IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 33 OF 2015
IN
SUMMARY SUIT NO. 945 OF 2014

M/s. Dynamix Realty .....Plaintiff
: V/S :
Grace Works Realty &
Leisure Private Limited .....Defendant

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Mr. Gaurav Joshi, Senior Counsel with Ms. Rujuta Patil i/by. Negandhi, Shah & Himayatullah, Advocate for the plaintiff.

Mr. Vikram Nankani a/w. Mr. Parag Kabadi and Ms. Geetanjali Joshi i/by. Doijode Associates, 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 a summary suit for recovery of Rs.18,40,60,970/- being debt due to the plaintiff under the written contract being agreement for sale of TDR dated 7th March, 2011 between the parties.

2). The plaintiff agreed to sell the TDR to the extent of 48,450 sq.mtrs for the payment as scheduled in the agreement. The payment was to be made in four installments. There is no dispute as regards the payment of the first three installments. The fourth installment of Rs.34,51,20,750/- was to be paid on expiry of 180 days from 10th April, 2011. The period of 180 days from that date expired on 7th October, 2011. Further, undisputedly there was grace period available to the defendant of 7 days. Therefore, the last date on which the payment could have been made was 14th October, 2011. Clause-5 of the Agreement provided, for interest at the rate of 15% p.a. from the due date of payment till payment.

3). About 2 months prior to the due date of payment, the Deputy Director- Directorate of Enforcement, Ministry of Finance, India, by the order dated 30th August, 2011 passed under Section 5(1) of the Prevention of Money Laundering Act, 2002 ("the Act" for short) provisionally attached an amount of Rs.69,02,41,500/- payable by the defendant to the plaintiff. Subsequently, the provisional attachment was confirmed by the adjudicating authority by its order dated 10th January, 2012 under Section 6 of the Act. The plaintiffs have challenged the order in the appropriate forum and the proceedings are pending for final disposal. The Deputy Directorate of Enforcement by his letter dated 3rd September, 2014 called upon the plaintiff to deposit the amount of Rs.69,02,41,500/- with it. Therefore, the plaintiff immediately by its letter dated 12th September, 2014 called upon the defendant to pay the balance outstanding amount as on that date of Rs.34,51,20,750/- under the agreement together with interest at the rate of 15% p.a. from the due date i.e. 10th April, 2011 till the payment and issue the cheque for the amount to the account of “Joint Directorate of Enforcement (PMLA) Account”. One M/s. Pheonix Mills Ltd replied the plaintiff's letter and intimated that on that day, an amount of Rs.34,51,20,750/- was deposited in the bank account of Joint Directorate of Enforcement (PMLA) Account with the Union Bank of India, New Delhi. It claimed that, with that payment, there was no further liability to be discharged under the agreement for purchase of TDR. Pheonix Mills Ltd had claimed that, it was the nominee of the defendant to the extent of the TDR of 38,600 sq.mts. The plaintiff alleges that, it has no privity of contract with Pheonix Mills Ltd. However, has restricted its claim to the amount of Rs.18,40,60,970/- being the interest due and payable by the defendant under the agreement. When the defendant failed to respond to the demand for the interest, the plaintiff filed the present suit for its recovery. It is alleged in the plaint that, the defendant, even after the attachment of the amounts by the Enforcement Directorate, had continued to enjoy the same.

4). The defendant contests the Summons for Judgment and the suit disputing its liability to pay interest to the plaintiff. According to the defendant, it had paid all the three installments in time. As regards the fourth installment, with the attachment of the amount of the installment, in its hands by the Directorate of Enforcement, the amount stood set apart for the plaintiff and was not available to the defendant since the date of provisional attachment on 30th August, 2011. As such, Clause-5 of the agreement for payment of interest, did not become alive. *Prima-facie*, there is substance in the contention of the defendant.

5). Since the claim in the suit is only for the interest and a triable issue has been raised by the defendant regarding the liability to pay the interest, the defendant would be entitled to conditional leave to defend the suit on that ground alone. There are other triable issues also raised by the defendant including the bar of limitation. In the circumstances, the Summons for Judgment is dismissed. The defendant is granted unconditional leave to defend the suit. The defendant shall file written statement within a period of 8 weeks from today. The suit shall appear for directions on 16th December, 2015.

(SMT. R.P. SONDURBALDOTA, J)