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

SUMMONS FOR JUDGMENT NO. 139 OF 2011
IN
SUMMARY SUIT NO.866 OF 2005

Maharashtra Film Stage & Cultural Development Corporation Ltd. ...Plaintiff

vs

Neelmudra Entertainment Ltd. ...Defendant

.....

Mr N.R.Bubna for the Plaintiff.
Mr S.V.Sadavarte for the Defendant

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CORAM : S.C. GUPTE, J.

FEBRUARY 26, 2015

P.C. :

The Summons for Judgment is taken out in a suit for a liquidated sum of money payable to the Plaintiff on the basis of a written agreement. The written agreement is contained in two letters, dated 10 April 2003 and 3 May 2003. The short facts of the Plaintiff's case may be stated as follows:

2 The Plaintiff is a corporation established by the Government of Maharashtra with the objective of developing, aiding, assisting and financing production, distribution and exhibition of films generally and especially in Marathi language. On 4 March 2002, an agreement was purportedly entered into between the Plaintiff and the Defendant, who were in the process of developing, producing and releasing a bi-lingual feature film tentatively titled as “Invaders” in a two language format, namely, English and Hindi. The agreement envisaged that the Plaintiff would offer a sum of Rs.1.7 crores to the Defendant by way of a part financial accommodation to fill in the gap in the seed capital requirements of the Defendant for the project. The agreement envisaged sharing of 8 % net profits of the project by the Plaintiff. The agreement also provided for payment of

interest at the rate of 15 % p.a. from the dates on which the respective installments of finance were given by the Plaintiff to the Defendant. The agreement reserved a power to the Plaintiff to terminate the agreement by a written notice of 90 days, in case the progress of the project was not found satisfactory by the Plaintiff. In the event of such notice of termination, the Defendant was bound to refund all the cash investments by the Plaintiff, within a period of 60 days from the date of termination of the agreement. The project did not admittedly take off in time. By its notice dated 10 February 2003, the Plaintiff terminated the suit agreement and called upon the Defendant to refund the amount of Rs.1.95 crores paid by the Plaintiff to the Defendant along with the interest at the rate of 15 % p.a. In the termination notice, it was claimed by the Plaintiff that the agreement entered into by the Defendant with the then Managing Director of the Plaintiff was not a bona fide commercial transaction in the ordinary course of business, and that the agreement was entered into with a fraudulent intention to benefit the Defendant at the cost of the Plaintiff corporation. It was claimed that the agreement had been entered into without obtaining the approval of the Board of Directors of the Plaintiff Corporation. The Plaintiff, in the premises, disowned the suit agreement dated 4 March 2003, treating the same to be non-est. Without prejudice to this contention, the Plaintiff terminated the suit agreement, as noted above, on the ground that the progress of the project was not found satisfactory by the Plaintiff. It appears that in pursuance of the demand for refund, a revenue recovery certificate was applied for by the Plaintiff from the Collector of Pune and Collector of Mumbai. In response to this application, a notice of demand under Section 267 of the Maharashtra Land Revenue Code, 1966 ("MLR Code") was issued by the Collector of Mumbai, calling upon the Defendant to deposit a sum of Rs.1.95 crores within 20 days of receipt of the notice, failing which the land and other immovable property of the Defendant would be attached and sold under Section 267 of the MLR Code. After this notice was issued by the Collector of Mumbai, the Defendant, through its Advocate's letter dated 10 April 2003, offered to accept the notice of termination dated 20 March 2003 in terms of clause 23 of the agreement, the termination taking effect on the expiry of 90 days from the date of the notice. The Defendant offered to refund the entire amount of Rs.1.95 crores in one lump-sum payment within 60 days of such termination, i.e. within 150 days of the date of the termination notice (20 March 2003). The letter called upon the Plaintiff to withdraw its earlier communication and application made to the Collector for recovery of the amount as arrears of land revenue. The letter of 10 April 2003 was followed by another letter dated 3 May 2003 addressed by the Defendant to the Plaintiff. This latter communication *inter alia* clarified that along with the original amount of Rs.1.95 crores mentioned in the letter dated 10 April 2003, the Defendant would also pay interest on the whole amount at the rate of 15 % p.a., to be calculated from the date of receipt of the particular installments of the principal amount paid by the Plaintiff to the Defendant. The Defendant, accordingly, requested the Plaintiff to withdraw the revenue recovery initiated by the Plaintiff before the Collector of Mumbai. In response to this letter, by a communication of the same date, i.e. 3 May 2003, the Plaintiff called upon the Collector of Mumbai to keep the revenue recovery on hold for a period of two months. The Plaintiff also requested the Collector of Mumbai to de-seal the premises of the Defendant attached by the Collector. Further correspondence ensued between the parties. It is pertinent to note that the refund offered by the Defendant to the Plaintiff, i.e. Rs.1.95 crores together with the interest at the rate of 15 %, was not contested by the Defendant in the course of this correspondence. On these facts, the present Summary Suit has been filed by the Plaintiff.

