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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.11 OF 2014

IN

SUMMARY SUIT NO.626 OF 2013

Realtors Network Pvt. Ltd. ...Plaintiff

vs

Lodha Group of Companies And Ors. ...Defendants

....

Mr. Janak Dwarkadas, Senior Counsel, a/w. Mr. Cyrus Ardeshir, i/b. A.G. Revankar & Co., for the Plaintiff.

Mr. Virag Tulzapurkar, Senior Counsel, i/b. Wadia Ghandy & Co., for Defendant Nos. 1 to 6.

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CORAM : S.C. GUPTE, J.

DATED : JANUARY 21, 2015

P.C. :

. The suit is in respect of a brokerage contract between the Plaintiff and Defendant No.1. Defendant No.1 is described as the Lodha Group, which is an Association of Defendant Nos. 2, 3 and 4. The Plaintiff is claiming brokerage and interest in connection with an immovable property of Defendant No.6, called 'Mumbai Textile Mill land of DLF Group', which was proposed to be sold by Defendant No.6 in conjunction with the DLF Group. The Plaintiff offered to act as an agent on commission basis for striking a deal between M/s. DLF and Defendant No.1 for this land. The Plaintiff addressed a communication dated 18 August 2011 to Defendant No.1 proposing to act as an agent on

commission basis. This letter was followed by another letter addressed by the Plaintiff to Defendant No.1 disclosing certain facts relating to the property. It is the case of the Plaintiff that, in response to the proposal of the Plaintiff, Defendant No.1 through its authorised signatory Defendant No.7 addressed a communication dated 25 August 2011 to the Plaintiff accepting its mandate to act as a broker for the Mumbai Textile Mill land of DLF Group owned by Defendant No.6 and agreed to pay 2% brokerage on the conclusion of the deal. It is the case of the Plaintiff that in pursuance of the agreement between the parties, the land deal between the DLF Group and Defendant No.1 was concluded for a total transaction value of Rs. 2727 crores. The Plaintiff, accordingly, claims its 2% commission aggregating to Rs.61.28 crores together with interest.

2. The Summons for Judgment is opposed by the Defendants. It is submitted, firstly, by Defendant Nos. 1 to 6 that Defendant No.7, who had issued the purported acceptance letter dated 25 August 2011, had no authority to issue such letter. It is the case of Defendant Nos. 1 to 6 that Defendant No.7 was incharge of the property deals to be concluded on behalf of the Lodha Group only for the regions of Thane and Bhiwandi and not for the region of Mumbai. Secondly, it is claimed that the board of directors has not passed any resolution for payment of any agency commission to the Plaintiff towards brokerage of the subject deal. Thirdly, it is claimed that no services have actually been rendered by the Plaintiff to these Defendants towards the subject deal.

3. The question whether or not Defendant No.7 had the requisite authority to issue the letter dated 25 August 2011, is a matter

of trial. The parties will have to lead evidence to show whether Defendant No.7 had the requisite authority and, therefore, whether the letter addressed by him binds Defendant Nos. 1 to 6. Secondly, whether or not the Plaintiff rendered the service envisaged by the agency contract and whether he is entitled to the brokerage claimed to be due are also matters of dispute, which need to be tested in the trial. Mr. Tulzapurkar, learned Senior Counsel appearing for the Plaintiff relied on a judgment of Patna High Court in the case of **Union of India v/s Motilal Kamalia**¹ and a judgment of our Court in the case of **Rabo Bank Singapore v/s State Bank of Hyderabad, Mumbai**². Relying on these authorities, it is submitted that once the Defendants accept that their employee had the requisite authority, the case that there were restrictions on such authority, cannot be set up by the Defendants unless the Defendants are in a position to show that the Plaintiff was made aware of these restrictions. No such general proposition emerges from the two judgments referred to by the learned Counsel for the Plaintiff. The case before the Patna High Court was a case, where the defendant was pleading a fraud and the Court found the necessary averments to found such a plea to be wanting and in the facts of that case, came to a conclusion that the limitations pleaded by the defendant were of no value unless third parties were made aware of this. So also, no general proposition regarding restrictions of an admitted authority, as submitted by Mr. Tulzapurkar, is deducible from the case of **Rabo Bank**. That was a case, where the Defendant Bank had signed bills of exchange together with a written contract, out of which the claims in the case arose. In the facts of the case, the Court came to a conclusion that the defence of lack

1 AIR 1962 Patna 884 (V 49 C 188)

2 SJ No.238/08 in SS No.1586/2001 dtd. 15.10.13.

of authority was not a genuine defence but a frivolous defence. That was in the context of facts of that particular case.

4. In the premises, the Defendants have made out a case of bonafide defence, raising triable issues. Accordingly, the Defendants are granted unconditional leave to defend the suit. The suit is transferred to the list of commercial causes. Written statement to be filed within six weeks. Place the suit for directions after six weeks, i.e. on 13 March 2015.

(S.C. GUPTE, J.)