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

SUMMONS FOR JUDGMENT NO.20 OF 2017
IN
SUMMARY SUIT NO.453 OF 2015

Toucan Agro And Developers Pvt Ltd. … Applicant

In the matter between :

Toucan Agro And Developers Pvt. Ltd. ... Plaintiff
Versus
Shri D.L. Sadhashiva Reddy And Others … Defendants

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Mr. Zal Andhyarujina a/w Ms. Aakansha Agarwal I/b R.S. Saluja for the Plaintiff.
Mr. D.S. Pagare for the Defendants.

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CORAM : S.C.GUPTE, J.

DATE : 5 MARCH 2018

P.C. :

. Heard learned Counsel for the parties.

2 This Summons for Judgment is taken out in a Summary Suit based on a written contract as also on dishonoured cheques. The facts of the case may be briefly outlined as follows :-

3 By a Memorandum of Understanding dated 15 January 2008 (“MoU”), the Defendants agreed to procure for the Plaintiff 478 acres of land in certain villages in Bangalore named therein. The consideration for

such procurement, transfer and assignment to the Plaintiff was fixed at Rs.1.55 crores per acre of land. The Plaintiff claims to have paid various sums to the Defendants for procurement of the land. That was sometime in the year 2008. By early 2012, it was clear that the Defendants had failed to fulfill their obligations under the MoU, and as a result, were liable to refund the entire amount paid by the Plaintiff to them. In fact, a cheque in the sum of Rs.1.93 crores was issued by the Defendants towards this repayment. This cheque was dishonoured on 31 May 2012. Subsequent to the dishonour of this cheque, a supplementary writing/letter was executed by the Defendants *inter alia* undertaking to pay Rs.1.93 crores and Rs.1.33 crores vide cheques referred to therein. These cheques were handed over to the Plaintiff in pursuance of this writing/letter. The writing *inter alia* recorded the transaction between the parties and liability of the Defendants therein to refund the amount to the Plaintiff. The writing also referred to the Defendants' acceptance of their failure to fulfill their obligation for procurement of land under the MoU within time and their corresponding liability to return the entire amount paid by the Plaintiff to the Defendants, which matters were already admitted by the Defendants in their letter dated 28 February 2012. The writing also recorded that a cheque in the sum of Rs.1.93 crores was issued by the Defendants and handed over to the Plaintiff towards part repayment of the amount received under the MoU; and that this cheque was dishonoured due to insufficient funds. The writing, accordingly, called upon the Plaintiff not to initiate any legal action for dishonour of cheque and grant the Defendants further time to repay the amount. The writing referred to two cheques, one of Rs.1.93 crores and another of Rs.1.33 crores, handed over to the Plaintiff towards repayment of the amount. These cheques could not be honoured by the drawee bank. The first cheque of Rs.1.93 crores dated 30 July 2012 was returned dishonoured due to insufficient funds. The cheque along with the memo of dishonour is produced on record. As for the second cheque of Rs.1.33 crores dated 15 September 2012, the bank on which it was drawn, refused to accept the same, since the amounts mentioned on the cheque in figure and words did not tally. The suit is, thus, based on the writing dated 16 June 2012 and the two cheques referred to therein, one of which was dishonoured, whilst the other could not be presented.

4 The Defendants resist the Summons for Judgment on the ground that the MoU *inter alia* records that the Defendants, as procurers, had handed over several documents including original title deeds concerning 10 acres of land and MoUs with land owners for about 226 acres of land, out of the properties listed in the MoU and that these documents have not been returned by the Plaintiff to the Defendants. It is further submitted that considering the various provisions in the MoU and the commitment undertaken in pursuance thereof, the Plaintiff was required to calculate the amount paid under these documents and deduct the same from the amount paid by it to the procurers and only make a claim for the remaining amount. It is submitted that the Plaintiff has neither deducted any amount nor has returned or produced any document. It is submitted that in the premises, the exact liability cannot be worked out between the parties. This particular defence has really no merit. It is not even a statable defence. Similar defence based on the MoU was raised in the Notice of Motion in the Summary Suit taken out by the original Defendant under Section 8 of the Arbitration and Conciliation Act, 1996 and rejected by this Court. As mentioned in my order in that motion (Notice of Motion No.758 of 2017),

