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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
SUMMONS FOR JUDGMENT NO. 6 OF 2019
IN
COMM SUMMARY SUIT NO. 216 OF 2018

Sukhdev Singh Bansal ...Plaintiff
Versus
KT Group & Ors ...Defendants

Mr Kayval P Shah, *with Mr Tejas K Sanghrajka, for the Plaintiff.*
Ms Sunita M Poddar, *for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 18th March 2019

PC:-

1. This summary suit filed under Order XXXVII of the Code of Civil Procedure 1908 seeks recovery of an amount of Rs.2,27,09,320/-. This comprises a principal amount of Rs.1,83,08,000/-, interest calculated at Rs.34,01,320/- and Rs. 10,00,000/- towards stamp duty charges.

2. The Writ of Summons having been served, the Defendants entered appearance. The Plaintiff filed a summons for judgment to which there is an Affidavit in Reply. There is no Affidavit in Rejoinder, and in my view quite correctly so.

3. The facts are these. The 1st Defendant is a partnership firm supposedly in the business of real estate development. Defendants Nos. 2 to 5 are its partners. According to the Plaintiff, Bansal, in June 2016 he wanted to invest in the Defendants' redevelopment project called Sai Vishal Cooperative Housing Society at Malad. I will at this stage deal straightway with the objection from Ms Poddar for the Defendants that there is a difference between an investment and a booking of a flat. There is no such distinction. Many persons book flats as investments, meaning that they wish to invest in real estate without actually taking up residence in the flat they purchase. There is nothing illegal or improper about this.

4. Paragraph 3 of the Plaint says that the Plaintiff made an initial payment or Rs.35 lakhs as advance against the proposed purchase of two flats 1201 and 1202 on the 12th floor of this building. These payments were made by RTGS. The other defence now sought to be raised, that nothing more than an initial amount of 10 lakhs was paid, is therefore clearly incorrect. There is also no dispute that the Defendants signed separate agreements for sale of 2nd July 2016. The consideration for flat 1201 was Rs.87.81 lakhs. The consideration for flat 1202 was Rs.95.27 lakhs. There is simply no answer to either of these agreements. Both agreements are registered. The aggregate consideration is Rs.1,83,08,000/-. Consequently, when Ms Poddar argues that there is an allotment letter, and the allotment letter is not an agreement, she is incorrect on facts.

5. It is true that the agreements required Bansal to make payments as each slab was completed. This is usual in such cases. In paragraph 7, Bansal sets out the payments he made between 2nd and 19th July 2016. All these payments were direct credits to the bank account of the 1st Defendant and made by RTGS. The attempt, therefore, to deny today that the Defendants received these funds is utterly futile. What is missing is an explanation for the receipt of these funds.

6. The agreements required the Defendants to deliver possession in 24 months. Bansal soon realised that this was unlikely. On 2nd July 2017, according to Bansal, the 1st Defendant issued a letter agreeing to pay interest at 1.1% per month. A copy of that letter is at page 201 and it is signed by 4th Defendant. Of course when Ms Poddar denies this letter, she has the quite considerable advantage of being able to do so on the basis that this gentleman is presently a guest of the State Government and has therefore filed no Affidavit. But the letter he signed also has a rubber stamp of the 1st Defendant; and he signed the letter not in some personal capacity but as a partner of the 1st Defendant. I am asked to believe that this letter was obtained under some sort of a duress but I will deal that argument a little later because it seems to be the only argument the Defendants take throughout to excuse everything that the Defendants did and did not do.

7. There is some discussion about a separate allotment letter for the car parking spaces but this is irrelevant. The next reference is to a letter of 26th July 2017 copy of which is at 210. Again, this is signed by 4th Defendant and in this letter the 4th Defendant on behalf of the 1st Defendant agreed to repay an amount of Rs.87,81,000/- in respect of flat 1201. There is an identical letter of the same date at page 211 where the amount agreed to be repaid is Rs.95,27,000/-. For the first amount of Rs.87.81 lakhs, the 1st Defendant issued four cheques. The second amount of Rs.95.27 lakhs was covered by five separate cheques. Details of these cheques are set out page 9 of the Plaint.

