Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 103 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 894 OF 2018

Harmony Lifestyle Structures Pvt Ltd ...Plaintiff
Versus
Morya Infraconstruct Pvt Ltd ...Defendant

Mr Mayur Khandeparkar, *with Mr Chetan Mali, i/b RV & Co, for the Plaintiff.*
Mr RL Turbhekar, *i/b PL Singh, for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 4th December 2018

PC:-

1. Heard.

2. The Summary Suit is filed in the Commercial Division under Order XXXVII Rule 2 of the Code of Civil Procedure 1908 (**"CPC"**) to recover an amount of Rs.1,86,83,414.00/-. The Writ of Summons having been served, the Defendant entered appearance. The Plaintiff then filed the present Summons for Judgment on 4th October 2018. It was served on 11th October 2018. There is no Affidavit in Reply within the time provided by the CPC. I am informed that an Affidavit in Reply was filed in the registry without leave of the Court last Thursday and the copies were served on the Advocates for the Plaintiff. In a Summary Suit, it is not the right of the Defendant to file the Affidavit in Reply at any time of his choosing. Every Defendant is given a specified period time by the statute, within which that reply must be filed. If an extended period is required or is sought, leave of the Court must be specifically obtained. It cannot be assumed.

3. The Defendant is a private limited company engaged in real estate development. According to the Plaintiff, it entered into a Memorandum of Understanding (**"MoU"**) dated 23rd December 2013 with the Defendant for the grant of certain development rights. That is not in itself the basis of the money claim made today. Leaving aside the question of reciprocal obligations under the MoU, there is no manner of doubt that the Plaintiff has made payment of an amount of Rs 1 crore to the Defendant as set out in paragraphs 5 to 7 of the plaint. The plaint then has a narrative of the various transactions that ensued between the parties including proposals for settlement and for the allotment of flats. What is material, however, is that by its undated letter, a copy of which is at Exhibit "J" at page 51, the Defendant, under the signature of its Managing Director, one Shashank Parab, categorically agreed to refund the amount of Rs. 1 crore to the Plaintiff after deducting an amount of Rs. 21 lakhs already paid and agreed to pay liquidated damages of Rs. 80 lakhs. The relevant portion of this letter at page 52 reads thus:

> "We further hereby submit that if for any reason we do not get saleable component building CC on or before 31st January 2016, then we will not delay the matter further and in such event we shall refund your entire invested amount

> of Rs.1.00 crore (after deducting Rs.21.00 already paid) and further compensate you towards the liquidated damages in lieu of flats agreed to be provided to you, which as per present market value is approx amounting to Rs.80 lakhs. We assure you that we shall pay/compensate you the above said total amount of around Rs.180 lakhs (which is including the amount of liquidated damages/profits) on or before 5th February 2015 as our best offer for full and final settlement."

4. The present claim is thus brought for Rs. 1,30,00,000/- and interest totalling to Rs.1,86,83,414/-. The particulars of claim at Exhibit "M" to the plaint at page 144 make it clear that the principal claim is Rs. 1,30,00,000/- which is exactly in consonance with the Defendant's unconditional and unequivocal promise to pay at pages 51 and 52, Exhibit "J" to the plaint.

5. In addition, if there was any doubt about this, the Defendant issued five post-dated cheques itself between 20th February 2018 and 20th June 2018, the details of which are set out in paragraph 21 of the plaint. The amounts of the cheques at Sr. Nos. 2, 3, 4 and 5 accord exactly with the claim as made at page 144 and the particulars of claim reference these four cheques specifically. All five cheques mentioned in paragraph 21 came to be dishonoured on presentment. There was, however, a later payment (which in itself would constitute an admission of liability) of Rs.29 lakhs as mentioned in paragraph 25 of plaint.

6. There is absolutely no defence disclosed to the suit in any correspondence prior to the plaint. No Affidavit in Reply has been filed within time to the Summons for Judgment.

7. The Summons for Judgment is accordingly made absolute as prayed. The Suit is decreed in the amount of Rs.1,86,83,414/-. The principal claim of Rs.1,30,00,000/- will carry interest at the accepted rate of 18% per annum from 16th June 2018 until payment or realisation.

8. The documents tendered by the Plaintiff are taken on record and marked **"P1"** for identification. The originals of the dishonoured cheques are lodged with the criminal court in Section 138 proceedings under the Negotiable Instruments Act 1881. Liberty to the Plaintiff to substitute certified or authenticated photocopies in the compilation tendered.

9. Sub section 2 of Section 35 of the CPC as amended by the Commercial Courts Act 2015 requires that costs must be awarded to the successful party and reasons are required to be given if costs are not to be awarded. The explanation to sub section 1 of Section 35 of the CPC clarifies that the expression costs includes legal fees and expenses incurred and all other expenses incurred in connection with the proceedings. In my assessment of it this would therefore include all reasonable fees and costs of institution i.e. Court fees and attendance cost as also all legal fees. These are set out in a statement tendered by the Plaintiffs, taken on record and marked "X1" for identification with today's date. There will also be a decree for costs in this amount of Rs. 5,59,500, but there will be no interest on the decree for costs

10. Decree to be drawn expeditiously.

11. All concerned will act on an authenticated copy of this order.

(G. S. PATEL, J)