IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 20 OF 2015
IN
SUMMARY SUIT NO. 172 OF 2015

CMS Computers Limited .....Plaintiff
: V/S :
Kalati Constructions Private Limited .....Defendant

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Mr. Vikram Nankani, Senior Counsel a/w. Mr. Amit Vyas, Mr. Varun Mamniya, Mr. Prithvi Choudhari & Ms. A.A. Mujawar i/by. Economic Laws Practice, Advocate for the plaintiff.

Mr. Mahesh Jethmalani, Senior Counsel a/w. Mr. Abhay Jadeja and Ms. Gunjan Mangla, i/by. Crawford Bayley & Co., Advocate for the defendant.

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

21st October, 2015.

P.C. :-

1). This Summons for Judgment is taken out in the suit for recovery of, sum of Rs.2,37,69,896/- and further interest thereon at the rate of 12% p.a. from the date of the decree.

2). The brief case of the plaintiff is that, sometime in the year 1990 the plaintiff through it's the then Managing Director, Mr. Rakesh Grover had invested a sum of Rs.1,58,56,000/- in a proposed project of the defendant by name “Duru House” for premises admeasuring 5,000 sq.ft.

No formal agreement in respect thereof was entered into between the parties. The amount thereafter continued with the defendant and was being shown as the outstanding amount in its balance sheet until the year ending 31st March, 2011. During the lifetime of Rakesh Grover, several meetings had taken place in which the defendant had assured either return of the amount with interest or compensation in lieu of the proposed area of 5,000 sq.ft. Rakesh Grover passed away on 5th March, 2011. The plaintiff, then by its letter dated 28th December, 2011 made a demand for return of the amount with interest from the defendant and thereafter by advocate's notice dated 13th June, 2013 demanded return of the amount. When the defendant denied it's liability, after some more correspondence, the plaintiff filed the present suit on 21st February, 2015. For bringing the suit within the ambit of Order 37 of Civil Procedure Code, the plaintiff relies upon the books of accounts of the defendant. It contends that the suit deserves to be filed as a summary suit as the outstanding amount is admittedly due to it as per the defendant's books of accounts.

3). The Summons for Judgment is contested by the defendant mainly on three grounds. Firstly, that the suit cannot be maintained as a summary suit. Secondly, that the suit is barred by the law of limitation and thirdly that the transaction reflected in the suit is not a legal transaction.

4). Perusal of the plaint clearly shows that, the same does not fall within the four corners of Order 37 Civil Procedure Code. The claim made therein is based neither on a bill of exchange nor is a debt due under an agreement in writing. The balance sheet of the defendant, can hardly be said to be an agreement between the parties giving rise to any debt. Therefore, the suit as filed is clearly not maintainable as a summary suit. On this ground alone, the Summons for Judgment is liable to be dismissed.

5). Coming to the question of bar of limitation, the decision thereon would be dependent upon ascertainment of the nature of the claim in the suit. Perusal of the plaint shows that, the cause of action pleaded therein is not very specific and clear. At para-4 of the plaint, the plaintiff alleges an oral agreement for sale of immovable property arrived at in the year 1990 and payment of Rs.1,41,00,000/- to the defendant in the same year. It was allegedly agreed that until such time, a formal agreement was executed between the parties, the outstanding amount shall stand as loan by the plaintiff to the defendant. Accordingly, the outstanding amount has been shown as “unsecured loan” by the defendant in its books of accounts and this fact is reflected in the balance sheet of the defendant. Admittedly, no formal agreement has been executed between the parties in respect of the sale of immovable property at any point of time subsequently. Further, at para-6 of the plaint, the plaintiff claims that after the death of its Managing Director on 5th March, 2011 several meetings had taken place between its officers and the Management of the defendant in which it was assured by the defendant that, either on completion of construction, conveyance in respect of the premises would be executed or the outstanding amount returned with interest or compensation in lieu of the proposed area of 5,000 sq.ft would be paid, which ever is higher. Then, at para-9, the plaintiff refers to the letter dated 20th December, 2011 sent to the defendant for return of the outstanding amount with interest. By the said notice, the plaintiff demanded payment of the principle amount of Rs.1,58,56,000/- and interest thereon of Rs.23,50,57,355/- @ 24% p.a. (yearly cumulative) with effect from 1st April, 1995. The actual claim made in the suit, however is for Rs.1,41,00,000/- towards the principle and Rs.96,69,896/- towards interest @ 24% p.a. At para-21 of the plaint, the plaintiff describes the suit claim as “loan amount advanced”. Therefore, the claim made in the suit is to be taken as “for payment of loan advanced” by the plaintiff to the defendant sometime in the year 1990.

