

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

**SUMMONS FOR JUDGMENT NO.7 OF 2014
IN
SUMMARY SUIT NO.946 OF 2013**

Ahluwalia Contracts (I) Limited & Ors. ...Plaintiffs

vs.

M/s. Sheth Developers Pvt. Ltd. & ors. ...Defendants

Dr. G. R. Sharma a/w Mr. D. P. Singh, Mr. Anil Singh, Advocates
for the plaintiff.

Ms. Alpana Ghone a/w Mr. Ravi Gandhi, Mr. Mahek Kamdar & Mr.
Rashmin Jain i/by Kanga & Co., Advocates for the defendants.

Coram : Smt. R. P. SondurBaldota, J.

Date : 2nd September, 2015.

P.C.

1. The Summary Suit in which this Summons for Judgment is taken out, is for recovery of a sum of Rs.1,19,09,607/- from the defendants. As per the statement of claim annexed to the plaint, it consists of Rs.1,02,22,839/- being "Amounts as per the bills" and Rs.16,86,768/- being the interest at the rate of 18% p.a. on the principal sum upto 31st August, 2013.

2. A glance at the plaint is sufficient to know that the suit cannot be maintained as a Summary Suit. The plaintiffs refer to two transactions therein. One is of four work orders issued by the defendants to the plaintiffs for designing and construction of its construction site and the other is of issuance of two cheques dated

15th June, 2012 and 15th November, 2012 for the sums of Rs.48,00,000/- and Rs.96,00,000/- respectively. The cheques when presented for payment, dishonoured.

3. At para 8 of the plaint the plaintiffs state that the suit claim is the debt due to them payable by the defendants without specifying the debt due. But at para 9, they refer to the two cheques issued by the defendants, which have been dishonoured for justifying filing of the summary suit. The two paras read as under ;

“8) The Plaintiffs state that the present case is being filed by the Plaintiffs seeking only to recover their debt amounts of Rs.1,19,09,607/- (Rupees One Crore Nineteen Lakhs Nine Thousands Six Hundred and Seven only), which amounts are payable by the Defendants with interest @ 18% P.A. from the date of issuance of said two cheques or at least from the date of dishonouring of the said two cheques and related to the executed contractual works, out of and from which the said claimed amounts arise, details of which are given in the particulars of claims annexed hereto marked as Exhibit 'F'”

“ 9) The Plaintiffs state that since the said 2 Nos. of cheques stand issued by the Defendants in discharge of their debt liability in money towards the Plaintiffs, the present Suit falls within the scope of Order XXXVII of Code of Civil Procedure, 1908 and the Plaintiffs state that no relief, which does not fall within the ambit of Order XXXVII, Rule 2, has been claimed in the present plaint.”

4. From the above two paras it is seen that for maintaining

the suit as a Summary Suit the plaintiffs rely upon the cheques issued by the defendants. However, the claim actually made is not of the amounts under the cheques, but the amounts due under some accounts. Therefore, the suit is not maintainable as a Summary Suit. On this ground alone the defendants are entitled for unconditional leave to defend the suit.

5. The defendants have raised disputes as regards the correctness of the claim of the plaintiffs also. They allege that the work of construction carried out by the plaintiffs was found to be not upto the specifications and standard desired by the defendants. The shortcomings and defects in the work done by the plaintiffs was brought to their notice from time to time and the plaintiffs had assured the defendants that the defects would be rectified and the standard of the quality would be maintained. However, instead of taking steps to rectify the defects in the work, the plaintiffs attempted to encash the post-dated cheques given by the defendants. As the cheques were not meant to be encashed and had been given to the plaintiffs only by way of collateral security, the same were dishonoured.

6. The plaintiffs have filed affidavit-in-rejoinder denying that there are any defects or shortcomings in the work of construction carried out by them. There is, however, no denial that the two cheques issued by the defendants were towards collateral

security to be furnished to the bank for securing loan from the bank by the plaintiffs.

7. For establishing their claim in the suit the plaintiffs rely upon the documents of the bills at exhibit 'C' collectively. There are as many as 28 documents of the bills annexed which are for varying periods and varying work. The bills are seen to be signed by the plaintiffs. There is no signature of the defendants thereon. Next the plaintiffs rely upon the statement of account dated 9th October, 2012 allegedly furnished by the defendants to them disclosing the extent of the work done and the payment due therefor. The statement of accounts however does not refer to the work orders mentioned in the plaint, therefore, it is difficult to connect the statement of accounts to the four work orders mentioned above.

Ms. Alpana Ghone, the learned advocate for the defendants submits that the statements of accounts sent by the defendants to the plaintiffs do not reflect the amounts due to the plaintiffs for the work done by them. According to her, the statement merely reflects the extent of the work done at site by taking measurements by both the sides. Thereafter, there is inspection of the quality of the work done and only after the quality is certified by the defendants that the payment becomes due to the plaintiffs. The defendants have produced extensive correspondence

carried out by the plaintiffs regarding the complaints about the quality of the work done by the plaintiffs. This indicates that there is serious dispute as regards the claim of the plaintiffs.

8. Thus apart from the suit not being maintainable as a Summary Suit there are several triable issues raised by the defendants. Hence, the Summons for Judgment is dismissed. The defendants shall file their written statement within eight weeks from today. The suit to appear on the board for directions on 28th October, 2015.

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