

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

**CHAMBER ORDER (L) NO.1501 OF 2017
IN
NOTICE OF MOTION (L) NO.517 OF 2017
IN
COMMERCIAL SUMMARY SUIT NO.453 OF 2015**

D.L. Sadashiva Reddy ... Applicant/Org. Defendant

In the matter between :

Toucan Agro and Developers
Private Limited ... Plaintiff
Versus
D.L. Sadashiva Reddy ... Defendant

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

Toucan Agro And Developers Pvt.
Limited ... Plaintiff
Versus
Mr. D.L. Sadashiva Reddy And
Others ... Defendants

**AND
SUMMONS FOR JUDGMENT NO.24 OF 2017
IN
SUMMARY SUIT NO.884 OF 2015**

Toucan Agro And Developers
Private Limited ... Plaintiff

In the matter between :

Toucan Agro And Developers

Private Limited	...	Plaintiff
Versus		
Smt. E. Nagarathnamma	...	Defendant

**WITH
NOTICE OF MOTION NO.758 OF 2017
IN
COMMERCIAL SUIT NO.159 OF 2015**

Smt. E. Nagarathnamma Reddy	...	Applicant/
W/o. Late K. Balakrishna Reddy		Org. Defendant

In the matter between :

Toucan Agro And Developers
Private Limited ... Plaintiff
Versus
Smt. E. Nagarathnamma ... Defendant

Mr. Dushyant S. Pagare for the Applicant in Chamber Order (L) No.1501 of 2017 and Notice of Motion (L) No.517 of 2017 (Original Defendants). Applicant/Original Defendant in Notice of Motion No.758 of 2017.

Mr. Zal Andhyarujina a/w Ms. Aakanksha Agarwal I/b R.S. Saluja for the Plaintiff.

CORAM : S.C.GUPTE, J.

DATE : 14 FEBRUARY 2018

P.C. :

Heard learned Counsel for the parties.

2 This Summary Suit is filed on the basis of a written agreement and dishonour of cheques issued in pursuance thereof by the Defendants. The Defendants have taken out the present notice of motion, being Notice of Motion (L) No.517 of 2017, under Section 8 of the Arbitration and Conciliation Act, 1996, on the ground that the subject matter of the present suit is covered by an arbitration agreement between the parties. The Notice of Motion was dismissed for default on 26 September 2017. Chamber Order (L) No.1501 of 2017 is for a recall of the dismissal order and restoration of the notice of motion. Learned Counsel for the Plaintiff tenders an affidavit in reply to the Chamber Order. A copy has already been served on the Applicants/Defendants.

3 For the reasons stated in the affidavit in support of the chamber order, Chamber Order (L) No.1501 of 2017 is allowed by recalling the dismissal order passed on the notice of motion and restoring the motion to file. The motion is now taken up for hearing by consent of learned Counsel of both the parties.

4 It is the case of the Applicant (original Defendant No.1) in Notice of Motion (L) No.517 of 2017 that that the present suit is based on a Memorandum of Understanding ("MoU") dated 15 January 2008 (Exhibit "A" to the plaint). It is submitted that under the MoU, it was agreed that the Defendants would arrange vacant and freehold lands admeasuring 478 acres lying and situated at Villages mentioned therein in Bangalore Rural District for purchase by the Plaintiff on terms and conditions provided therein. It is submitted that this MoU has an arbitration agreement

contained in it. It is submitted that since the Plaintiff's case here is based on a writing executed on 16 June 2012 and cheques issued thereafter in pursuance of this MoU, the subject matter of the present suit is covered by the arbitration agreement contained in the MoU.

5 The MoU *inter alia* contains an agreement on the part of the Defendants (referred to therein as procurers) for procuring, transfer and assignment unto the Plaintiff of vacant and freehold lands admeasuring in aggregate 478 Acres or thereabouts in the villages named in the MoU. The Defendants admit that at their request and directions, and in pursuance of this MoU, the Plaintiff paid to the Defendants a sum of Rs.2.60 crores to enable them to utilize the said amount for the purpose of procuring and acquiring lands on behalf of the Plaintiff in terms of the MoU. It is also admitted that the Defendants failed to procure the lands as per the MoU. The Defendants thereafter agreed to refund the entire amount paid by the Plaintiff in pursuance of the MoU. A cheque issued by them in pursuance of this agreement was dishonoured. The Defendants thereafter executed a writing on 16 June 2012 ("the suit writing"), recording all this and assuring the Plaintiff to refund the amount in the matter stated therein. The suit writing records that the Defendants, under their letter dated 28 February 2012, had communicated their failure to fulfill obligations of procurers under the MoU within time and their corresponding liability to refund the entire amount paid by the Plaintiff to the Defendants. The suit writing also records 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 MoU; and that this cheque was dishonoured due to insufficient funds. In the premises, the suit writing, calls upon the

Plaintiff not to initiate any legal action for dishonour of cheque and grant them further time to repay the amount. The writing records that the Defendants were handed over cheques described in the writing towards full repayment of the Plaintiff's dues. The cheques of Rs.1.93 crores and as also Rs.1.33 crores, referred to in this writing, which were, respectively, dated 30 July 2012 and 15 September 2012, could not be honoured by the bank on which they were drawn. The first cheque of Rs.1.93 crores dated 30 July 2012, returned dishonoured, along with the memorandum of dishonour, is produced in the Court. The bank on which the second cheque (of Rs.1.33 crores) was drawn refused to accept the same, since the amounts mentioned on the cheque in figures and words did not tally. The present suit is, thus, based on the writing dated 16 June 2012 and cheques referred to therein, one of which was dishonoured, whilst the other could not be presented.

6 The Plaintiff does not seek enforcement of the MoU, but asserts a claim arising out of a writing executed subsequently and cheques issued in pursuance of this writing. The only questions which arise in such a suit, are, (i) whether the writing dated 16 June 2012 was executed by the Defendants; (ii) whether the cheques issued in pursuance thereof were supported by lawful consideration; and (iii) whether the cheques were, respectively, dishonoured or could not be presented for the reasons stated in the plaint. None of these questions arise under or out of the MoU dated 15 January 2008. None of the disputes forming part of the controversy in the suit, thus, can be said to be covered under the MoU.

7 There is, accordingly, no merit in the notice of motion. Notice of Motion (L) No.517 of 2017 is dismissed. Costs to be costs in the cause.

8 The companion notice of motion, namely, Notice of Motion No.758 of 2017, is taken out in the companion Summary Suit on the same ground as alleged in the Notice of Motion decided above. The Defendants to this suit were also parties to the Memorandum of Understanding dated 15 January 2008. The Defendants also had, by similar writing dated 16 June 2012, agreed to repay the amount in the manner stated therein. Three cheques were issued in pursuance of this writing. All three cheques were dishonoured. The summary suit is accordingly based on the writing as well as the three cheques issued thereunder. A similar case is set up by the Defendants/Applicants therein, alleging that the subject matter of the controversy is covered by the arbitration agreement contained in the original MoU dated 15 January 2012. By the above order, for the reasons stated therein, this plea has been rejected and the Notice of Motion based thereon has been dismissed. For the same reasons, the present Notice of Motion is also dismissed. Costs to be costs in the cause.

9 Summonses for Judgment in both suits to come up for hearing on 20 February 2018.

(S.C. GUPTE, J.)