what the Plaintiff prays for here is not enforcement of the MoU, but a claim arising out of a writing executed subsequently and cheques issued in pursuance of that writing. Since the MoU could not be performed by the Defendants, referred to therein as 'procurers', by a supplementary writing (writing/letter dated 28 February 2012), the Defendants admitted having failed to fulfill their obligations under the MoU and their liability to refund the entire amount paid by the Plaintiff to the Defendants towards procurement of land and to pay these amounts by cheque within the time mentioned. In pursuance of this writing, a cheque of Rs.1.93 crores was in fact issued by the Defendants to the Plaintiff and this cheque was dishonoured. In the face of this development, a further supplementary writing/letter (writing/letter dated 16 June 2012) was executed by the Defendants undertaking the commitment referred to above. Out of two cheques offered in pursuance of this writing/letter, one was dishonoured and the other cheque could not be presented due to variation in figures and words describing the amount. Neither the supplementary writing/letter dated 28 February 2012 nor supplementary writing/letter dated 16 June 2012 refers to any commitment on the part of the part of the Plaintiff to either return the documents referred to in the MoU or adjust any amount paid towards those documents. There is absolutely nothing in the correspondence contemporaneously exchanged between the parties or even prior to the filing of the suit, which suggests that there was any such liability on the part of the Plaintiff. Not only was an unconditional commitment undertaken in terms of the supplementary writings/letters, but even cheques in pursuance of such commitment were in fact admittedly issued, and which could not be honoured by the drawee bank. Non-return of the documents or adjustment of the amount purportedly paid by the

Defendants towards those documents are nothing but a clear afterthought and not *bona fide* defences in any sense of the matter. These do not give rise to any plausible, much less any probable, defence.

5 Alternatively, it is submitted by learned Counsel for the Defendants that this Court has no territorial jurisdiction, since the subject matter of the suit concerns land situate outside the local limits of its jurisdiction. As I have noticed above, since what is sought to be enforced in the present suit is not the commitment undertaken under the MoU and which concerns land, but monetary liability arising on a writing/letter issued subsequent to, and consequent upon, the failure of the MoU and cheques issued in pursuance of such writing/letter which were not honoured by the drawee bank, the suit does not any way concern land and there is no want of territorial jurisdiction. The suit writing/letter was executed by the Defendants at the Plaintiff's office in Mumbai and the cheques referred to therein were handed over by the Defendants to the Plaintiff at the latter's office at Mumbai; the material cause of action in the present suit having thus arisen in the local limits of the jurisdiction of this Court, and part having arisen outside, the Plaintiff has obtained leave under Clause XII of the Letters Patent for filing the present suit. There is, thus, no statable defence even on this aspect of the matter.

6 It is submitted by learned Counsel for the Defendants that by a supplementary writing dated 11 April 2011, one Panchakshari Reddy has undertaken to pay the entire liability of the procurers. First of all, Panchakshari Reddy has written this letter on behalf of himself and others including the defendants herein, who were described as 'procurers' in the

MoU. The commitment of Panchakshari Reddy on behalf of himself and others was to jointly and severely refund to the Plaintiff the entire amount paid by it towards procurement of land under the MoU. This writing cannot even be remotely suggested to be amounting to substitution of the liability of others by the liability of Panchakshari Reddy. Besides, it is a unilateral document and not a bilateral commitment and cannot in any way bind the Plaintiff. Even here, the defence is not even statable.

7 Lastly, it is submitted in the reply to the Summons for Judgment that the signatures of drawers of the cheques were taken under threats. This submission, at its best, can be described as vague. There are no particulars of any threat. A simple threat does not amount to coercion for avoiding any contractual commitment. What is merely averred is that a phone call was received from the Plaintiff that the deponent of the affidavit should come to Mumbai or else Police personal of Economic Offences Wing would bring him to Mumbai. It is submitted that on this threat, the deponent went to Mumbai and his signatures were extorted on cheques and writings. For a threat to amount to coercion within the meaning of Section 15 of the Indian Contract Act 1872, the threat must be to commit any act forbidden by the Indian Penal Code or to detain any property to the prejudice of any person whatever, with the intention of causing such person to enter into an agreement. None of these ingredients is even faintly suggested by the averments made in the reply to the summons for judgment. The averments, even if they are taken as whole, do not satisfy the primary requirement of a plea of coercion. There is, thus, no plausible or even statable defence, leave aside a probable defence here.

8 Accordingly, the defence does not raise any substantial triable issue. The defence cannot be described as either genuine or bona fide. It does not even amount to a plausible defence, leave aside a probable defence. In the premises, this Court would be fully justified in passing a decree at least in so far as the principal amount of the suit claim is concerned. However, with a view to give the Defendants one chance, merely by way of mercy, to attempt to make out a defence at the trial, this Court is of the view that leave to defend may be granted to the Defendants, but on the condition of deposit of the entire principal amount into the Court.

9 Accordingly, the following order is passed :

(i) The Defendants are granted leave to defend on and subject to the condition of their depositing in this Court a sum of Rs.3.26 crores within a period of six weeks from today;

(ii) The amount, if any, deposited by the Defendants shall be invested by the Prothonotary & Senior Master of this Court in fixed deposit/s of the Nationalized Bank/s for a period of third months, renewable thereafter from time to time and to abide by further orders that may be passed in the suit;

(iii) Written statement to be filed by the Defendants within four weeks upon deposit as per clause -(i) above;

(iv) Place the Suit for directions after ten weeks;

(iv) The Summons for Judgment is disposed of.

10 Learned Counsel for the Defendants seeks stay of this order. Since the Defendants are any way granted six weeks' time to deposit the amount, there is no need to grant a separate stay.

(S.C. GUPTE, J.)