

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 29 OF 2019

IN

COMMERCIAL SUMMARY SUIT NO. 375 OF 2019

Mira Construction ... Plaintiff

vs.

Kavya Mira Realty and 2 Ors. ... Defendants

Mr. Nikhil Rajeshirke for the Plaintiff.

Ms. Kausar Banatwala a/w. Ms. Meetal Savla and Mr. Yash Dhakad i/b. Ms. Aruna Ghadge for the Defendants.

CORAM : A. K. MENON, J.

DATED : 8th JUNE, 2022

P.C. :

1. In a suit filed for recovery of a sum of Rs. 10,76,34,097/- towards dues of the plaintiff who is admittedly partner of defendant no. 1 and said to be payable to the plaintiff on his retirement, the plaintiff seeks a decree by this Summons for Judgment.

2. Learned counsel for the plaintiff has pointed out that under a deed of retirement dated 31st December, 2015 the plaintiff retired from the firm and under clause 3 of the deed the firm agreed to pay to the retired partner a sum of Rs. 9,00,00,000/-. The deed also mentions cheques amounting to Rs.

4,00,00,000/- and Rs. 5,00,00,000/- respectively including the amount

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standing to the credit of the plaintiff in the books of defendant no.1. as on 31st December, 2015 said to be payable by way of full and final settlement. The amount has not been paid.

3. Later it appears that on 29th January, 2016 a confirmation of the amount due has been issued by the defendants who have executed the said confirmation, copy of which is at Exhibit C. By this confirmation the continuing partner in defendant confirmed liability to pay to the plaintiff the aforesaid amount vide these two cheques. Both cheques have been dishonoured. Copies of the dishonored cheques are at Exhibit D. Learned counsel for the plaintiff therefore submits that the plaintiff is entitled to receive a sum of Rs. 9,00,00,000/- and interest as computed is set out in particulars of claim at Exhibit P. Interest has been computed @ 18% per annum in view of the agreement between the parties and as embodied in the confirmation dated 29th January, 2016. Thus the plaintiff claims a decree in the aforesaid amount.

4. On behalf of the defendant summons is resisted on the strength of affidavit in reply filed by one Kajal Nimesh Vora defendant no. 3 for defendant nos. 1 and 2. Affidavit sets out that there is no arbitration agreement between the parties, however that objection does not survive since an application under section 8 of the Arbitration and Conciliation Act, 1996 has been rejected. That having attained finality, the suit is now liable to be proceeded with. It appears that an appeal has been filed but admittedly there

is no stay to the suit and hence the suit must proceed. Objection is also taken on the ground that a summary suit cannot be filed because the dispute pertains to partnership business and that the claim of the applicant / plaintiff is secured by certain immovable documents of properties which are retained by escrow agents who are two solicitors as set out in Exhibit '4' to the affidavit in reply.

5. It is further contended by the learned counsel for the defendant that the amount being secured and property being valued at more than Rs.10 crores, there is no justification in filing the present suit or filing decree in terms of the plaint. It is also her contention that after execution of the retirement deed a sum of Rs. 2,24,00,000/- has already been paid over as such principal sum is only Rs.6,76,00,000/- and therefore there is no occasion to seek a decree in a sum of Rs. 10,76,34,097/-. It is also contended that interest is not payable that the balance principal sum being only Rs.6,76,00,000/- and the escrow agents being in possession of documents of title of immovable property worth more than Rs. 10 crores, there is no justification in seeking to prosecute the present suit. She states that it is open to the plaintiff to approach the escrow agent and seek custody of the original documents as security. That being a secure claim, there is no justification in seeking a decree.

6. Having heard the learned counsel for the parties I find that the amount of the claim is admitted inasmuch as the retirement deed clearly provides for

payment of Rs. 9 crores. It has been acted upon by issuing two cheques. These cheques have been dishonoured for want of sufficient funds as evident from the copies at Exhibit D and Memo of return of cheques at Exhibit E. The liability is undoubtedly admitted. Obligation to pay has been acted upon by making remittance of Rs. 2,24,00,000/-. The balance is now due. Interest is has been claimed at 18% based on agreement in writing and the particulars of claim sets out the computation of interest after giving the credit for the part payment received. The computation per se is not in dispute. It is the defendants contention that compound interest has being charged. That does not appear to be correct since particulars of claim computes interest separately on Rs. 2,24,00,000/- for the period 1st April, 2016 to 16th July, 2016 and on the balance of Rs.6,76,00,000/- from 1st April, 2016 to 31st March, 2017.

7. The computation of interest does not set out the principal amount on which interest is claimed but it is admitted that a sum of Rs.6,76,00,000/- is due and payable and that interest would be payable @ 18% on the aforesaid amount of Rs.6,76,00,000/-. To that extent I find that there is no defence whatsoever. Accordingly, I pass the following order :

(i) Subject to deposit of Rs.6,76,00,000/- within a period of four weeks from today the defendant is granted conditional leave to defend the suit.

- (ii) If amount of Rs.6,76,00,000/- is deposited as aforesaid, the defendant will be entitled to file a written statement within a further period of four weeks.
- (iii) If the amount is not deposited the plaintiff is entitled to a decree and is at liberty to move the court after obtaining certificate of non deposit on the basis of which the suit is filed.
- (iv) If the amount is deposited, it shall be invested by the Prothonotary and Senior Master for a period of one year in a nationalised bank and shall be renewed each year till disposal of the suit.
- (v) Summons for judgment disposed in the above terms.

(A. K. MENON, J.)