

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL NOTICE OF MOTION NO.610 OF 2017
IN
COMMERCIAL SUIT NO.671 OF 2017**

Gurdev Singh Sehra and Ors.Applicants/Plaintiffs

Vs.

Parthesh K.L. Developers and Nirav ShahDefendants

Mr. Ashwin Shete a/w. Mr. Abhay Dhadiwal I/b. Jayakar and Partners for applicants/plaintiffs.

None for defendants.

Mr. Lokesh Zade for defendants (at 3.00 p.m.).

CORAM : K.R.SHRIRAM, J.

DATE : 5th MARCH 2019

P.C.:

1 Though the notice of motion is listed to which no reply has been filed, I have to note that even to the suit no written statement has been filed.

2 On 29th August 2018, the advocate for defendants had appeared and waived service of the writ of summons. The time prescribed under Order 8 Rule 1 of the Code of Civil Procedure for a commercial suit expired long ago. No written statement has been filed. In my view, therefore, this Court can go ahead and decree the suit in favour of plaintiffs.

3 Mr. Shete, counsel for plaintiffs states that defendants were represented through one Mr. Zade, Advocate, on 29th August 2018 and waived service of the writ of summons. On record there is Vakalatnama dated 26th June 2018 filed by Mr. Lokesh Zade. No written statement is filed

by either of defendants and mandatory period prescribed under the amended Code of Civil Procedure has lapsed. Therefore, Mr. Shete makes an oral application for summary judgment under Order XIII-A on the grounds that defendants have no real prospect of successfully defending the claim of plaintiffs and there is no compelling reason why the claim should not be disposed without recording of oral evidence. Since there is no written statement on record and defendants are absent on call, I proceed to hear plaintiffs' submission for summary judgment under Order XIII-A.

4 Plaintiffs, on representation made by defendants, paid a sum of Rs.1,43,00,000/- for purchase of two commercial units admeasuring 475.75 sq. ft. each in the building proposed to be erected by defendants. The building never came up. It is stated in the plaint that defendants had assured that the project would be completed by 2011 and hence, plaintiffs made payment of Rs.1,43,00,000/-. Defendants had also issued allotment letter dated 12th November 2010 alongwith floor plan for the proposed commercial units in the new proposed building of defendants' project.

5 As the building was not coming up, plaintiffs kept enquiring with defendants. Defendants initially assured that the project will be completed but later agreed that the project will not come up and agreed to refund the amount invested by plaintiffs. Therefore, Settlement Agreement dated 11th June 2016 was entered into between plaintiffs and defendants,

copy whereof is at Exhibit “F” to the plaint. As per the Settlement Agreement, plaintiffs agreed to accept a sum of Rs.1,05,00,000/- in full and final settlement. It is averred in the plaint that the understanding was if the amount of Rs.1,05,00,000/- was not paid as per the schedule provided in the Settlement Agreement, the entire amount of Rs.1,43,00,000/- will be payable. The Settlement Agreement, however, does not provide for any interest. Even the allotment letter does not provide for any interest. It is stated in the plaint that defendants paid sum of Rs.10 lakhs in June 2016 and thereafter, did not make any further payments.

6 Plaintiffs are therefore, seeking a decree for an amount of Rs.1,33,00,000/- plus interest from June 2011 to June 2016 at 18% p.a. on Rs.1,43,00,000/- and from June 2016 till payment/realisation on the balance amount of Rs.1,33,00,000/-.

7 Having considered the averments in the plaint and the documents annexed thereto and in view of the fact that there is no defence filed, the suit is decreed in favour of plaintiffs in the principal sum of Rs.1,33,00,000/- together with interest thereon at 10% p.a. from June 2016 until payment/realisation plus cost in the sum of Rs.50,000/-. Drawn up decree dispensed with. Notice of motion also accordingly disposed.

8 All to act on authenticated copy of this order.

AT 3.00 P.M.

9 Mr. Zade appeared and stated that he could not appear earlier when the matter was called out as he was on his legs before another Court. Mr. Zade further stated that he is not seeking recall of the decree passed in the morning but only wants the Court to record that he had sent several reminders to defendant no.2, who is also partner of defendant no.1, stating that the draft of the written statement is ready and he had sent the draft to defendants for further instructions. Defendants, however, ignored and never came forward to even declare the written statement. Mr. Zade further stated that on 3rd March 2019 he informed defendants that the notice of motion as well as suit is listed for today and asked defendants to revert with instructions to which again there has been no response. Mr. Zade stated that he will be applying to the registry for discharge as advocate on record.

(K.R. SHRIRAM, J.)