IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

SUMMONS FOR JUDGMENT NO. 70 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO. 1172 OF 2019

1.	**Jayant Meghani** Aged : 84 years, residing at Ram Niwas, Ground floor, Navroji Lane, Ghatkopar West, Mumbai – 400076, Through his Constituted Attorney Ms. Shraddha Khandhadia	]	
2.	**Mahendra Meghani** Aged : 76 years, residing at Ram Niwas, Ground floor, Navroji Lane, Ghatkopar West, Mumbai – 400076, Through his Constituted Attorney Ms. Shraddha Khandhadia	]	
3.	**Taru Meghani** Aged : 72 years, residing at Ram Niwas, Ground floor, Navroji Lane, Ghatkopar West, Mumbai – 400076, Through his Constituted Attorney Ms. Shraddha Khandhadia	]..	Applicants (Orig. Plaintiffs)

IN THE MATTER BETWEEN :

1.	**Jayant Meghani** Aged : 84 years, residing at Ram Niwas, Ground floor, Navroji Lane, Ghatkopar West, Mumbai – 400076, Through his Constituted Attorney Ms. Shraddha Khandhadia	]
2.	**Mahendra Meghani** Aged : 76 years, residing at Ram Niwas,	]

	Ground floor, Navroji Lane, Ghatkopar	]
	West, Mumbai – 400076,	]
	Through his Constituted Attorney	]
	Ms. Shraddha Khandhadia	]
		]
3.	**Taru Meghani**	]
	Aged : 72 years, residing at Ram Niwas,	]
	Ground floor, Navroji Lane, Ghatkopar	]
	West, Mumbai – 400076,	]
	Through his Constituted Attorney	]
	Ms. Shraddha Khandhadia	].. Plaintiffs

V/s.

1. Shree Tirupati Greenfield	]
(Shree Tirupati Greenfield Developers)	]
Diwanchand Hansraj Compound,	]
Kolshet Road, Dhokali Naka,	]
Thane (W), Thane 400 607	]
	]
And Also at -	]
Abhiman II Building Opp Karur	]
Vysya Bank, Teen Hath Naka,	]
Thane (W), Thane – 400 602.	]
	]
	]
2. Haresh Gurbaux Daulatani	]
Aged : Adult, Occ : Business,	]
Residing at 1101/1102 Phase II,	]
Siddhanchal Pokharan Road No.2,	]
Near Vasant Vihar, Thane West	]
Thane 400 602.	]
	]
3 Arvind Satpal Gupta	]
Aged : Adule, Occ : Business,	]
Residing at – Flat No.2, 5th floor,	]
Mitra Kunj, 16th Peddar Road,	]
Mumbai – 400026.	]
	]
4 Sunil Satpal Gupta	]
Aged : Adult, Occ : Business	]
Residing at Flat No.2, 5th floor,	]

Mitra Kunj, 16th Peddar Road,]
Mumbai – 400026]
]
Also Having Address at :]
]
803, Sai Samarth, Near Vasant]
Service Centre, Deonar Village,]
Govandi East, Mumbai 400 088.]
]
And Also at :]
]
Plot No. 257, Building No.3,]
Central Avenue Road, Behind Road].. Defendants
No.10, Chembur, Mumbai – 400 071]

ALONG WITH
INTERIM APPLICATION NO. 1 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO. 1172 OF 2019

1. Shree Tirupati Greenfield
(Shree Tirupati Greenfield Developers)
& Ors. .. Applicants/Orig. Plaintiffs

In the matter between :

Jayant Meghani
& Ors. .. Plaintiffs
Vs.
1. Shree Tirupati Greenfield
(Shree Tirupati Greenfield Developers)
& Ors. .. Defendants

Mr.Narayan Sahu i/b Adv. Shrinath Kamta Dubey for plaintiffs.

Mr. Saurab Oka for defendants/applicants in interim application.

CORAM : N.J. JAMADAR, J.
DATE : 10th JANUARY 2020

ORAL JUDGMENT :

1. This commercial division summary suit is instituted for recovery of a sum of Rs.1,54,22,832.60 on the basis of a memorandum of understanding and the negotiable instruments.

2. The claim of the plaintiffs is that on the representation of the defendants that the handsome return could be earned in the event of making an investment in the projects which the defendant No.1 was developing, the plaintiffs had collectively advanced a sum of Rs. 75 lakhs. The defendants had promised to repay the said amount along with interest @ 33 % per annum within a period of 12 months. The defendants had drawn cheques towards the repayment of the said amount. However, the cheques were returned unencashed on presentment. Hence, the suit for recovery of the said amount along with interest.

3. The defendants entered appearance in response to the writ of summons. The plaintiffs took out the summons for judgment.

4. The defendants have preferred this interim application seeking the reference of the dispute to arbitration in view of an arbitration clause in the memorandum of understanding dated 7th June 2014 ('MOU'). The defendants have contended that the transaction between the parties was of an investment in the project which was being developed by the defendants. The transaction was evidenced by the MOU. Apart from the other terms, the MOU contains an arbitration clause, which reads as under :

> *"n If at any time, any dispute, difference or question shall arise, between the parties hereto, touching, pertaining, affecting concerning or relating to the terms of this MOU or meaning of these presents or the rights or liabilities, hereunder, which cannot be resolved by or between the parties themselves, then, every such dispute difference or question shall be referred to an arbitrator to be appointed by the parties under the provisions of Arbitration and Re-Conciliation Act, 1996 or any statutory amendment or re-enactment thereof."*

As the plaintiffs have approached the Court with a claim for recovery of an amount advanced thereunder and the dispute is clearly covered by the arbitration clause, the reference under section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') is warranted.

