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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
SUMMONS FOR JUDGMENT NO. 124 OF 2018
IN
COMM SUMMARY SUIT NO. 1151 OF 2018

The Indian Hotels Company Limited …Plaintiff
Versus
DBS Capital Markets Pvt Ltd & Anr …Defendants

Mr Astad Randeria, *with Ms Avasia & Ms Shaheen Moghul, i/b m/s Mulla & Mulla & Craigie Blunt & Caroe, for the Plaintiff.*
Mr Vivek Kantawala, *with Mr Amey Patil, Mr Vivek M Sharma, Mr Shanay Bafna & Ms Hetal Jobanputra, i/b M/s Vivek Kantawala & Company, for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 7th March 2019

PC:-

1. The suit is by the Indian Hotels Company Limited. It owns, manages or operates the Taj Mahal chain of hotels and resorts. The claim against the Defendants jointly and severally is in the amount of Rs.1,00,50,115/- with interest on the principal amount of Rs.64,80,535/- at the rate of 18% per annum from the date of the suit till payment or realisation.

2. Shortly stated the claim is for the amount incurred for the Defendants' use of one of the Plaintiff's properties, service apartments known as the Taj Wellington Mews Luxury Residences from 1st May 2015 to 13th July 2015.

3. The Writ of Summons having been served the Defendants entered appearance and sought leave to defend. The Plaintiff filed a Summons for Judgment. There is a reply and a rejoinder.

4. The 2nd Defendant, Vikram Agarwal, is described as a director on the board of the 1st Defendant, DBS Capital Markets Private Limited. The Plaint contains some narrative about an associated company, DBS Corporate Services Ltd, and its membership of the Taj Group exclusive club called *The Chambers*. In 2010, Agarwal left DBS Corporate Services. Its membership of the Chambers was transferred to DBS Capital Markets. Agarwal says he did not confirm this membership transfer, but the submission is, as we shall see, a complete non-sequitur and total irrelevance. DBS Capital Markets is entirely owned and controlled by Agarwal and his wife Shaheen.

5. In April 2015, Shaheen sought information from the Chambers on options for temporary accommodation — now, whether or not Agarwal had approved of the membership transfer from one DBS entity to another is clearly immaterial, since his wife used that membership first to obtain this information by referencing the corporate membership. The Plaintiff's representative responded with an offer of a penthouse apartment at Wellington Mews quoting

Rs.70,000/- plus taxes per night as on 29th April 2015. Various other facilities and services were to be charged additionally. The response from Shaheen was that the amounts should be billed to the Chambers' membership account. The Agarwals confirmed that they would take up residence *en famille* at Wellington Mews from 1st May 2015. They made a booking for one month — and of course immediately asked for transportation facilities as well from their own residence at Worli. The Plaintiff confirmed the booking. It arranged a pick up from the Agarwals' residence.

6. Agarwal and his family arrived at Wellington Mews on 1st May 2015, signed a registration form, and provided the necessary identification particulars and list of occupants. The registration form of course constitutes a contract and there is no dispute that this was indeed signed by Agarwal. There is also no dispute that the Agarwal family took up residence in Apartment 1102 of Wellington Mews from 1st May 2015 and continued to use it (and its various facilities) until 13th July 2015. The facilities extended to everything now considered essential to modern day urban life: a swimming pool, spa, and a gymnasium, apart from more mundane housekeeping and laundry services; plus restaurants, room service, and, of course, the inevitable and indispensable WiFi internet facility.

7. The Plaintiff says it called on Agarwal to make payments by a letter dated 28th June 2015 and an e-mail of 23rd June 2015 (while the family was still in residence). It received no payment. Instead, it got an e-mail of 23rd June 2015 from Agarwal. This makes for the most interesting reading. A copy is at page 72. Here Agarwal says that he raised various serious issues some time earlier by an e-mail addressed to the director of the Plaintiff, as also to an ex-director of Tata Sons, and the trustees of the Sir Ratan Tata Trust but had no reply. Then he said that all 'costs and consequences' of the Plaintiff's 'action' would be 'borne by the Tata group' until Agarwal received a satisfactory reply. It is difficult to understand what, if anything, this is supposed to mean or has to do with what is essentially the cost of a hotel accommodation by whatever name called. The fact that this is a service apartment makes no difference to the contract. The e-mail of 23rd June 2015 actually raises no dispute whatsoever. It seems that the Plaintiff replied on 24th June 2015 quite correctly pointing out that any grievances Agarwal may have had with others in the Tata Group were wholly irrelevant. The Plaintiffs then tried to send physical copies of the bills but found the Agarwals' apartment locked. These were then delivered to a security officer. There is a long recitation of attempts at correspondence and sending notices. Importantly, all this was happening while the Agarwals were still in residence at Wellington Mews; that is to say, the Agarwals continued to use the service apartment but did not make payment, apparently refused to accept service of bills, and raised disputes wholly irrelevant to their financial obligations. It was not until 13th July 2015 that the Plaintiff was able to persuade the Agarwal family to vacate apartment 1102. It seems the family decamped leaving its bills unpaid.