6). The suit for recovery of the money lent would be governed by Article 19 of the Schedule to the Limitation Act, which provides for limitation of 3 years with the starting point of the period of limitation as the date on which the loan is made. In that case, the period of limitation for the plaintiff to file suit for recovery of the loan amount started running from the date in the year 1990 when the amount was handed over to the defendant. This date is not specified in the plaint. The plaintiff alleges that until the year ending 31st March, 2011 the balance sheet of the defendant reflected amount of Rs.1,41,00,000/- as the "unsecured loan" from the plaintiff but the balance sheet for the financial year 2011-12 did not reflect the amount. On this background of pleadings, the plaintiff alleges, at para-19 of the plaint, as regards the limitation, as follows :-

> "The Annual Report for the years 2011-12 was finalized by the Defendant in September 2012 in which for the first time, no amount was shown as payable to the plaintiff. Alternatively, prior thereto the Defendant for the first time refused to pay vide letter dated 18th January, 2012. The Suit is, therefore, within limitation and no part of the reliefs as claimed herein is barred by limitation."

Thus, the plaintiff has, without specifying the provision under the Limitation Act, contended that the cause of action for the plaintiff to file suit for recovery of the amount arose for the first time on 18th January, 2012 with denial of it's claim and therefore the suit filed according to it was within the period of limitation. Thus, on the pleadings as set out in the plaint, no case of saving of the period of limitation is made out.

7). Mr. Nankani, the learned Senior Counsel appearing for the plaintiff submits across the bar in justification of the suit that, the same would be governed by Article 113 of the Schedule to the Limitation Act, which is the residuary provision. It prescribes period of limitation of three years with it's starting point being the date on which the right to sue accrues. He submits that the defendant refused to pay the amount for the first time on 18th January, 2012 and therefore the suit lodged in the year 2014 is within the period of limitation. The submission needs to be rejected outright as the residuary clause comes into operation only when no period of limitation is provided elsewhere in the Schedule to the Limitation Act. The suit herein being provided for by Clause-19 of the Schedule, the residuary clause cannot be resorted to.

8). Mr. Nankani, then seeks to rely upon Section 18 of the Limitation Act to submit that the acknowledgement in writing of the debt by the defendant in its balance sheet for the year ending on 31st March, 2011 would save the period of limitation and a fresh period of limitation needs to be computed from the date of acknowledgement. Mr. Jethmalani, the learned Senior Counsel appearing for the defendant, submits in reply that, reliance by the plaintiff on the entries in the

Balance Sheet is not correct. According to him, the entries do not constitute an acknowledgement of the suit claim. It is his further argument that, even if the entries in the balance sheet are to be treated as acknowledgement, the suit has not been filed within the period of 3 years from 31st March, 2011. Therefore, in any case, the same is barred by the law of limitation.

9). For an acknowledgment in writing to save the period of limitation, it must be clear, specific and made before expiration of the prescribed period of limitation. The prescribed period of limitation in the case on hand, being of 3 years from the date of payment of money, the acknowledgement ought to have been within that period. However, as already mentioned earlier, the date of payment is not disclosed in the plaint. In that circumstance, resort to Section 18 of the Limitation Act would be difficult. The reliance placed by the plaintiff in the suit is only on the balance sheet for the year ending on 31st March, 2011. As regards the period prior thereto, the plaintiff baldly claims at para-5 of the plaint that, the outstanding amount has all along been shown as “unsecured loan” by the defendant in its books of accounts. Therefore, at the moment, there is no material on record to establish that the balance sheets of the defendant during the period of 3 years from the date of the payment also reflected the amount as “unsecured loan” and since then continued to reflect till the year ending on 31st March, 2011. In the absence of such material on record, the question of limitation would be a triable issue in the suit. I also find substance in the submission of Mr. Jethmalani that the suit has not been filed within the period of 3 years even from the date of balance sheet for the year ending on 31st March, 2011. On this ground also, the defendant would be entitled to unconditional leave to defend the suit.

10). As regards the third contention of the transaction reflected in the suit being an illegal transaction, Mr. Jethmalani submits that an agreement to purchase any immovable property in the early 1990s violated the provision of Chapter (XX)(C) of the Income Tax Act read with Income Tax Rules, 1961. Therefore, the same is void and unenforceable. This is yet another triable issue raised by the defendant. Hence, the Summons for Judgment is dismissed. Unconditional leave is granted to the defendant to defend the suit. The defendant shall file written statement within a period of 8 weeks from today. The suit is adjourned for directions to 9th December, 2015.

(SMT. R.P. SONDURBALDOTA, J)