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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
SUMMONS FOR JUDGMENT NO. 65 OF 2018
IN
COMM SUMMARY SUIT NO. 547 OF 2018

World Renewal Spiritual Trust ...Plaintiff
Versus
Narendra V Mewawalla & Anr ...Defendants

Dr BG Saraf, *with Mr Vaibhav C, i/b GS Hiranandani, for the Plaintiff.*
Mr Piyush Raheja, *i/b DP Desai, for Defendants Nos. 1 & 2.*

CORAM: G.S. PATEL, J
DATED: 23rd January 2019

PC:-

1. This suit is filed in the Commercial Division of this Court as a summary suit under the provisions of Order XXXVII of the Code of Civil Procedure 1908 (**"CPC"**).

2. The Plaintiff is a registered Public Charitable Trust which *inter alia* promotes Indian culture, knowledge, philosophy and the practice of yoga. According to the Plaintiff since one of its premises at Gamdevi was under repairs, the Plaintiff approached the

Defendants for permission to use a flat at Prakash No. 2, Nutan Prakash CHS, Walkeshwar, Ridge Road, Opposite Malabar Hill Police Station, Mumbai 400 006 (**"the Flat"**) for a maximum period of six months. The Defendants agreed to this provided the Plaintiff placed an interest-free refundable security deposit of Rs.2 crores. There is no dispute that the parties then entered into a Memorandum of Understanding (**"MoU"**) dated 25th September 2014. Moving slightly ahead in the chronology, the defence taken after the suit was filed was that the MoU was insufficiently stamped. This Court directed that the MoU be sent to the Collector of Stamps for adjudication. After a short delay, this was done by the Collector's order of 16th November 2018. He assessed the stamp duty payable at Rs.8,05,175/-. I am shown a challan dated 15th December 2018 which indicates a one-time payment in favour of the office of the Collector of Stamps, Mumbai in respect of this Flat giving the particulars of the Plaintiff and the Flat number. The amount paid was the amount assessed as stamp duty, i.e., Rs.8,05,175/-. There is thus no impediment on the ground of stamp to the receipt of this document in evidence and the Court is not prohibited from considering it.

3. Mr Raheja for the Defendants fairly accepts that there was indeed such a MoU and that his clients, the Defendants, signed it. The Plaint narrates that the interest-free refundable security deposit was placed by the Plaintiff on 26th September 2014. This again is not disputed. In paragraph 7, the Plaintiff says that at the end of the agreed period of six months it returned possession of the Flat to the Defendants but did not receive a refund in full of the interest-free security deposit. It only received an amount of only Rs. 2 lakhs which was paid by a cheque dated 22nd August 2015. This left a balance of Rs. 1,98,00,000/- payable by the Defendants to the Plaintiff. his is the frame of the suit. The Plaintiff sent an Advocates' notice on 8th March 2018. There is no compliance with that notice. The amount claimed is Rs.2,73,91,419/- inclusive of interest at 12% per annum until the date of the suit and thereafter further interest at 12% per annum from the date of the suit until payment or realisation.

4. The Writ of Summons and a copy of the Plaint having been served as required by Order XXXVII Rule 1 of the CPC, the Defendants entered appearance. The Plaintiff filed this Summons for Judgment for a summary decree. There is a Reply and Rejoinder.

5. In the Affidavit in Reply filed on behalf of both the Defendants, the MoU itself is not in dispute, nor is the receipt of Rs. 2 crores. However the Defendants say that they have from their accounts withdrawn an amount of Rs.1,25,92,000/- in cash and paid this to the Plaintiff-Trust in cash. An amount of Rs. 74,08,000/- has been withheld towards an anticipated tax liability. In paragraph 4 there is also a statement that the Trust kept gold and diamond jewellery as security, part of which was returned. Nothing can be made of this because the Defendants have not filed any suit in this regard, and this is completely outside the frame of this litigation. The Trust is run by a well-known sect of the "Brhmakumaris" and both the Defendants are said to be its adherents or followers. In paragraph 10 there are some details of the amounts withdrawn by the Defendants' son from his UCO Bank account in cash and in paragraph 11 there is once again the statement that an amount of Rs.1,25,92,000/- has been paid in cash to the Plaintiff–Trust. There is no dispute that an amount of Rs.2 lakhs was paid by cheque on 22nd August 2015 and indeed the Plaintiff has accepted this in the Plaint itself.

6. What is missing in the Affidavit in Reply is any form of evidence of repayment of this amount of Rs.1,25,92,000/- in cash to the Plaintiff. The mere withdrawal by the Defendants or their son from the Defendants' account of certain amounts in cash does not and cannot possibly constitute evidence of repayment to the Plaintiff. This assertion or defence also does not stand to reason. If the Defendants accepted the security deposit by an RTGS transfer and took the trouble to require a MoU to be executed, then there is simply no explanation as to why the Defendants then chose to follow an entirely undocumented route for the repayment of the security deposit under that documentation.

7. The other defence taken, apart from want of appropriate stamp duty, is a lack of registration of the document and the submission is that the document requires to be registered mandatorily under the provisions of the Registration Act 1908. This in itself is not an illegality and will not render the document void. It is an irregularity that can certainly be cured at any stage. Of course I do not expect the Defendants now to cooperate in the registration of the document. The submission that the document cannot be received in evidence will not assist the Defendants because in a matter such as this, on the averments in the defence itself and the clearest possible admission of the execution of the MoU, that document is not even required in evidence. The factum of the document itself is sufficient. What is being tested here is not the existence of the MoU, for that is admitted, or even what it says or requires the parties to do, but only whether the Defendants have made repayment as required by it. There is no other dispute.

8. Coming now to the question of whether the Defendants are entitled to retain any amount towards an anticipated tax liability towards TDS or otherwise, I do not find any provision in the agreement that allows this retention and certainly I do not see how once there is such a demand, this can possibly be raised as a defence as if to suggest that the Defendants or their son are somehow entitled in law to make this retention.

9. Having regard to these facts and circumstances, I find no merit whatsoever in the defence. The defence is not just improbable. It is far from plausible. It is entirely moonshine. In my view the Plaintiff is entitled to a summary decree. As far as I am concerned the only documents that need to be marked in evidence, and they are accordingly marked **Exhibit "P1"** collectively, are the copy of the challan evidencing payment on the MoU and a copy of the Advocates' notice dated 8th March 2018 to which there is no reply.

10. The Summons for Judgment is thus made absolute.

11. There will be a decree in the suit jointly and severally against the Defendants in the amount of Rs.2,73,91,419/- with further interest on the principal amount of Rs.1,98,00,000/- at the rate of 12% per annum from the date of the suit until payment or realisation.

12. In my view the rate of interest claimed is not exorbitant.

13. There remains the question of costs, this being filed in the Commercial Division. Section 35 of the CPC as amended by the Commercial Courts Act 2015 requires that costs must be awarded to the successful party. If costs are not to be awarded, reasons must be supplied. I see no reasons not to award costs.

14. The Plaintiff has paid the maximum *ad valorem* Court fees of Rs.3 lakhs. It is entitled to a refund according to the Rules. The unrefunded amount will be awarded as costs and in addition there will be a decree jointly and severally against the Defendants but without interest on costs that are quantified at a reasonable Rs.5 lakhs.

15. Drawn up decree expedited.

16. The Plaintiff is entitled to move in execution without awaiting sealing of the decree.

17. The Summons for Judgment and the Commercial Summary Suit are disposed of in these terms.

(G. S. PATEL, J)