8. The Plaintiff then issued a notice dated 29th June 2016. Mr Kantawala for the Defendants makes — or, more accurately, attempts to make — a grievance about the so-called delay in sending this demand. He says it is inconceivable that the Taj Group would so considerably delay sending out a bill. The argument is unfortunate, because it posits a priori that the bill was due and unpaid. In any case, the submission, such as it is, does not take us anywhere. It is not his case that the bill is false, or that the Agarwals did not use the service apartment at Wellington Mews. If the submission is that a bill, only on account of delay, becomes unrecoverable in law, then the submission is unsound, and only needs to be stated to be rejected. There is no dispute about the liability under the demand. The mere delay furnishes no answer at all. Linking the delay to the Taj Group is equally meaningless. At best, this may speak to that Group's tradition of genteel hospitality, but nothing more.

9. This, then, is the basis of the claim which today stands Rs.1,00,50,115/-.

10. There is one more defence and this has to do with jurisdiction, for Mr Kantawala suggests that the particulars of claim at page 32 do not correspond to the 1st June 2015 bill for the month of May 2015 at page 74 and that the claim today has been, to use his words, "padded up" to bring it within the jurisdiction of this Court. I do not think that is correct. The bill at page 74 of 1st June 2015 included apartment charges, applicable tax and certain amounts as incidental charges per fortnight. The particulars of claim at page 32 are the consolidated figure for all charges accrued due. Then there is the claim for delayed interest after allowing for 45 days of credit. I do not think that the argument Mr Kantawala raises has much substance. Indeed, this granting of credit for 45 days itself is a sufficient answer to the previous submission about the so=called delay. Most hotels would insist on payment in full before they allowed a guest to even leave the premises.

11. The other disputes that the Agarwal may have had with individuals in the Taj Group or any of the Tata Group of companies are evidently wholly irrelevant to this claim. It simply cannot be that because Agarwal had a grievance against the holding company, Tata Sons, or one of the trusts that has equity in Tata Sons, that he has not liable to pay his dues for his and his family's use of a service of apartment at Wellington Mews.

12. Similarly, the other dispute about Agarwal not having consented to the change in the membership of the Chambers again has nothing at all to do with the claim simply because there is no dispute that it was the Agarwals who used Apartment 1102 at Wellington Mews. There is no question of an agreement to let them use this apartment free.

13. This is not a case of there being an implausible, improbable, bogus or sham defence. This is case of there being no defence at all.

14. The Summons for Judgment is accordingly made absolute. The suit is decreed in the amount sought jointly and severally against the Defendants for Rs.1,00,50,115/- with further interest on the principal amount of Rs.64,80,535/- at the rate of 18% per annum from the date of the suit until payment or realisation.

15. Since this has been filed as a commercial summary suit, the Plaintiff is also entitled to a decree in costs under Section 35 of the Code of Civil Procedure 1908 (**"CPC"**) as amended by the Commercial Courts Act. Having regard to the nature of the defence, and the quite extraordinary delay on the part of the Defendants in clearing a legitimate due, I believe an amount of Rs.6 lakhs is a reasonable litigation fee to be awarded to the Plaintiff jointly and severally against the Defendants. This decree for costs will not carry interest.

16. In addition the Plaintiff will be entitled to a refund of Court fees in accordance with the Rules. The costs are not to be reduced by the amount obtained as a refund.

17. The Plaintiffs will submit a compilation of authenticated copies of their documents within one week from today. These will be taken on record.

18. The decree is to be drawn expeditiously in these terms.

19. Liberty to the Plaintiffs to move in execution without awaiting sealing of the decree.

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

(G. S. PATEL, J)