

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 110 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 1167 OF 2018**

Mohamed Akhtar Merchant	...Plaintiff
<i>Versus</i>	
BSB Developers & Ors	...Defendants

Mr Nilesh M, i/b Tejas Deshpande, for the Plaintiff.
Mr A Sequera, i/b Vasim AS Shaikh, for Defendants Nos. 1 to 4.

CORAM: G.S. PATEL, J
DATED: 16th January 2019

PC:-

1. Heard.

2. This is an ambitious Summary Suit. According to the Plaintiff, he paid an amount of Rs. 36 lakhs to the Defendants towards a flat in a property being developed by them. Payments were supposed to have been made between 15th February 2012 and some time in April 2012. Of the amount of Rs. 36 lakhs, Rs. 15 lakhs is said to have been paid in cash. Whether such a claim can ever be on its own the subject matter of a recovery proceeding is a question I need not address because the Plaintiff relies on a receipt at Exhibit

“D”, at page 23, which *prima facie* seems to accept this payment. But that is not the difficulty in the Plaintiff’s way. The principal amount is Rs.36 lakhs and is therefore within the pecuniary jurisdiction of the City Civil Court and not this Court. In order to bring it within the jurisdiction of this Court there is a claim for interest. This claim is at the rate of 30% per annum without it being shown that there is any agreement for this rate of interest; a rate that, in any event, is so utterly unconscionable and usurious that no Court would ever allow it, especially absent any agreement. It is computed at this rate from 2012 onwards, and that in turn raises the question of a bar of limitation to such a claim. According to the Plaintiff, the Defendants agreed in 2012 to provide a flat within three years by March or April 2015. The suit itself was filed on 20th July 2018. Either way, this raises the question of limitation.

3. It is of little use to submit that the bar of limitation is saved because the Plaintiff thought it fit to terminate the agreement only some time in 2017 or to contend that the cause of action accrued to the Plaintiff only on such termination. There is no explanation at all why the Plaintiff waited for two years after what according to the Plaintiff himself was the scheduled or agreed date of delivery of possession of a completed flat to terminate this notice.

4. There is no question of making the Summons for Judgment absolute or of even making a conditional order on it.

5. The Summons for Judgment is dismissed. The Defendants are granted unconditional leave to defend. All contentions are kept

open and the Defendants are at liberty to take such defences and adopt such proceedings as they deem fit.

6. I will, at the request of the Plaintiff however, since the Writ of Summons has been served, issue directions for filing of a Written Statement. That Written Statement is agreed to be filed and served on or before 22nd February 2019.

7. List the suit for framing issues on 27th February 2019.

(G. S. PATEL, J)