

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

**SUMMONS FOR JUDGMENT NO.30 OF 2016
IN
SUMMARY SUIT NO.336 OF 2016**

Gold Finger Est. Pvt. Ltd.

....Plaintiff

V/s.

The National Sports Club of India & Ors.

....Defendants

Mr. Girish Paryani a/w. Mr. Rajiv Pandey for the plaintiff.

Mr. Sarosh Bharucha a/w. Mr. H.E. Desai and Ms. Radhika Nair i/b.
Mulla and Mulla and CBC for the defendant nos.1 to 4.

Ms. Nisha Shah i/b. Kalpesh Joshi and Associates for the defendant
no.6.

CORAM : K.R.SHRIRAM,J

DATE : 17th OCTOBER,2016

P.C.:-

1 The plaintiff has filed this suit claiming a sum of Rs.9,35,04,474.78 which includes interest at 15% p.a. It is the case of the plaintiff that the plaintiff was appointed as a Civil and Interior Works Contractor for Indoor Stadium at N.S.C.I., Worli by defendant no.1. The plaintiff had bid for the tender floated by defendant no.1. According to the plaintiff, the plaintiff had quoted an all inclusive figure of Rs.5,73,16,045/- for carrying out the items covered in the Tender and the above figure was subsequently revised upwardly to an all inclusive figure of Rs.6,37,12,436.50/- after taking into account the figures quoted for the additional work entrusted to the plaintiff.

2 The defendant no.1 issued a letter of acceptance to the plaintiff and the plaintiff commenced work as provided under the contract. It is the plaintiff's case that they raised various RA bills and upto RA bill no.5 all amounts were paid. The defendants allegedly have not paid RA bill no.6 and returned the earnest money deposit, etc. It is the case of the defendants that the plaintiff had issued a declaration cum undertaking dated 8th February, 2013, copy whereof is at Exhibit 'T' to the plaint whereby the plaintiff agreed to accept a sum of Rs.40 lakhs in full and final settlement of all the amounts payable by the defendant no.1 to the plaintiff. In addition to this Rs.40 lakhs, the plaintiff also agreed to accept a sum of Rs.19,95,534/- towards the plaintiff's materials that were in the possession of defendant no.1. By this declaration cum undertaking the plaintiff has also accepted that the work order issued by defendant no.1 stood cancelled and terminated subject to the defendants paying this amount of Rs.40 lakhs and Rs.19,95,534/-.

3 The counsel for the plaintiff does not deny that the plaintiff has issued this declaration cum undertaking. The counsel for the plaintiff states that as the director of the plaintiff was going out of Bombay he had signed the blank stamp paper which was provided by

the defendant no.1 and it is the defendant no.1 who has filled up the entire contents of the said stamp paper.

4 In my view, this itself raises a triable issue. Therefore, unconditional leave to defend to the defendants has to be granted and is hereby granted.

5 The summons for judgment accordingly stands dismissed.

6 Within four weeks from today the defendants to file the written statement and serve a copy thereof upon the plaintiff. Within four weeks thereafter parties to file and serve their respective affidavit of documents and complete discovery and inspection and file and exchange their statement of admission and denial with reasons for denial.

7 Since I have dismissed the summons for judgment and I am also satisfied that no case has been made out for a decree against the Architect, I am inclined to allow defendant no.6 to file the Vakalatnama though the 10 days period expired long ago. The registry to accept the Vakalatnama being filed by the defendant no.6.

8 The suit to be listed for issues on 19th January, 2017.

(K.R.SHRIRAM,J)