8. Bansal says that at the Defendants' request he did not deposit the cheques for some time. On 30th November 2017, he sent a legal notice through his Advocates demanding the entire amount. There is no reply. Bansal then deposited all nine cheques. Every one of these was returned unpaid for insufficiency of funds. Photocopies of these cheques are annexed to the Plaint. The cheques are very interesting. To begin with, they are signed on behalf of the 1st Defendant firm and there is the printed endorsement of the name of the 1st Defendant. Second, the cheques are not signed only by one signatory i.e. 4th Defendant; they are signed by two partners on behalf of the 1st Defendant firm. Every single one of these nine cheques is so signed. Therefore to say that the 4th Defendant, presently in jail, is able to answer and that a further Affidavit is necessary is utterly pointless. There is no explanation for the dishonour of these cheques in the Affidavit in Reply. Indeed the only traverse in paragraph 11 is to say that "return of the cheques are matter of record". This admits the issuance of the cheques. This admits the dishonour of the cheques. This admits that there is no explanation whatsoever.

9. Ms Poddar has urged repeatedly that the two letters to which have referred of July 2017 and the cheques were all issued under pressure and duress. There is not even an averment to this effect anywhere in the Affidavit in Reply. That Affidavit in Reply is filed by the 3rd Defendant, evidently a brother of 4th Defendant. Curiously, from the signature on the Affidavit, it seems that it is the 3rd Defendant whose signature was the other signature on all nine cheques. That, I should imagine, is enough to put up an end to this defence of pressure. If the 3rd Defendant believed he was coerced, he ought to have said so. I reject Ms Poddar's application for an adjournment to put in a further affidavit to say this. A defence taken in a Summons for Judgment must be complete. It cannot be a work in progress. Ms Poddar seems to overlook the cardinal principle underlying Order XXXVII: unlike a regular suit, a defendant to a summary is *not* entitled as of right to defend it. He must seek leave to defend. To do that, he must make out a defence that is bona fide and, on a prima facie evaluation, meets the criteria that are by now well laid out in this branch of the law.

10. There is no answer to the dishonoured cheques. There is no answer to the written commitments except to argue orally across the Bar, unsupported by the slightest averment, that these (and the cheques) were all obtained under duress. That is the vaguest possible statement. The rules of pleadings will apply to any such defence. It must be sufficiently particularized. It is not. It is also inconceivable that a firm of builders could be so utterly terrorized by an individual flat purchaser or investor. There is not even a mention of this before the suit. There is no answer to the legal notice.

11. In short: there is no question of holding that there is a defence that is not probable or not plausible. There is no defence whatsoever. There is in fact nothing in the Affidavit in Reply that even remotely resembles a defence.

12. The Summons for Judgment is made absolute.

13. The Suit is decreed. The decree jointly and severally against the Defendants in the sum of Rs.2,27,09,320/- with further interest on the amount of Rs.1,83,08,000/- and on the amount Rs. 10,00,000/- at 13.2% per month from the date of suit till payment or realisation. On the question of interest, but for the fact that the interest has been claimed at what is said to be agreed rate of 13.2%, the Plaintiff would have been entitled to a higher rate of interest.

14. There is also a prayer for costs and since this is a suit filed in the Commercial Division, having regard to the provisions of Section 35 of the Code of Civil Procedure 1908 as amended by the Commercial Courts Act 2015, the Plaintiff is entitled to costs as a matter of right. If costs are not to be awarded then reasons must be stated. I can see no reason not to award costs. In my view, having regard to the fact that the Plaintiff has had to contest the matter to the stage of a summons for judgment, there will be a single consolidated award of costs and a decree in these terms jointly and severally against the Defendants for both the summons for judgment and the suit in the amount of Rs.4.5 lakhs. I consider these to be reasonable legal expenses and costs.

15. In addition the Plaintiff will be entitled to refund of Court fees in accordance with the Rules. The amount of refund is not to be deducted or reduced from the decree in costs. Liberty to the Plaintiff to move in execution without awaiting sealing of the decree. Drawn up decree expedited.

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

17. Ms Poddar requests a stay. There can be no question of stay of this order. The Plaintiff will have to file appropriate proceedings in execution. The application is rejected.

(G. S. PATEL, J)