

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 20 OF 2019

IN

COMMERCIAL SUMMARY SUIT NO. 377 OF 2019

Desmond Crasto ... Plaintiff

vs.

Sumer Buildcorp Pvt. Ltd. ... Defendant

Mr. V. R. Dhond, Senior Advocate a/w. Mr. Shyam Kapadia, Ms. Kirtida Chandarana and Ms. Rukaiyyah Mahuwala i/b. Mr. Mahernosh Humranwala for the Plaintiff.

Ms. Kausar Banatwala i/b. Mr. Tushar Goradia for Defendant no. 1.

CORAM : A. K. MENON, J.

DATED : 8th JUNE, 2022

P.C. :

1. In a suit filed for recovery of a sum of Rs. 4,58,55000/- due under a Cancellation Letter dated 16th February, 2016 copy of which appears at Exhibit D to the suit, the plaintiff seeks a judgment and decree. Summons for judgment has been duly served upon the defendants on May, 2019. Admittedly there is no reply to the Summons for Judgment even today.

2. This matter was kept back at the request of the Advocate for the defendant in order to ascertain whether the defendant wishes to make remittance and settle the dispute. However the learned counsel for the defendant has even on second call states that she has no instructions in the matter. Accordingly the Summons for Judgment has proceeded to hearing.

3. Mr. Dhond pointed out that the plaintiff and defendant no. 1 entered into an agreement for allotment of the flat in a project being developed at Santacruz being Flat No. 1101, Willingdon Colony, S. V. Road, Santacruz, Mumbai. The project was not completed and the project was separately taken over by another group of developers. Further sums of money were demanded by the plaintiff which the defendants was not willing to pay as a result of negotiation then between the parties concerned. The defendant agreed to the cancellation of a tentative allotment / reservation made in respect of the flat and agreed to pay to the plaintiff a sum of Rs.4,58,55000/- within four months from 16th February, 2016 being the date of Cancellation Letter. It is an admitted document and there is no dispute as to its contents.

4. Learned counsel for the plaintiff has today produced and tendered the original agreement in a compilation. Mr. Dhond pointed out that despite several demands the defendant has failed to comply with that obligation under the cancellation letter. He is therefore entitled to a decree.

5. In my view having perused the plaint, the document annexed to it and having heard the learned counsel for the parties I am of the view that there is absolutely no defence to the claim. The original document has been produced in court. The obligation to pay is unconditional and the plaintiff in my view is entitled to a decree. Accordingly I pass the following order :

- (i) Summons for Judgment is made absolute.
- (ii) Rate of interest on the decretal sum of Rs. 4,58,55,000/- shall be paid @ 9% from date of the suit till payment of the sum.
- (iii) Refund, if any, as per rules.
- (iv) Original documents shall be retained on record.
- (v) Suit disposed in the above terms.

(A. K. MENON, J.)