

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

**SUMMONS FOR JUDGMENT NO. 41 OF 2014
IN
SUMMARY SUIT NO. 307 OF 2014**

1. Shri Narendra Manish Nandu of Mumbai .. Plaintiff

In the matter between :

1. Shri Narendra Manish Nandu of Mumbai & Ors. .. Plaintiffs

Vs.

Mr.Babhabhai Peerbhai Chudesra .. Defendant

Mr.Dhiren Akbari for plaintiff.

None for defendant.

Mr.D.D.Manjrekar, Section Officer Court Receiver Branch.

CORAM : K.R.SHRIRAM, J.

DATE : 8TH JUNE 2015

P.C.

1 This summons for judgment is taken out by the plaintiffs for an order and decree against the defendant to recover a sum of Rs.1,05,00,000/- being the principle amount payable by the defendant to the plaintiffs along with interest of Rs.71,48,416/- at 24% p.a. aggregating to Rs.1,76,48,416/- upto 28.02.2014 together with further interest at 24% p.a. or any other rate as the Court may deem fit and proper from 1.03.2014 till the date of the payment/or realization thereof.

2 In the year 2011, the defendant represented to the plaintiffs that he is the owner of the plot of lands more particularly described in Schedule A and B of the Agreement for Sale of Commercial premises dated 17.03.2011 (the said Agreement). As mentioned in the said agreement, the defendant represented to the plaintiffs that he is in use, occupation and possession and enjoying the property mentioned in the schedule A and B of the said agreement and that he proposed to develop the said plots of land by constructing a building thereon. Relying upon representations made by the defendant, the plaintiffs agreed to purchase the commercial premises admeasuring 3000 sq.ft. (saleable), i.e., 1800 sq.ft. carpet area on the first floor of the proposed to be constructed building. The plaintiffs agreed to purchase the said commercial premises for the price and consideration amount of Rs.2,10,00,000/- was to be paid as under :

(3) The Purchaser hereby agrees to pay the total price and consideration of Rs.2,10,00,000/- (Rupees Two Crores and Ten Lacs Only) to the Owner/Developer in the following manner :

(i) On or before execution hereof Rs.30,00,000/- (Rupees Thirty Lacs Only), the receipt whereof the Owner/Developer admits and acknowledges and has signed the receipt mentioned hereinafter.

(ii) Rs.30,00,000/- (Rupees Thirty Lacs Only) on or before 17.04.2011 shall be paid by the Purchaser to the Owner/Developer.

(iii) Rs.45,00,000/- (Rupees Forty Five Lacs only) on or before 17.05.2011 shall be paid by the Purchaser to the

Owner/Developer.

(4) The balance amount of Rs.1,05,00,000/- (Rupees One Crore and Five Lacs only) shall be paid by the purchasers in the following manner :-

(i) The balance amount of Rs.1,05,00,000/- (Rupees One Crore and Five Lacs only) shall be paid by the Purchaser to the Owner/Developer by installments of Rs.10,00,000/- (Rupees Ten Lacs Only) on the completion of each slab, the last installment of Rs.15,00,000/- (Rupees Fifteen Lacs Only) shall be paid to the Owner/Developer on his handing over the possession of the said commercial premises to the Purchaser. The time being the essence of this contract.

3 As recorded in the agreement, the defendant also agreed that if he fails to start the construction of the said commercial building by 31st December 2011, the plaintiffs shall have the right to terminate this agreement and in such case the defendant shall forthwith return back the amounts received by him along with 24% interest thereon to the plaintiffs. It was also agreed that in case, the defendant fails to return the amount received by him to the plaintiffs, the plaintiffs shall have the charge and lien on the said first and second plots of lands mentioned in schedule A and B of the said agreement. In accordance with the said agreement, the plaintiffs paid sum of Rs.1,05,00,000/- as evidenced by the three receipts issued by the defendant.

