

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

COMMERCIAL SUMMARY SUIT NO. 815 OF 2018

Parag Jyotindra Gandhi ...Plaintiff

V/s.

Shri Jayant Narendra Mehta & Anr. ...Defendants

Ms. Pinky M. Bhansali for the Plaintiff.

Mr. Shravan K. Giri for Defendants.

CORAM : ARIF S. DOCTOR, J.

DATE : 26th April, 2023

P.C. :

1. This Court by an order dated 28th September, 2022, granted leave to defend to the Defendants on the following terms:-

"a/ Leave to defend is granted to the defendants subject to deposit of a sum of Rs.50,00,000/- (Fifty Lakhs) in this Court within a period of six weeks from today.

b/ If the aforesaid deposit is made within the stipulated period, this suit shall be transferred to the list of Commercial Causes and the defendants shall file written statement within a period of thirty days from the date of deposit;

c/ If this conditional order of deposit is not complied with, within the aforesaid period, the plaintiff shall be entitled to apply for an ex-parte decree against the defendants after obtaining a Non-Deposit Certificate from the Prothonotary and Senior Master of this Court.

D/ Summons for judgment stands accordingly disposed of."

2. It is not in dispute that the Defendants have not complied with this order as they have not deposited the amount of Rs. 50,00,000/-. This is evident from a Non Deposit Certificate issued by the Prothonotary and Senior Master which is dated 2nd January, 2023.

The relevant facts of the case are as follows:

3. The Defendant No.1 is the proprietor of Defendant No.2(Firm). Pursuant to representations made by Defendant No.1, the Plaintiff agreed to purchase a flat bearing Flat No. 901 in an under construction building known as Kamla Vihar bearing C.T.S. No.95 at Parekh Lane, Kandivali West, Mumbai 400 067, which was then re-developed by Defendant No.1. The consideration for the said flat was Rs. 1,70,00,000/- . The Plaintiff on instructions of the Defendants made the following remittances:

- i. An amount of Rs.1,00,00,000/- vide RTGS into the account of the Defendant No.2.
- ii. A sum of Rs. 46,00,000/- into the account of Jayant Mehta (HUF).

iii. The Plaintiff have paid the balance payment to the Defendants by

RTGS transfer, viz Rs. 10,00,000 on 30th April, 2015 and

iv. Rs. 12,80,000 on 30th April, 2015 in favour of the Defendants.

Thus, the Plaintiff duly transferred the entire consideration of Rs.1,70,00,000/- to the Defendants. A sum of Rs. 1,20,000/- was deposited to the authorities by way of TDS on 4th May, 2015.

4. Under the terms of the agreement between the parties, the Defendants had agreed to deliver possession of the said Flat No. 901 by the end of December, 2015. The Agreement further stipulated that in the event of default, the Defendants would refund the amount paid by the Plaintiff with suitable compensation. It is not in dispute that the Defendants have committed default and in fact thereafter expressed inability to hand over the possession of the said flat. However the Defendants offered another flat being Flat No. 104 admeasuring 700 sq. ft. Carpet area in other project of the Defendants. The Defendants also agreed to pay compensation. This offer was not acceptable to

the Plaintiff since the size of the Flat offered was not same as comparable to Flat No.901.

5. Since Flat No.104 was not same comparable to Flat No.901, the Plaintiff agreed that he would be willing to take Flat No. 104 along with the compensation of Rs. 1,00,00,000/-. Thus, on 29th July, 2016, a registered agreement for sale of Flat No. 104 came to be executed in favour of the Plaintiff wherein the consideration of the said Flat is shown as 1,44,00,000/- Thereafter, on 23rd August, 2016 the Defendants issued a letter acknowledging the receipt of consideration of Rs. 1,70,00,000/- from the Plaintiff. The market value of the Flat No. 104, which was conveyed to the Plaintiff by the Defendants was only Rs. 1,44,00,000/- and, the liability to pay compensation was of Rs. 1,00,00,000/- for the delay in delivery of the said Flat No. 901, as initially agreed. It was further agreed that in the event the Defendants executed the agreement to transfer Flat No. 901 to the Plaintiff by 25th October, 2016, the Plaintiff would then in turn de-register the agreement of Flat NO.104 and the post dated cheque of Rs.1,00,00,000/- given to the Plaintiff by the Defendant as

compensation would be forfeited and stand cancelled. It is not in dispute that the Defendants thereafter did not transfer Flat No. 901 in favour of the Plaintiff by the stipulated date instead the Defendants executed a registered agreement for sale in respect of Flat No.901 in favour of a third party.

6. It is in these circumstances that the Plaintiff presented the cheque for encashment, it was thus returned dishonored with the noting "payment stopped by drawer"

7. It is thus that the present Suit came to be filed.

8. As already noted above that the Defendants have failed to deposit the amount of Rs. 50,00,000/- and thereby the suit has proceeded uncontested. The Plaintiff has filed the Affidavit of Evidence in lieu of examination in chief of Mrs. Nilima Devan Pethani as also an Affidavit in support of the Claim, in which the averments in the Plaint find support. There is no reason for the Court to disregard what has been stated in the Affidavit of Evidence. That apart, I have considered the Plaintiff's claim on merit and find that the same is entirely

justifiable from the case pleaded in the Plaint and the evidence led in support.

There is no reason to disbelieve the Plaintiff's claim. The Plaintiff has also filed a compilation of original documents which is taken on record. The said documents have been sufficiently explained in the Affidavit of Evidence. Given that the default arises from a negotiable instrument the necessary presumption that the same was issued for consideration is also made. In these facts I find no reason why a decree must not be followed. Suit is therefore decreed in terms of prayer clause (a) which reads as under:-

(a) that this Hon'ble Court be pleased to order and decree the Defendant to pay to the Plaintiffs a sum of Rs.1,00,00,000/- (Rupees one crore Only) [as per the particulars Exhibit "G" hereto] with further interest thereon @ 18% per annum from the date of filing of the suit till payment and/or realization and for costs."

(ARIF S. DOCTOR, J.)