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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.332 OF 2011

IN

SUMMARY SUIT NO.1750 OF 2011

Chandulal P. Patel ...Plaintiff

vs

Aakash Lavlesh Leisure Pvt. Ltd. ...Defendant

.....

Mr. Rajesh Dadar, for the Plaintiff.

....

CORAM : S.C. GUPTE, J.

DATED : FEBRUARY 2, 2015

P.C.:

. This is a Summary Suit filed for recovery of a sum of Rs.1.03 crores as per particulars annexed to the plaint. It is the case of the Plaintiff that the Plaintiff advanced various sums of money aggregating to Rs.1.04 crores and that as per mutual understanding between the parties the Defendant was to pay interest on the amount advanced by the Plaintiff calculated at the rate of 24% p.a. on the basis of quarterly rests. The Plaintiff has produced purported confirmation statements issued by the Defendant on 1 April 2006, 1 April 2007 and 1 April 2008 concerning this liability. The Plaintiff has, accordingly, filed the present suit on 3 March 2011.

2. The Summons for Judgment is opposed by the Defendant,

firstly, on the ground of the bar of limitation. Secondly, it is claimed by the Defendant that the suit liability does not arise on a written contract within the meaning of Order XXXVII of the Code of Civil Procedure, 1908. Thirdly, the Defendant contests the suit claim on merits. The loan is disputed by the Defendant. It is the Defendant's case that the parties had jointly undertaken the work of construction of Club Juhu Millennium. The Plaintiff and the Defendant represent two groups – the Classic group and the Lavlesh group, each of which had agreed to contribute the amounts required for completion of the club. It is submitted that both groups accordingly brought in money by way of loans and advances by themselves and/or through their family members, relatives and associates. It is submitted that the Plaintiff at no stage advanced the alleged loan, if any, as a creditor of the Defendant. It is also claimed that the Plaintiff made the alleged advances on the sole understanding that the amount of the advance, if any, shall be returned only after discharging third party liability and after completion of the construction of the Club.

3. As is obvious, these defences indicate triable issues bonafide arising for determination of this Court in the present suit. On the basis of these defences, the Defendant deserves an unconditional leave to defend the suit. Accordingly, the Defendant is granted unconditional leave to defend the suit. The suit is transferred to the list of commercial causes. Written statement to be filed within a period of eight weeks. Place the suit for directions on 10 April 2015.

(S.C. GUPTE, J.)