

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

SUMMONS FOR JUDGMENT NO. 114 OF 2018

IN

COMM SUMMARY SUIT NO. 1141 OF 2018

Teena Hoshang Jilla Alias Teena Mohammed ...Plaintiff
Roshan

Versus

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. 1.42 crores 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. 32 lakhs of a total consideration of Rs 56.70 lakhs to the 1st Defendant towards the purchase of Flat No.1304 and two car parking spaces in an under-construction building, Kalpvruksha 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. 89 lakhs. The 1st Defendant gave the Plaintiff two post-dated cheques for Rs. 44.50 lakhs 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 cheques also for Rs. 44.50 lakhs each. These too were dishonoured, and the parties were back in negotiations.

4. Finally, the parties entered into a Settlement Agreement dated 15th December 2017. The settled amount was an upfront payment by demand draft of Rs. 50 lakhs; a cheque for Rs. 39 lakhs (thus making the previous total of Rs. 89 lakhs); an additional cheque for Rs. 35 lakhs; and a provision for monthly recompense at Rs. Two lakhs and Rs One Lakh per month should either of those cheques be dishonoured. The cheque for Rs. 39 lakhs was post-dated to 31st January 2018. The one for Rs. 35 lakhs was post-dated to 5th April 2018. The Settlement Agreement also said that the Plaintiff's dues were secured and collateralized by a charge over a property at Tungarli, Lonavala.

5. Both cheques for Rs. 39 lakhs and Rs 35 lakhs were 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 cheques and their 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 parties, this Defendant has admitted its liability to the present Plaintiff. 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.1.42 crores with interest at the rate of 18% per annum from 1st August 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)