IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORIDINARY ORIGINAL CIVIL JURISDICTION.

SUMMONS FOR JUDGMENT NO. 55 OF 2015
IN
SUMMARY SUIT NO. 950 OF 2014

M/s. Dynamix Realty … Plaintiff
V/s.
Mystical Constructions Pvt. Ltd. … Defendant

Ms. Vidya Nair a/w Ms. Rujuta Patil i/b Negagndhi Shah & Himayatuyllah for the Plaintiff.

Mr. Ankit Tripathi i/b Ramgopal Tripathi for the Defendant.

CORAM : K. K. TATED, J.
DATED : 04/12/2015.

P.C.:

. Heard learned Counsel for the parties.

2 The plaintiff filed summary suit for recovery of sum of R.75,36,60,389/- together with interest on principal sum of Rs.46,91,00,000/- till the date of payment.

3 The learned Counsel for the plaintiff submits that as per agreement for sale TDR dated 18.12.2010, the defendant agreed to purchase TDR from the DRC (Development Rights Certificate) bearing No. SRA/925/Const TDR/FSI credit of 61130.00 sq. meters out of 61130.00 sq. meters equivalent to 6,58,003.32 sq. ft. for total consideration of Rs.1,87,53,09,462/-. The Defendants paid Rs.18,75,30,946/-. She submits that as per clause 2 of the said

agreement, the defendant was supposed to pay remaining amount as follows:

> *"a) Rs.28,12,00,000/- (Rs. Twenty Eight Crores Twelve Lacs only) on or before 31.01.2011.*
> *b) Rs.28,12,00,000/- (Rs. Twenty Eight Crores Twelve Lacs only) on or before 28.02.2011.*
> *c) Rs.28,12,00,000/- (Rs. Twenty Eight Crores Twelve Lacs only) on or before 31.01.2011.*
> *d) Rs.28,12,00,000/- (Rs. Twenty Eight Crores Twelve Lacs only) on or before 30.04.2011.*
> *e) Rs.28,12,00,000/- (Rs. Twenty Eight Crores Twelve Lacs only) on or before 31.05.2011.*
> *f) Rs.28,17,78,516/- (Rs. Twenty Eight Crores Seventeen Lacs Five hundred and sixteen only) on or before 30.06.2011."*

4 The learned Counsel for the plaintiff submits that as per the said agreement, the defendant was supposed to pay the entire amount on or before 30.06.2011. She submits that the defendant after due date i.e. 30.06.2011 paid on 22.08.2011, 24.08.2011 and 26.08.2011 an amount of Rs.3,55,00,000/-, Rs.7,80,00,000/-, Rs. 2,75,00,000/- and Rs.1,00,00,000/- respectively aggregating to Rs.15,20,00,000/- leaving a balance of Rs.46,91,00,000/-. She submits that the defendant failed and neglected to pay the remaining amount, the plaintiff issued legal notice dated 05.09.2014 to the defendant calling upon them to make payment. She submits that the said notice was duly served on the defendant. The defendant by their letter dated 13.09.2014 showed inability to pay the same on the ground that the plaintiff claim was time barred. Hence, the plaintiff filed the present summary suit and preferred summons for judgment.

5 The learned Counsel for the plaintiff submits that the defendant

had not denied their liability to pay the sum, but they raised the objection about the limitation. She submits that the defendant on their own paid certain amount after 30.06.2011. She submits that whenever the plaintiff called upon the defendant to make the payment, they orally assured the plaintiff that they required some time to clear the same. Hence, the suit as it is filed by the plaintiff on 18.09.2014 was within limitation. Hence, the summons for judgment to be made absolute.

6 On the other hand, Mr. Ankit Tripathi appearing on behalf of defendant vehemently opposed the present summons for judgment. Defendant filed affidavit-in-reply dated 13.10.2015. The learned Counsel for the defendant submits that admittedly, as per agreement dated 18.12.2010 the last payment was supposed to be made on or before 30.06.2011. The present suit filed by the plaintiff on 18.09.2014, is barred by limitation. He submits that if prima facie suit is barred by limitation, then there is no question of granting any relief to the plaintiff in terms of summons for judgment. Hence, summons for judgment to be dismissed with costs.

7 I heard both the sides at length. There is no dispute that the present suit is based on agreement for sale of TDR dated 18.12.2010. As per the said agreement, defendant was supposed to pay balance sum of Rs.16,87,77,856/- . The last installment of Rs.28,17,78,516/- was due on or before 30.06.2011. After this date, the defendant made some payment to the plaintiff on 26.08.2011. Even limitation is calculated from last date of payment i.e. 26.08.2011, the suit filed on

18.09.2014 is beyond the period of limitation. Same required to be decided at the time of final hearing. Hence, prima facie, it seems that the suit filed by the plaintiff was barred by limitation. Hence, plaintiff is not entitled to any relief in the present summons for judgment.

8 Hence, order is passed:

a) Summons for Judgment is rejected.

b) Unconditional leave is granted to the defendants to defend the summary suit.

c) Defendant to file their written statement on or before 15.01.2016 and serve copy on other side.

d) Both the parties to file their affidavit-of-documents and compilation and complete the inspection of the documents on or before 05.02.2016.

e) Parties to file their draft issues if any, on or before 08.02.2016.

f) Matter to appear on board on 12.02.2016 for framing issued.

(K.K.TATED, J.)