5. The plaintiffs have resisted the application by filing an affidavit in reply. It is averred that there was a series of transactions between the plaintiffs and the defendants. As of now, five suits have been instituted against the defendants by the plaintiffs and other investors. Some of the transactions are not covered by Memorandum of Understanding, though forming part of one and the same bargain. The plaintiffs are the senior citizens. In the event of reference of the dispute to arbitration, the plaintiffs would be required to wait for an indefinite period for an admitted claim. Thus, the prayer for reference to arbitration be rejected.

6. Heard Mr.Narayan Sahu, the learned counsel for the plaintiffs and Mr.Saurab Oka, the learned counsel for the defendants/applicants.

7. Banking upon the arbitration clause, extracted above, Mr. Oka would urge that there is no other go but to make an arbitral reference under section 8 of the Act. Without disputing the execution of MOU and the arbitration clause therein, the learned counsel for the plaintiffs-respondents attempted to wriggle out of the situation by putting forth a submission that despite there being an arbitration clause, as extracted above, in the peculiar facts of the case, where there are multiple transactions between the parties, resulting in as many as five suits, the reference of the dispute to arbitration, will lead to conflicting decisions in diverse proceedings. As the transaction of loan is explicitly admitted by the defendants, this Court can proceed to determine the suit, urged the learned counsel for the plaintiffs-respondents.

8. I find it rather difficult to accede to the aforesaid submission. Few of the clauses of the MOU executed between the parties dated 7th June 2014 would make the situation abundantly clear. Clauses (c), (d), (e) and (h) of the MOU read as under :-

> *(c) The Second Part/Investors agreed to pay on execution of this MOU to the First Part / Developer the sum of* ***Rs. 75,00,000/- (Rupees Seventy Five Lakhs Only)*** *as the short term loan for a period of 12 months. The Second Part/Investor shall pay the said amount of* ***Rs.75,00,000/- (Rupees Seventy Five Lakhs Only)*** *as the following payment schedule :*

CHEQUE NO.	AMOUNT	DATED	DRAWN ON
003827	35,00,000/-	04-06-2014	Cosmos Co-op. Bank Ltd.
129401	20,00,000/-	04-06-2014	Corporation Bank
129382	20,00,000/-	04-06-2014	Corporation Bank

> *(d) The First Part/ Developers agrees and undertake to repay these amount of* ***Rs. 75,00,000/- (Rupees Seventy Five Lakhs Only)*** *at the end of 12 months from the date of the MOU or from the date of last months from the date of this MOU or from the date of last payment made by the Second Part / Investor whichever is later.*

> *(e) The First Part / Developers shall also pay Rs.6,60,000/- (Rupees Six Lakhs Sixty Thousand only) by cheque / cash as quarterly interest @ 33% per annum on account of appreciation profit on the said investment. This said amount of quarterly interest is payable by the First Part / Developers at the end of each quarter.*
>
> *...........*
>
> *(h) In case default on the part of the First Part/Developer to repay the amount mentioned in clause (c) above, then the Second Part / Investor will have all right either retain the said Flat for their own use or shall be entitled to sale the said Flat to any other Purchaser of his own choice by executing necessary documents and registering the same and for that purpose. The First Part / Developer shall execute simultaneously with this document, Special Power of Attorney for executing and registering the said Agreement for Sale and transfer of the said Flat in favour of the prospective Purchaser and receive consideration in their name."*

9. A conjoint reading of the aforesaid clauses of the MOU leads to a legitimate inference that not only the amount was advanced, under the MOU, but the terms of repayment, including the interest at which the amount was to be repaid and the consequences, in the event of default in repayment, were explicitly provided therein. Clause (h) provides that the investor will have right to retain the said flat for their own use or will be entitled to sell the said flat to any other purchaser.

10. In this backdrop, reverting to the arbitration clause, extracted above, it becomes crystal clear that the arbitration clause is comprehensive and covers all the disputes including the failure on the part of the defendants to repay the amount, as agreed.

11. From the text of section 8 of the Act, referral of the parties to arbitration becomes imperative, if the following conditions are satisfied :

> *"(i) there is an arbitration agreement;*
>
> *(ii) a party to the agreement brings an action in the court against the other party;*
>
> *(iii) subject-matter of the action is the same as the subject-matter of the arbitration agreement;*
>
> *(iv) the opposite party applies to the judicial authority for referring the parties to arbitration before it submits his first statement on the substance of the dispute."*

12. In the facts of the instant case, all the aforesaid conditions appear to have been satisfied, in the sense that, there is an arbitration clause in the MOU; the plaintiffs, who are parties is a party to the said agreement, have brought an action based thereon, the subject matter of the action is governed by the arbitration clause and the defendants have sought referral of the parties to arbitration before the defendants have submitted their first statement on the substance of the dispute. Resultantly, section 8 of the Act, being peremptory in nature, there is no escape from the conclusion that the dispute is required to be referred to arbitration.

13. Hence, the interim application deserves to be allowed. Thus, the following order :

(i) The interim application is allowed.

(ii) The parties are referred to arbitration in accordance with the arbitration agreement contained in the Memorandum of Understanding dated 7th June 2014.

(iii) An Arbitrator shall be appointed by the parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

(iv) In view of the reference of the parties to arbitration, Commercial Summary Suit No. 1172 of 2019 stands disposed of.

No costs.

(v) The plaintiffs are entitled to refund of court fees, if any, in accordance with rules.

(vi) In view of disposal of the commercial summary suit, Summons for Judgment No.70 of 2019 also stands disposed of.

[N.J. JAMADAR, J.]