3 After the Writ of Summons was served on the Defendant, there was a delay of 30 days in filing an appearance. That delay was condoned on a Chamber Summons taken out by the Defendant and the office was directed to take the appearance of the Defendant on record. That was by an order dated 9 March 2011. After the appearance was taken on record, the Defendant did not file any affidavit in reply within the stipulated period. The Defendant thereafter took out another Chamber Summons, Chamber Summons No.221 of 2012, seeking condonation of 12 months' delay in filing an affidavit in reply. That Chamber Summons was directed to be placed along with the Summons for Judgment, taken out by the Plaintiff in the meantime. When the matters were called out before the Court on the next date, none appeared for the Defendant. As a result one last opportunity was given by this Court to the Defendant to

remain present on the next occasion and the matter was stood over. On the next date, i.e. 23 December 2013, once again none appeared for the Defendant. This Court, by a detailed order, considering the averments made in the plaint and all the documents annexed thereto, made the Summons for Judgment absolute and directed a decree to be drawn in favour of the Plaintiff in terms of prayer clause (a) of the plaint and as per the statement of claim at Ex F to the plaint, with costs. An undertaking on the part of the Advocate of the Plaintiff to file the original documents in support of the Plaintiff's claim was accepted. The Summons for Judgment was made absolute on the basis of this undertaking, which the Plaintiff was directed to file on or before 20 January 2014. As far as the Chamber Summons of the Defendant, Chamber Summons No.221 of 2012, was concerned, the same was disposed of as not surviving. The Plaintiff, thereafter, took out a Notice of Motion, being Notice of Motion (L) No.118 of 2014, for permission to produce secondary evidence by way of true copies of the documents referred to and relied upon in the plaint. The Notice of Motion was heard by this Court on 13 March 2014. Both the Plaintiff and the Defendant appeared through Counsel. This Court, after taking into account the peculiar facts and circumstances of the case, and conscious of the fact that the Notice of Motion sought permission to lead secondary evidence by way of modification of the pre-condition of the order dated 23 December 2013 decreeing the suit, observed that it was inclined, in any event, to exercise powers under Section 151 of the Code of Civil Procedure, 1908, (“CPC”) to waive the pre-condition and accept true copies of the documents filed, in view of the explanations set out in the affidavit of the Plaintiff. This Court also recorded an offer made by the Court to the Defendant to deposit in the Court a sum of Rs.1.70 crores, which was declined by the Defendant. This Court also noted that the Defendant had omitted to take out any application for relief under Order 37 Rule 4 of the Code of Civil Procedure. In that view of the matter, this Court accepted true copies of the documents in compliance with the order dated 23 December 2013, thus disposing of the Notice of Motion.

4 The matter was thereafter carried in appeal by the original Defendant. There were two appeals filed by the original Defendant, namely,

Appeal (L) No.73 of 2014 challenging the order dated 23 December 2013, disposing of the Chamber Summons and decreeing the suit, and Appeal (L) No. 225 of 2014, challenging the order dated 13 March 2014 passed on the Plaintiff's Notice of Motion, i.e. Notice of Motion (L) No. 118 of 2014. The Appellate Court *inter alia* noted that absent an affidavit in reply and absent anything else, the conduct of the parties established that the Plaintiff had accepted the composite proposal contained in the Defendant's letter dated 10 April 2003. This Court noted that in view of the clear agreement to repay the amounts and also in view of the fact that there was no affidavit in reply, the impugned order decreeing the suit was entirely justified. The Appellate Court, however, was inclined to grant the original Defendant an opportunity of contesting the claim on merits with a view of ensuring that there was no cause for grievance on its part. On the Appeal from the Plaintiff's Notice of Motion, namely, Appeal (L) No. 225 of 2014, challenging the order dated 13 March 2014 permitting the Plaintiff to lead secondary evidence by way of true copies of the documents referred to and relied upon, the Appellate Court was of the view that there was no infirmity in the order passed in the Notice of Motion. The Appellate Court noted that it was not the Defendant's case that the documents were forged or fabricated; that the Defendant did not even contend that the letters were false or fabricated, thereby admitting all the documents. In the premises, the Appellate Court allowed Appeal (L) No.75 of 2014, setting aside the order making the Summons for Judgment absolute, and dismissed Appeal (L) No.225 of 2014, upholding the order allowing secondary evidence of true copies.

