

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

**SUMMONS FOR JUDGMENT NO.63 OF 2016
IN
COMMERCIAL SUIT NO.468 OF 2016**

Sunarch Enterprises ... Plaintiff
Versus
Sainath Builders And Developers
And Others ... Defendants
.....

Mr. M.K. Tanna for the Plaintiff.
Mr. S.A. Bhagwat a/w Mr. Abhijit Barve for Defendant No.2.
Mr. Pradeep R. Kadam for Defendant Nos.3 And 4.

.....

CORAM : S.C.GUPTE, J.

DATE : 1 JULY 2017

P.C. :

. Heard learned Counsel for the parties.

2 This Summary Suit is filed on a claim purportedly arising out of a written contract. It is said to arise on a final invoice dated 25 August 2015 issued by the Plaintiff to Defendant No.1. Defendant No.1 is a partnership firm, of which Defendant Nos.2, 3 and 4 are partners. The Plaintiff's case is that in 2010-2011, Defendant Nos.1 to 4 entrusted the work of construction of a building known as Manali Co-operative Society Ltd., situated at Tata Colony, Mulund (East), Mumbai-400 081, to the Plaintiff. The Plaintiff constructed this building and rendered various services in connection with such construction. The Plaintiff from time to time raised various running bills, the copies of which are produced with the Plaintiff.

Finally on 25 August 2015, a final invoice was raised by the Plaintiff for the construction services rendered by it, claiming the balance amount of about Rs.1.26 Crores. On these facts, no claim within the meaning of Order 37 Rule 2 of the Code of Civil Procedure, 1908, is made out. The claim, in the present case, does not arise on a written contract. Neither the R.A. bills submitted by the Plaintiff to the Defendants nor the final bill/invoice submitted by it, can be termed as written contract to pay for services rendered, contained in either the R.A. bills or the final bill.

3 In the premises, the Defendants are granted unconditional leave to defend the suit. Written statement to be filed within a period of four weeks from today. The Suit to come for directions after four weeks.

(S.C. GUPTE, J.)