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

SUMMONS FOR JUDGMENT 61 OF 2014
IN
SUMMARY SUIT NO. 915 OF 2013

Avtar Singh Sethi ... Plaintiff

vs.

M/s. Orient Tourism Pvt. Ltd. and ors. ... Defendants

Mr. P. D. Prasad Rao, Advocate for the plaintiff.
Mr. Anoop Sharma i/by G. K. Tripathi, Advocate for defendant Nos. 1 to 5.

Coram : Smt. R. P. SondurBaldota, J.
Date : 20th October, 2015.

P.C.

1. This Summons for Judgment is taken out in a suit for recovery of the sum of Rs.5,86,30,000/- along with interest at the rate of 18% p.a. As per the particulars of the claim annexed to the plaint, the suit is based on eight cheques for the total amount of Rs.3,75,95,000/-. The cheques issued by defendants No.2, 3 and 5 carry different dates of the month of October-2008. The plaintiff presented the cheques for payment in the same year when the same were dishonoured. Then, the present suit was filed in the year 2012. At para 42 of the plaint, the plaintiff claims that the cause of action in the suit in fact accrued to the plaintiff in the year 2010 and the same has continued from day to day. Further,

at para 34 of the plaint, the plaintiff states, "defendants also issued a cheque No.338980 dated 13-2-10 for Rs.7,00,000/- as and by way of part payment towards the interest". Considering that the same is acknowledgment of debt by the defendants. The plaint does not disclose the name of the person who has issued that cheque. Mr. Rao states across the bar that the cheque was issued by defendant No.1 and signed by defendant No.2 on behalf of defendant No.1.

2. The defendants contest the suit on the ground of it's maintainability as well as the merits. According to them the suit is not maintainable as a Summary Suit. Secondly, it is barred by the law of limitation. As regards the merit the defendants in their affidavit-in-reply state that they had in the month of October-2008 taken a loan in the sum of Rs.3,25,00,000/- from the plaintiff and had executed Promissory Notes and issued post-dated cheques by way of security towards repayment of the loan. They had also executed Sale Deed cum Deed of Assignment in favour of the plaintiff in respect of the property situated at Kharghar, Navi Mumbai. The property at the relevant time was valued at Rs.1,50,00,000/-. Thereafter, there was a Memorandum Of Understanding ('the M.O.U.', for short) executed between the parties stating that in the event the defendants failed to repay the loan by 31st August, 2009, the plaintiff will dispose off the three

properties mentioned in the M.O.U. The properties are i) a penthouse admeasuring 2420 sq. ft., ii) a plot of land admeasuring 400 sq. mts. and iii) a plot of land admeasuring 200 sq. mts. both situate at Kharghar. These facts are not disputed by the plaintiff.

3. Admittedly, before filing of the suit the plaintiff had sent notice to the defendants and in their reply to the notice the defendants had pointed out that the plaintiff had got the properties under the M.O.U. conveyed to himself and offered to repay the amount by cheque / D.D. of Rs.3,25,00,000/- is provided the plaintiff reconveyed the properties. The only response of the plaintiff to the letter was to seek inspection of the originals.

4. The facts disclosed in the pleadings obviously give rise to several triable issues, which are required to be decided only after giving an opportunity to the parties to lead evidence. Therefore, the defendants will be entitled to unconditional leave to defend the suit. The Summons for Judgment is dismissed. The defendants shall file written statement within a period of eight weeks from today. The suit to appear on the board for directions after eight weeks.

[Smt. R. P. SondurBaldota, J.]