

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

SUMMONS FOR JUDGMENT NO.32/2015
IN
SUMMARY SUIT NO.841/2014

M/s. Dynamix Realty

... Plaintiff

V/s.

UBS Dream Construction Ltd.

... Defendant

Mr. Piyush Raheja with Ms. Rutuja patil i/b. Negandhi Shah &
Himayatulla for the Plaintiff.

Mr. Naushad Engineer a/w. Phiroz Merchant i/b. Apex Law Partners for
the Defendant

CORAM: K.K. TATED, J.
DATED : DECEMBER 2, 2015

PC. :

1. Heard the learned counsel for the parties.
2. The Plaintiff filed the summary suit for recovery of Rs.5,42,26,167/- with future interest on principal amount of Rs.2,75,00,000/- @ 24% p.a. The summary suit is filed on the basis of agreement for sale of TDR dated 12/01/2010. The learned counsel for the Plaintiff submits that as per the said agreement, the Plaintiff agreed to sell TDR of 3130.00 sq.mtr. equivalent to 33691.32 sq.ft. out of DRC bearing certificate No.SRA/835/CONST dated 30/09/2009 for total consideration of Rs.5,39,06,112/-. Out of said total consideration, the Defendant paid Rs.2,13,27,990/- and the remaining balance was

Rs.3,25,78,122/-. He submits that thereafter the Defendant paid Rs.10,78,122/- on 21/01/2010 and Rs.40,00,000/- on 06/08/2010. He submits that as per clause 1(a) of the said agreement, the Defendant was supposed to pay the balance amount on or before 15/01/2010 or deduction of said TDR from the DRC, whichever is earlier. Hence, they filed the present summary suit for recovery of Rs.2,75,00,000/- and the Summons for Judgment.

3. The learned counsel for the Defendant vehemently opposed the Summons for Judgment. The Defendant filed their Affidavit-in-Reply dated 04/08/2015. The learned counsel for the Defendant submits that the suit as it is filed by the Plaintiff on 18/09/2014 itself is barred by law of limitation. He submits that as per clause 1(a) of the agreement for sale of TDR dated 12/01/2010, the Defendant was supposed to pay balance amount on or before 15/01/2010. He submits that the Plaintiff has filed the suit beyond the period of limitation i.e. more than 3 years. Hence, there is no question of entertaining the suit. He further submits that even the Plaintiff has made incorrect statement in paragraph 7 of the plaint. He submits that as per the agreement dated 12/01/2010 the Defendant was supposed to pay balance on or before 15/01/2010 or deduction of the said TDR from the DRC, whichever is earlier, whereas the Plaintiff has made a statement in paragraph 7 putting the words “**whichever is later**” instead of “**whichever is earlier**”. He further submits that as the Plaintiff made an incorrect statement, the Summons for Judgment be rejected.

4. Considering the submissions made by the learned counsel for the

Defendant and perusal of the agreement dated 12/01/2010, *prima facie*, I am satisfied that the Plaintiff has filed the suit beyond limitation. Hence, the Defendant is entitled for conditional leave to defend the suit.

5. Hence, following order is passed:

- a. Summons for Judgment is rejected.
- b. Unconditional leave is granted to the Defendant to defend the Summary Suit No.841/2014.
- c. The Defendant is permitted to file written statement on or before 15/01/2016 with copy to other side.
- d. Parties to complete their inspection and discovery of documents within 4 weeks thereafter and file affidavit of documents and compilation of documents in the Department.

S.O. to 08/02/2016 “for directions”.

(K.K. TATED, J.)