

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

**SUMMONS FOR JUDGMENT NO.30 OF 2017
IN
COMMERCIAL SUMMARY SUIT NO.52 OF 2017
WITH
CHAMBER SUMMONS NO.339 OF 2017**

Riyaz Ahmed Lambay

@ R.F. Lambay

... Plaintiff

Versus

M/s Sand Piper Resorts Ltd

(in Liqn.) through Official

Liquidator And Others

... Defendants

.....

Mr. Vikash Singh for the Plaintiff.

Mr. L.T. Satelkar for Official Liquidator/Defendant No.1.

Mr. Karl Tamboly a/w Malcolm Siganporia, Anuj Desai, Hormuz Mehta
And J. Vakil I/b J. Sagar Associates for Defendant Nos.2, 3 And 4.

....

CORAM : S.C.GUPTE, J.

DATE : 20 FEBRUARY 2018

P.C. :

. Heard learned Counsel for the parties.

2 This Summons for Judgment is taken out in a Commercial Summary Suit for bringing on record developments subsequent to the filing of the present commercial summary suit. As a result of winding up and in pursuance of the proceedings against Defendant No.1 herein, certain documents have been purportedly executed by Defendant No.2, who was originally impleaded in his capacity as Director of Defendant No.1. It is

now submitted that by reason of these new documents, Defendant No.2 owes liability to the Plaintiff in his personal capacity. This is contested by Defendant No.2. Anyway, the merits of this controversy are matters of trial. Nothing should prevent the Plaintiff from bringing this fact on record and making a claim on that basis. If in the course of the suit, the Defendants have become liable to the Plaintiff on the basis of further documents executed, it is in the interest of justice that that controversy should be determined in the very suit and the Plaintiff is not driven to file a separate suit on these new documents. Accordingly, the Chamber Summons is allowed in terms of prayer clause -(a). It is made clear that insofar as the merits of the Plaintiff's case on the alleged documents are concerned, all rights and contentions of the parties are kept open.

3 The Plaintiff shall carry out the amendment within a period of two weeks from today and serve copies of the amended plaint on all Defendants. The Defendants shall be at liberty to file additional affidavits in reply to the summons for judgment, as a result of the present amendment. Such affidavits to be filed within two weeks of service of the amended plaint. Rejoinder, if any, to be filed within one week thereafter.

4 The Chamber Summons is disposed of.

5 Let Summons for Judgement No.30 of 2017 come up on Board for hearing on 2 April 2018.

(S.C. GUPTE, J.)