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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 68 OF 2018
IN
COMM SUMMARY SUIT NO. 85 OF 2018

Moonlight Caterers Pvt Ltd ...Plaintiff
Versus
Balabhai Nanavati Hospital & Ors ...Defendants

Mr Rakesh Singh, *for the Plaintiff.*
Mr Chetan Kapadia, *with Rahul Sarda, Sachin Chandarana & Vivek Dwivedi, i/b M/s. Manilal Kher Ambalal & Co., for Defendant Nos. 1 to 11.*
Mr Nausher Kohli, *i/b DSK Legal, for Defendant No. 12.*

CORAM: G.S. PATEL, J
DATED: 21st November 2018

PC:-

1. Heard.

2. The claim is by a caterer which provides canteen services at the Nanavati Hospital. Defendant Nos. 1 to 11 are the hospital itself, and the persons said to be its trustees. Defendant No. 12 is a private limited company that is supposedly managing the operations of the hospital including the canteen facilities. The claim is for an amount of Rs. 1,21,44,329/- with interest of Rs. 55,92,513/- computed at

18% per annum, aggregating to Rs. 1,77,36,842/-. There is a claim for further interest from 28th July 2017.

3. The Suit was filed on 29th July 2017 under Order 37 Rule 2 of the Code of Civil Procedure, 1908. Shortly stated, the case of the Plaintiff is that it has been running a canteen for many years in the premises of the 1st Defendant. The Plaint itself begins not with a straightforward claim for unpaid bills, but includes an assertion reiterated in arguments at the hearing of the Summons for Judgment that the Defendants are seeking to evict the Plaintiff from the premises in question. That in itself is a ground to dismiss the Summons for Judgment.

4. The basis of the money claim is that the Plaintiff provided canteen services including catering food, drink and meals to staff and other visitors in the period from June 2014 onwards. These dates assume significance in view of the defence. The Plaintiff claims that the Defendant No. 1 and its directors including Defendant No. 2 did not make payment but sought time claiming financial difficulties. Paragraphs 9 and 10 of the Plaint read thus:

> "9. The Plaintiff submits that gradually and particularly after September 2014, the approach of the Defendants towards the Plaintiff changed completely and the Defendants started asking the Plaintiff to vacate the premises of the said hospital including the said canteen. The Plaintiff refused to do so. <u>**The Plaintiff was only orally asked to vacate the premises. The Defendants have not given anything in writing till date to the Plaintiff and have been threatening the Plaintiff of forcefully evict the Plaintiff from the premises of the said Hospital**</u>.

> 10. The Plaintiff however continued to serve the needs of the Defendant No. 1 and their Staff and in its usual course of business has issued the monthly Bill to the Defendant No. 1. The said Bills have been duly accepted by the Defendant No. 1 and Defendant No. 1 has also deducted TDS on the said bills and deposited with the IT authorities. **However, Defendant No. 1 has since the month of June 2014** have failed and/or neglected to make payments of the monthly bills in entirety. The Director of the Plaintiff has time and again reminded the office bearers of the Defendants Nos. 1 and 2 to release the payments of the monthly bills, however the Director of the Plaintiff was given excuses for the same."

(*Emphasis added*)

5. In my view, on its own, this would entitle the Defendants to unconditional leave to defend. However, the Affidavits in Reply filed by Defendants Nos. 1 to 11 raise additional grounds under distinct heads. The first and most obvious is of course that at least a part of the claim is barred by limitation. The suit was filed on 29th July 2017. There are at least three invoices (pages 129, 130 and 131) of 30th June 2014, clearly beyond the period of limitation. The next of defence is set out in paragraph 14 at page 33 of the Affidavit in Reply. Here Defendants Nos. 1 to 11 say that the agency they appointed to manage the affairs, Defendant No. 12, demanded from the Plaintiff itself an amount of Rs. 5,04,79,251.50/- as amounts paid in excess, i.e., without supporting documents; for dues towards electricity charges; and for dues towards gas consumption charges. The Plaintiff disputes these amounts. That is a matter that requires trial.

6. Mr Kapadia for Defendants Nos. 1 to 11 points out from page 81 of the Plaint itself that a detailed internal audit conducted by Grant Thornton India LLP commissioned by Defendant No.12 specifically included the transactions between the Plaintiff and the hospital and this audit resulted returned a finding of amounts due from the Plaintiff rather than *vice versa*.

7. In my view, there is no doubt that triable issues arise. The Summons for Judgment is dismissed.

8. The Defendants are granted unconditional leave to defend. Written Statements are to be filed and served on or before 18th December 2018 along with Affidavit of Documents and Compilation of Documents.

9. Discovery and inspection are to be completed, and statements of admission and denial are to be exchanged on or before 11th January 2019.

10. List the Suit for framing issues on 18th January 2019.

(G. S. PATEL, J)