IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 2 OF 2012
IN
SUMMARY SUIT NO. 2680 OF 2011

with

SUMMONS FOR JUDGMENT NO. 194 OF 2012
IN
SUMMARY SUIT NO. 558 OF 2012

with

SUMMONS FOR JUDGMENT NO. 195 OF 2012
IN
SUMMARY SUIT NO. 560 OF 2012

Urban Infrastructure Trustees Ltd. & Anr. …Plaintiffs
vs.
Joyce Realtors Pvt.Ltd. ...Defendant

Mr.F.E. Devitre, Senior Counsel with Mr.Jimmy P. Avasia i/b. M/s.Dastur Dadhich and Kalamb for Plaintiffs.
Mr.Pravin Samdani, Senior Advocate with Dr.Birendra Saraf, Mr.S.K. Srivastava, Ms.Manorama Mohantry, Ms.Kavita Srivastava Sharan i/b. M/s.S.K. Srivastav & Co. for Defendant.

CORAM : S.C. GUPTE, J.

13 APRIL 2015

P.C. :

These summary suits are in respect of three separate Inter Corporate Deposits. It is the case of the Plaintiffs that they kept Short Term Inter Corporate Deposits in the sums of Rs.20 crores, Rs.8 crores and Rs.40 crores with the Defendant company, which the Defendant company undertook to repay on or before certain stipulated dates. These dates were extended from time to time by written agreements. The amounts, after the last of these extensions, became due and payable, respectively, on 30 September 2009, 20 February 2009 and 20 February 2009. Out of the deposit of Rs.40 crores, forming part of

Summary Suit No.560 of 2012, sums of Rs.20 crores and Rs.8 crores paid by the Defendant to the Plaintiffs have been adjusted towards repayment of the particular Inter Corporate Deposit. The Plaintiffs have, accordingly, filed the present suits for recovery of the outstanding amounts of the Inter Corporate Deposits together with interest.

2 The main defence of the Defendant company is that the transaction between the Plaintiffs and the other promoter group represented by Everest Developers was to develop immovable properties, which were to be brought into a special purpose vehicle for carrying on business of development of properties. The Defendant company was the special purpose vehicle to be established for the purpose. It is the case of the Defendant that a term sheet was, accordingly, executed between the two promoter groups represented, respectively, by Everest Developers and the second Plaintiff, under which the second Plaintiff agreed to invest initially a sum of Rs.51 crores in the Defendant company and make further investments as mentioned in the term sheet. It is the case of the Defendant that total valuation of the projects identified for development was Rs.434.4 crores and that accordingly, the Plaintiffs were to bring in an investment of Rs.217.2 crores. Further monies, if any, were to be brought in by way of a loan at a fixed rate of interest of 12% p.a. It is the case of the Defendant that the term sheet *inter alia* contemplated that out of Rs.217.2 crores to be invested by the Plaintiffs, a sum of Rs.118.1 crores would be brought into the special purpose vehicle, i.e. the Defendant company, and Rs.99.1 crores would be repaid to entities forming part of Everest Developers towards payment for the properties brought by them into the Defendant company. The valuation summary sheet annexed to this term sheet provides the schedule and the manner in which the amounts were to be brought into the Defendant company. According to the Defendant, the promise to bring these funds forms part of the Plaintiffs' commitment to the Defendant company. It is the case of the Defendant that the Plaintiffs have till date brought in only a sum of Rs.110.39 crores out of Rs.217.2 crores. There are disputes between the two promoter groups represented, respectively, by the Plaintiffs and Everest Developers in respect of the commitments between them concerning the joint development of properties through the Defendant company, which form the

subject matter of a pending arbitration between them. It is submitted by the Defendant that the Inter Corporate Deposits, which are the subject matter of the present suits, were nothing but investments of the Plaintiffs made into the Defendant company as part of the Plaintiffs' commitment with the other promoter group, namely, Everest Developers and the Defendant. It is the case of the Defendant that due to various breaches and failures on the part of the Plaintiffs in bringing the requisite balance investment for the purposes of the development to be undertaken by it, the property could not be developed by the Defendant company and this has resulted into huge loss and damages suffered by the Defendant.

3 The Defendant relies on the term sheet, which, according to the Defendant, was executed between the parties on 28 September 2007. This term sheet is a matter of disputes between the parties. The Plaintiffs dispute the execution of this term sheet. It is a matter of fact that the monies were brought in various forms by the Plaintiffs after the execution of this term sheet. It is, however, the case of the Plaintiffs that there is a Share Subscription Agreement, which is executed subsequent to this term sheet and it was in pursuance of that agreement that these monies have been brought in by the Plaintiffs. Be that as it may, these pleadings surely disclose triable issues to be decided by the Court at the hearing of the suits.

4 It is also contended by the Plaintiffs that whatever be the umbrella agreement between the parties, particularly, the two groups of promoters, as far as the investments are concerned, the investments themselves were to be made in different forms such as subscription of shares, convertible debentures and loans. The loans to be made by the Plaintiffs to the Defendant company, assuming that they were to be made under the umbrella agreement, were to be stand alone matters, which created independent rights and liabilities between the Plaintiffs and the Defendant company. On the other hand, the Defendant's contention is that these transactions have to be viewed in a holistic manner as part of an overall understanding between the parties for development of properties by the Defendant company and as a result of the breach of such

overall arrangement, the Defendant company has incurred losses, which are recoverable from the Plaintiffs and constitute a defence to the Plaintiff's case for refund of monies owed by the Defendant to the Plaintiffs. These are also matters of trial which require evidence to be led.

5 Based on these pleadings and documents disclosed therewith, it cannot be said that the Defendant has not even an arguable case or that the defence raised by it is sham or practically moonshine.

6 In the premises, the Defendant deserves to be granted unconditional leave to defend the suit. Accordingly, the following order is passed :

(a) The Defendant is granted unconditional leave to defend the suit. The suit is transferred to the list of commercial causes.

(b) Written statement to be filed within a period of twelve weeks from today.

(c) Place the suit for directions thereafter.

(S.C. Gupte, J.)