

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

SUMMONS FOR JUDGMENT NO. 3 OF 2017

IN

SUMMARY SUIT NO. 48 OF 2014

Ahluwalia Contracts India Ltd. & Ors. ...Plaintiffs/Applicants

Vs.

M/s.Sheth Developers and Realtors
(India) Ltd. & Ors.

...Defendants

Dr.G.R. Sharma with D.P. Singh & Anil K. Singh for Plaintiffs.

Ms.Alpana Ghone with Ravi Gandhi, Rashmin Jain, Rishabh Ranka I/b.
Kanga & Co. for Defendants.

CORAM : S.C. GUPTE, J.

DATE : 26 FEBRUARY 2018

P.C. :

Heard learned Counsel for the parties.

2 This summons for judgment is taken out in a summary suit, which is based on a statement of accounts together with certified bills relating to executed contractual works. The purported statement of accounts and certified bills are in connection with a contract of construction of shopping mall for a project known as “Vivacity”. It is the case of the Plaintiff contractor that the Plaintiff commenced and completed contractual works detailed in various work orders issued for the construction work. It is submitted that the Defendants even certified the completion of works from time to time and against which payment certificates were also issued by the designated authority of the Defendants. Learned Counsel submits that based on these payment certificates, a statement of accounts confirming dues payable by the Defendants to the

Plaintiffs for completed contractual works was prepared and issued. The Plaintiffs filed the present suit under Order 37 of CPC based on these documents, presumably terming them to be written contracts.

3 On the other hand, it is the Defendants' case that so called statement of accounts referred to by the Plaintiffs is not a statement of contractual dues payable by the Defendants to the Plaintiffs based on payment certificates. In para 9 of the reply to the summons for judgment, the Defendants have proceeded to explain the so called statement of accounts. The Defendants submit that payment certificate number mentioned in column 4 of the statement of accounts does not connote that the relevant RA bills issued by the Plaintiffs are settled bills in all respects. It is submitted that payment certificate number is merely an internal number of the Defendant company. It is denied by the Defendants that this number and particulars, which are written against this number, indicate that the payment certificates had stood prepared after joint measurement or that there was completion of work. It is submitted that after completion of work, the Defendants' Quality Department inspects the site and issues a completion certificate calling upon the contractor, wherever applicable, to rectify the defective work. It is submitted that only after defects are rectified and the Defendants are satisfied about the completed work that the bills are settled and the outstandings are worked out. It is submitted that figures mentioned in the statement of accounts do not represent admitted figures of amounts due and payable to the Plaintiff as alleged or at all. Apart from challenge to the statement of accounts or the reference to the payment certificates thereunder and the conclusion to be drawn from the particulars reflected in the statement of accounts, the Defendants also submit that there were defects and shortcomings in the construction work

carried out by the Plaintiffs. It is submitted that instead of rectifying these defects, the Plaintiffs abandoned the project and stopped the construction activity on the site without intimation to the Defendants. It is submitted that owing to this, the Defendants have incurred additional costs and expenses in rectifying the defects by appointing various outside agencies. The Defendants even reserve their right to make a counter claim against the Plaintiffs in respect of the alleged defective work or the loss suffered by the Defendants.

4 On these facts and in the face of the documents produced before the court, there are several triable issues, which arise for the determination of the court. The defence indicated thereunder cannot be said to be lacking in *bona fides* or genuineness. Several documents are relied upon by the Defendants in support of such defence. Based on the averments made and documents produced, the defence is clearly a plausible defence, the merits of which can only be assessed after the parties lead their evidence and argue the matter at the trial.

5 In the premises, the following order is passed :

- (I) The Defendants are granted unconditional leave to defend the suit.
- (II) Written statement to be filed within four weeks from today.
- (III) Place the matter for directions after four weeks.
- (IV) The summons for judgment is disposed of.

(S.C. GUPTE, J.)