed between the two families, however, the same was not intended to be acted

upon. It was to act only as security for repayment of the money advanced to the defendants and their family. The entire amount of Rs.2,60,00,000/- had not given from one source. The defendants have annexed at exhibit 'B' to the affidavit-in-reply the list of payments received from Ambrish Singh Thakur and the members of his family. The list refers to 17 different payments received by the defendants and their family members from different persons. At the instance of Ambrish Singh Thakur, defendant No.2 agreed to give as security the family's residential premises at Flat No.603, Silver Residency, 6^{th} Floor, Ayodhya Co-operative Housing Society, Santacruz (E), the built up area of which is 1400 sq. ft. and its market value at the relevant time was of Rs.3,00,00,000/-. Then, further at the instance of the plaintiff and Ambrish Singh Thakur, the defendants and their family members also agreed to execute Deed of Assignment in respect of the shop premises located at prime location in the market area at Khar (E), of which the defendant No.1 is tenant. According to the defendants, the total area of the shop premises is about 3,000 sq. ft. and its tentative value is around Rs.4,00,00,000/-. Ambrish Singh Thakur next obtained cheque from defendant No.2 as a security for the money advanced.

6. On execution of the Memorandum of Understanding the original title deeds of the flat were handed over to Ambrish Singh

Thakur. One of the terms under Memorandum Of Understanding was that if the residential premises at Ayodhya Co-operative Housing Society were required to be sold to clear the dues the plaintiff and Ambrish Singh Thakur would clear the dues of the Developer of Rs.12,00,000/-. Because the defendants had not paid Rs.12,00,000/- to the Builder and the Developer the possession of the flat was not handed over to the defendants. Despite the facts in the year 2011 Ambrish Singh Thakur filed a suit in the Bombay City Civil Court being Suit No.1750 of 2011 for injunction simplicitor to restrain the defendants and their family members from creating any third party rights in respect of the said flat. He tricked the defendants and their family members to sign consent terms and fraudulently obtained a consent decree in respect of the flat. On discovery of the fraud and the consent decree, defendant No.2 has filed an application for setting aside the consent decree. That proceeding is pending. Ambrish Singh Thakur has filed five more Summary Suits against the defendants and their three family members, which are pending for hearing of the Summons for Judgment taken out therein. Defendant No.2 alleges that Ambrish Singh Thakur and his family members being in dominant position have been dictating terms and defendant No.2 and his family members being at their mercy have signed several documents and even blank papers.

6. Defendant No.2 admits to have issued the plaintiff company, cheque in the sum of Rs.87,00,000/-. But claims that it was not for consideration and was only by way of security to repayment of dues of Rs.2,60,00,000/- along with other securities of the residential flat and the shop. The plaintiff misused the cheque and deposited the sum for payment. Defendant No.2 has preferred an appeal against the conviction in the 138 proceedings, which appeal is admitted and pending for hearing before the Sessions Court, Mumbai.

7. The plaintiff has filed affidavit of Ambrish Singh Thakur to rejoin to the affidavit-in-reply of defendant No.2. He admits loan of Rs.2,60,00,000/- given to the defendants and their family by himself and different members of his family. He has stated the details of the expenses required to be met by the defendants with the help of the loan. He also admits that the amount of Rs.2,60,00,000/- was received by defendants from several sources i.e. the plaintiff himself and his family. There is also an admission as regards execution of Memorandum of Understanding in respect of the residential flat and the proceedings in the City Civil Court in respect of thereof. But, Ambrish Singh Thakur denies in his reply that the defendants have paid him a sum of Rs.43,00,000/- in cash.

8. It is obvious from the above pleadings that the plaintiff

has suppressed several material facts in the plaint and also the different securities provided by the defendants. Thus, there are several triable issues raised by the defendants. Hence, they are entitled to unconditional leave to defend the suit. Consequently, the Summons for Judgment is dismissed. The defendants shall file their affidavit-in-reply within a period of ten weeks from today. The suit is adjourned for directions to 29th January, 2016.

[Smt. R. P. SondurBaldota, J.]