5 After the order allowing the Summons for Judgment was set aside by the Appeal Court, the Defendant has filed its reply to the Summons for Judgment. The following defences have been raised to the Plaintiff's claim:

(i) It is submitted that the agreement dated 4 March 2002 between the parties was executed on Rs.100/- stamp paper. (It is not contended by the Defendant in the reply that this stamp paper was in any way inadequate. Even at the hearing of the Summons for Judgment today, Learned Counsel for the Defendant could not make any submission on the inadequacy of the stamp.)

(ii) It is submitted that the Plaintiff failed to comply with its obligations under the agreement dated 4 March 2002. (The reply does not state which obligation of the Plaintiff was not complied with and in what manner.)

(iii) It is submitted that the agreement was a joint venture agreement under which the Plaintiff had a share in the profits, and that in the premises, the suit in the form of a Summary Suit was not maintainable.

(iv) It is submitted that the agreement was never legally terminated by the Plaintiff; that the plea that the agreement was void, was not sufficient to file the present suit. It is submitted that the agreement was not void or non-est or not binding upon the Plaintiff;

(v) It is submitted that the Plaintiff was not in possession of any original documents; that this fact was not disclosed in the body of the plaint; and that in the premises, the Summary Suit was not maintenable.

These are the only grounds raised in defence to the Plaintiff's claim in the Summary Suit.

6 As noted above, the first two grounds of defence do not even call for any serious consideration. The Defendant has been unable to show that the agreement required stamp of any particular value or that the stamp paper, on which it was written, was of inadequate value. As far as the alleged non-compliance of the Plaintiff's obligations is concerned, there is not a single averment in the reply as to which particular obligation of the Plaintiff was not complied with. Even during the course of the hearing, no particular reference was made to any obligation of the Plaintiff under the agreement dated 4 March 2002

in this behalf. In any event, the suit is really based on the agreement to pay contained in the two letters dated 10 April 2003 and 3 May 2003. These two letters not only admit the Defendant's liability to refund the amount with interest, which in turn arises upon an admitted document between the parties, namely, the agreement of 4 March 2002, but contain an unequivocal promise to pay the admitted amount. There is thus no substance in the two defences noted above.

7 As far as the third defence, noted above, is concerned, the agreement was no doubt a joint venture agreement, under which the Plaintiff was to share the profits of the project in a particular ratio. Yet the agreement clearly provided that in the event the Plaintiff found the progress of the project to be unsatisfactory, the Plaintiff was very much entitled to terminate the suit agreement and demand refund of its money. The Plaintiff has not merely proceeded on the footing that the agreement was non-est, which the Plaintiff was entitled to disown, but that by way abandon action, the Plaintiff actually terminated the agreement on the footing that the progress of the project was not found satisfactory by the Plaintiff. There is no defence on merits in so far as inadequate progress of the project is concerned. There is, thus, no substance whatsoever in the defence that the agreement being an agreement to share profits, no Summary Suit was maintainable or that the agreement was not legally terminated by the Plaintiff at any time. In fact, quite to the contrary, the two admitted communications addressed by the Defendant to the Plaintiff, namely, the letters dated 10 April 2003 and 3 May 2003, clearly proceed on the footing that the Defendant has accepted the termination as a valid termination under clause 23 of the agreement and offered to refund the amount within 150 days of the date of the letter of termination. The Defendant, thus, has no statable defence on these two grounds either.

8 It is lastly contended by the Defendant that the Plaintiff not having disclosed the availability of originals of the documents with the Plaintiff when the suit was filed, the Plaintiff is not entitled to maintain the present Summary Suit. As noted above, the Appellate Court has already allowed the Plaintiff's application to lead secondary evidence in the form of true copies of the documents referred

to and relied upon in the plaint. Though the effect of these documents, namely, their evidentiary value, is a matter of trial and which was left open by the Appellate Court, the question as to whether or not the Plaintiff has made out a case for leading of secondary evidence, was not left open and stood concluded by the order of the Appellate Court. If that is so, there is absolutely no merit in the contention that the Plaintiff not having referred to the factum of loss of original documents in the plaint, the present Summary Suit is not maintainable.

9 In that view of the matter, there is neither a good defence nor a fair or bona fide defence available to the Defendant to contest the present suit. The facts indicated by the Defendant in its reply are not even such as would require an opportunity to the Defendant to make out its defence at the trial. As noted above, the Defendant has not even a statable defence, which could be allowed to go to trial. The Summons for Judgment, thus, deserves to be made absolute. Accordingly, the Summons for Judgment is made absolute and the suit is decreed in terms of the prayer clauses (a) and (b) of the plaint.

(S.C.GUPTE J.)