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

SUMMONS FOR JUDGMENT NO.14 OF 2016
IN
SUMMARY SUIT NO.743 OF 2015

J B F Industries Limited ....Plaintiff
V/s.
Bhawanishankar H. Sharma ....Defendant

Mr. Kunal Mehta a/w. Ms. Shivani Parikh & Ms. Priyanka Patel i/b. Crawford Bayley & Co. for the plaintiff.
Ms. Shaista Pathan i/b. Yusufs & Associates for the defendant.

CORAM : K.R.SHRIRAM,J
DATE : 14th JUNE, 2016

P.C.:-

1 The defendant though served has not filed an affidavit in reply or an application for leave to defend. Though this court had powers under Order 37, Rule 3, Sub-Rule 6 of the Code of Civil Procedure to give judgment to the plaintiff, I asked the plaintiff to explain what his case was.

2 The suit is filed by the plaintiff to recover a sum of Rs.78,41,80,141.07/- which can be split into three parts (a) principal amount of Rs.19,99,64,700/-, (b) guaranteed interest return @ 36%p.a. compounded annually on the principal amount for the agreed period of three years amounting to Rs.30,30,37,704.40/- and

(c) further interest at the contractual rate of 36% p.a. compounded annually from 3rd December, 2013 till institution of the suit. The plaintiff has also claimed interest at the contractual rate for a period after the suit has been lodged.

3 Pursuant to a Memorandum of Understanding (MOU) executed on 3rd December, 2010 between the defendant (in the capacity of an owner), a company by the name BHS Housing Private Limited of which the defendant is 100% shareholder and the plaintiff, the plaintiff gave a sum of Rs.19,99,64,700/- to BHS towards purchase of 24,687 sq. ft. of saleable area in the Buildings proposed to be developed by BHS. Against this payment, BHS and the defendant were to give a security by way of :

> *"a. An unconditional and irrevocable demand promissory note signed by the Sellers; and*
>
> *b. Unconditional and irrevocable personal guarantee of Mr. B.H. Sharma; and*
>
> *c. Post dated cheque for the investment amount and the return (defined hereafter) to be issued by the developer; and*
>
> *d. Post date cheque of an amount of the investment amount and the return (defined hereafter) to be issued by Mr. B.H. Sharma as the Guarantor.*
>
> *All documents/cheques to be issued under a,b,c and d above are hereinafter collectively referred to as the "Security".*

4 Clause 1,2 and 3 of the MOU read as under :-

> *"1. In consideration of the investment amount and the repayment and return obligation of the Sellers of the investment amount along with the return the Owners shall provide the security (as defined earlier).*
>
> *2. The Sellers guarantee a return of 36% p.a. compounded annually ("Return") on the invested amount for the entire 3 years period ("Holding Period") of investment from the date of this MOU. The return shall however be payable at the end of the 3 year period of such other earlier period at the option of the seller but not earlier than one year from the date of receipt of the investment amount by the developer.*
>
> *3. The investment amount along with the return shall be paid to the Investor by the Sellers at the end of the Holding Period either from their own resources or through sale of the purchased property. It is clarified that the entire responsibility of payment of the investment amount and the return shall be on the Sellers."*

5 As provided in the MOU, the defendant issued a personal guarantee to the plaintiff whereby the defendant in his personal capacity irrevocably and unconditionally guaranteed to the plaintiff payment of all moneys, i.e., the investment amount of Rs.19,99,64,700/- alongwith return of Rs.30,30,37,704.40/- (or such higher amount to account for any delay beyond the holding period) or adjusted return in case of acceptance of the exit offer as per the MOU which shall at any time be due from the Developer, which is BHS to the plaintiff as per the terms of the MOU.

6 Till date the plaintiff has been paid a sum of Rs.4,50,00,000/- only which the plaintiff has adjusted against the interest payable. The defendant had also issued post dated cheques for Rs.19,99,64,700/- and Rs.30,30,37,704.40/-. As no payments were forthcoming, the plaintiff went ahead and deposited these cheques, which came to be dishonored for insufficient fund. Thereafter the plaintiff sent notice on 29th January, 2014 under Section 138 of the Negotiable Instrument Act to which there has been no response. The plaintiff then invoked the personal guarantee vide a letter dated 17th April, 2015 to which also there has been no response. No affidavit in reply also has been filed.

7 The counsel for the defendant states that they do not dispute the fact that Rs.19,99,64,700/- and Rs.30,30,37,704.40/- were payable to the plaintiff. The counsel for the defendant further states that the remaining amounts claimed are only interest. The counsel for the defendant however, did not explain as to why the plaintiff is not entitled to claim any further interest because the personal guarantee itself provides "along with return of Rs.30,30,37,704.40/- (or such higher amount to account for any delay beyond the holding period)". Therefore, personal guarantee itself provided that the defendant would pay further interest for any delay

beyond the holding period. The counsel for the defendant further states that they had given a without prejudice offer to the plaintiff and tendered a copy of an email dated 8^{th} June, 2016 wherein they had agreed to pay of Rs.52.56 crores. Though the email does not mention without prejudice, the counsel for the defendant states that the offer was without prejudice offer.

8 To sum up, there is no defence whatsoever to the claim of the plaintiff. The defendant had not even filed an application for leave to defend. The defendant had also not disputed the documents signed by the defendant.

9 Therefore, in my view, the plaintiff is entitled to judgment forthwith. The suit accordingly stands decreed in the sum of Rs.78,41,80,141.07/-. For the period from the date of the filing of the suit until today, the plaintiff will be entitled to interest at the same contractual rate of 36% p.a. From the date hereof until payment/realisation, the plaintiff will be entitled to interest @ 15% p.a. The plaintiff is also entitled to cost quantified at Rs.50,000/-.

10 Decree be drawn up accordingly. The suit stands disposed. Summons for judgment also accordingly stands disposed.

(K.R.SHRIRAM,J)