

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
SUMMONS FOR JUDGMENT NO. 115 OF 2018
IN
COMM SUMMARY SUIT NO. 1140 OF 2018**

Peenaz Hoshang Jilla	...Plaintiff
<i>Versus</i>	
Kalpavruksha Developers & Ors	...Defendants

Mr Pradeep Thorat, for the Plaintiff.
Mr Dipesh Siroya, for the Defendants.

CORAM: G.S. PATEL, J
DATED: 5th March 2019

PC:-

1. The Plaintiff seeks to recover an amount of Rs. 2,04,41,000/- with interest at 18% per annum. Defendant No.1 is a partnership firm. Defendants 2 to 6 are its partners. Defendant No.1 is not a limited liability partnership.

2. The Plaintiff paid Rs. 53 lakhs of a total consideration of Rs 91 lakhs to the 1st Defendant towards the purchase of Flat No.1301 and two car parking spaces in an under-construction building,

Kalpvrksha Royal at Byculla. The 1st Defendant executed an Agreement dated 13th November 2013 in favour of the Plaintiff.

3. The building construction did not begin. The parties negotiated. On 16th August 2017, the 1st Defendant agreed to buy back the Plaintiff's rights for Rs. 1,76,41,000/-. The 1st Defendant gave the Plaintiff two post-dated cheques for Rs. 88,20,500 each. These were dishonoured: the 1st Defendant stopped payment. The Plaintiff protested. The parties executed a fresh Agreement dated 14th October 2017 under which the 1st Defendant gave two replacement post-dated cheques in the same amounts. There was an identical dispute at that time with the Plaintiff's sister, Teena, and this Plaintiff was asked not to deposit those replacement cheques as a Settlement Agreement was being drawn up.

4. These parties did enter into a Settlement Agreement dated 15th December 2017. The 1st Defendant agreed to pay the Plaintiff an amount of Rs. 1,76,41,000/- and issued a post-dated cheque of 5th April 2018 in that amount. Clause 5 of the Agreement said that should the cheque be dishonoured, the Plaintiff would be entitled to recover Rs Seven Lakhs per month until realization. The Settlement Agreement also said that the Plaintiff's dues were secured and collateralized by a charge over a property at Tungarli, Lonavala.

5. The Plaintiff presented the 1st Defendant's cheque for Rs. 1,76,41,000/-. It was dishonoured for insufficiency of funds.

6. Having been served with the Writ of Summons, the Defendants entered appearance and sought leave to defend. The Plaintiff filed this Summons for Judgment. There are affidavits in reply and rejoinder.

7. The only defence in the Affidavit in Reply is that the flat in question is even now available. But that is no answer at all. It does not explain the intervening agreements, including the Settlement Agreement. It does not explain the issuance of the cheque and its dishonour for insufficiency of funds. In fact, it explains nothing at all, and promises even less for, apart from anything else, at least one of the 1st Defendant's partners is even now in jail. The Affidavit in Rejoinder points out that in other proceedings before Kathawalla J at the instance of other plaintiffs, this Defendant has admitted its liability to the present Plaintiff's sister. That Court also returned a finding against the Defendant.

8. I see no reason to take any different view. There is absolutely no defence to the summons for judgment, let alone one that can be said to be probable or plausible, or one that raises any triable issue. In fact, there is no issue and there is no dispute to be tried.

9. The Summons for Judgment is made absolute.

10. The suit is decreed in favour of the Plaintiff and jointly and severally against the Defendants in the amount of Rs.2,04,41,000/- crores with interest at the rate of 18% per annum from 31st July 2018 till payment or realisation.

11. Since this is been filed as a Commercial Suit, the Plaintiff must be awarded to costs under Section 35 of the Code of Civil Procedure 1908 (“CPC”) as amended by the Commercial Courts Act. Having regard to the fact that the Plaintiff has had deal with a Notice of Motion in addition to prosecuting the Summons for Judgment, I believe an amount of Rs. 5 lakhs, though without interest, is a reasonable litigation fee. There will also be a decree jointly and severally against the Defendants in the amount of Rs. 5 lakhs as costs, without interest.

12. The Plaintiff will also be entitled for refund of Court fees, if any, in accordance with the Rules. The decree for costs is not to be reduced by the amount of refund.

13. Liberty to the Plaintiff to move in execution without awaiting sealing of the decree. Drawn up decree expedited.

14. The documents tendered by the Plaintiff are taken on record and marked as **Exhibit “P1”** in evidence. The original documents will be returned upon these being substituted with authenticated photocopies.

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

(G. S. PATEL, J)