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

SUMMONS FOR JUDGMENT NO.65 OF 2017
IN
COMMERCIAL SUIT NO.480 OF 2017

Bharat Virji Gala … Plaintiff
Versus
Standard Realtors Pvt. Ltd. … Defendant

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Mr.Rohaan Cama a/w Ms. Apeksha Sharma, Sanjeel Kadam, Sayalee Rajpurkar I/b Kadam & Co. for the Plaintiff.
Mr. Sugandh S. Deshmukh I/b Gansham Ramchandani for the Defendant.

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CORAM : S.C.GUPTE, J.

DATE : 26 MARCH 2018

P.C. :

. Heard learned Counsel for the parties.

2 This Summary Suit is based on a confirmation of account signed by the Defendant-company and addressed to the Plaintiff. The Plaintiff is one of the share holders of the Defendant-company. The Plaintiff is also its Director. It is his case that from the year 2008 onwards, he has made various contributions to the Defendant-company. It is submitted that these contributions were in the nature of loans. The Plaintiff's case is that on 22 December 2014, there is a balance confirmation signed by the Defendant-company in favour of the Plaintiff. This balance confirmation acknowledges that as per the books of accounts maintained by the Defendant-company, there is a balance outstanding owed by the Defendant-company to the Plaintiff in the sum of Rs.80,00,000/-. Learned Counsel for the Plaintiff submits that the confirmation of the accounts implicitly contains a promise

to pay and a Summary Suit can be founded on such balance confirmation. The Plaintiff submits that not only is this balance confirmed by the Defendant-company, but for a particular financial year, even TDS is deducted from the interest payable to the Plaintiff from this loan at the rate of 18 % per annum.

3 The Defendant offers various witnesses to the Summons for Judgment. In the first place, it is submitted that the Suit is barred by the law of limitation. Considering that the balance confirmation is signed as of 22 December 2014 and the Suit is filed on 9 June 2017, there is no case of bar of limitation. Apart from two other defences, namely, defences concerning pecuniary jurisdiction of this Court and application of Section 13 of the Maharashtra Money Lending (Regulation) Act, 2014, the main defence is that this amount represents the contributions made by the Plaintiff as a director and share-holder of the Defendant-company for a particular project known as 'Nakshatra' project. It is submitted that in pursuance of a resolution passed on 22 January 2009, the company required its shareholders to advance interest free contributions towards Nakshatra project; the return of this contribution could be demanded only after all inventory of the project was sold out and sale consideration realized. The Defendant also relies on another resolution dated 31 March 2013, whereby the Defendant-company decided that all shareholders would get only one time interest payment of 18% per annum, except for Mr. Satish Zaveri, who would get interest at 12% per annum and not at the rate of 18% per annum. The resolution further provided that even such one-time interest would be paid only when Nakshatra project was fully completed and the entire net sales amount was realized and expenses were

met. It was provided that till this was done, the amount would be considered as loan payable in the books of the company. This resolution was to be read in harmony with the earlier resolution dated 22 January 2009. Both these resolutions predate filing of the Suit and are part of the Defendant's pleadings.

4 Learned Counsel for the Plaintiff submits that these are not genuine resolutions. Learned Counsel submits that only one other director was a party to these resolutions. It is submitted that the resolutions are signed only by one Nikunj Turakhia, who is said to be a Chairman of the Defendant-company.

5 Whether or not these resolutions were passed and whether or not the amount acknowledged by the Defendant in its confirmation of account was a loan or shareholder's contribution on the part of the Plaintiff for Nakshatra project referred to in the resolution, are matters of dispute. The defence does give rise to triable issues. The defence cannot be termed either as devoid of *bona fides* or not genuine, or improbable. On the basis of this defence, the Defendant-company is entitled to unconditional leave to defend the Suit.

6 In the premises, the following order is passed :

: **O R D E R** :

(i) The Defendant is granted unconditional leave to defend the Suit;

(ii) Written statement to be filed within four weeks from today;

(iii) The Suit to come up on Board for directions after four weeks.

(iv) The Summons for Judgment is, accordingly, disposed of.

(S.C. GUPTE, J.)