4 The defendant did not commence construction of the said commercial building by 31st December 2011. The plaintiffs, therefore, called upon the defendant to return the amount of Rs.1,05,00,000/- together with interest at 24% per annum. As the defendant did not pay, the plaintiffs by their advocates' letter dated 26th February 2015, called upon the defendant to return the amount of Rs.1,05,00,000/- with interest of 24% per annum. The plaintiffs also terminated the said agreement by exercising their rights provided in clause 5 of the said agreement. As the defendant still did not pay the amount, the plaintiffs have filed the present summary suit. After filing the suit, the plaintiffs took out a notice of motion for appointment of receiver in respect of the defendant's property as prescribed at Schedule 'A' and Schedule 'B' of the said agreement. The said notice of motion bearing (lodg.) no.1297 of 2014 came to be allowed pursuant to an order dated 7.07.2014. The Court Receiver has also taken symbolic possession of the properties mentioned in the said agreement.

5 In the order dated 7.07.2014, this Court has observed that the Plaintiffs stand as stated in its letter dated 26.02.2014, addressed to the defendant that the conduct of the defendant was dishonest and that he was cheating innocent members of the public was correct. In view thereof, it is clear that what the plaintiffs stated as recorded in their advocates' letter

dated 26.02.2014, namely that the defendant through misrepresentation has cheated the plaintiffs by promising them commercial premises under the agreement dated 17.03.2011 within 36 months from the date of the said agreement and has similarly cheated the members of the public by collecting huge amounts through such misrepresentation and cheating, is correct.

The Defendant had also tried to avoid appearing before this Court on two occasions but appeared before the Court on 7.07.2014 only because the earlier order passed by this Court was served upon him through the police authorities. This Court in its order dated 7.07.2014 has also observed that any statement made by the defendant cannot be trusted/relied upon.

In view thereof, the Court was pleased to pass the order appointing the Receiver. The defendant was also restrained by an order and injunction from disposing of, alienating, encumbering, parting with possession and/or creating third party rights in respect of the properties described in the said agreement. The plaintiffs were also directed to serve the summons for judgment on the advocate for the defendant within a period of four weeks from 7.07.2014.

6 The plaintiffs have served the summons for judgment upon the advocate for the defendant in accordance with the order and have also filed an affidavit of service of one Narendra Manish Nandu affirmed on

4.11.2014 who is the plaintiff no.1, confirming service. It is almost 10 months since then and the defendant has not filed any affidavit in reply to the summons for judgment or application for leave to defend. Nobody has appeared also on behalf of the defendant. The defendant had not even replied to the notice dated 26.02.2014 or to notice of motion, *inter-alia*, dealing with the allegation that he is likely to dispose of the said properties and/or create third party rights in respect of the same.

7 The plaintiffs have filed the original documents. The original agreement of sale of commercial premises is taken on record and marked as **Exh.P-1**. The three receipts of Rs.50 lakhs, Rs.45 lakhs and 10 lakhs, respectively, are taken on record and marked as **Exh.P-2 colly**. and the office copy of the letter dated 26th February 2014 from the plaintiffs' advocate to the defendant together with courier receipt and acknowledgement is taken on record and marked as **Exh.P-3 colly**.

8 Having considered the documents, the pleadings, the submissions of the counsel for the plaintiffs and the observations made by this Court in its order dated 7.07.2014, , this is a fit case for passing an ex-parte order and decree as prayed for has to be granted in favour of the plaintiffs. The said agreement in clause 5 also provides that the defendant would return the

amount with interest at the rate of 24% per annum. The suit is also not barred by limitation and this Court has jurisdiction.

9 The suit, therefore, stands decreed in the sum of Rs.1,76,48,416/- upto 28.02.2014, with further interest at 24% per annum from 1st March 2014 upto the date hereof on the principal amount of Rs.1,05,00,000/- and thereafter at 12% per annum on the amount of Rs.1,05,00,000/- upto payment and/or realization. The plaintiffs are also entitled to costs in the sum of Rs.50,000/-.

(K.R. SHRIRAM, J.)