

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUMMARY SUIT NO.20 OF 2022**

Antara Housing LLP
a limited liability partnership firm
incorporated under the provisions of the
Limited Liability Partnership Act, 2008,
having its registered address at 8, Abhishek
Building, Dalia Industrial Estate, Andheri,
Link Road, Andheri (W), Mumbai – 400 058. ... Plaintiff

Vs.

M/s. Primeland Constructions
a firm registered under the Partnership Act, 1932,
having its registered office at Laxmi Palace, 76,
Mathuradas Road, Kandivali (W),
Mumbai – 400 067. ... Defendant

**WITH
INTERIM APPLICATION (L) NO.10318 OF 2022
IN
COMMERCIAL SUMMARY SUIT NO.20 OF 2022**

Mr. Vikram Garewal a/w Mr. Himanshu Agarwal i/by Bellator Legal Services
LLP for the Plaintiff.

Ms. Viloma Shah i/by M/s. AVP Partners for the Defendant.

CORAM : ARIF S. DOCTOR, J.
RESERVED ON : 19th JANUARY 2023
PRONOUNCED ON : 2nd FEBRUARY, 2023

JUDGMENT :

1. Heard learned Counsel.

2. At the outset, the learned Counsel appearing on behalf of the Defendant sought time on the ground that the Defendant had filed an appeal against the order dated 03rd October 2022, by which the Defendant had been granted conditional leave to defend the present Commercial Summary Suit.

3. The learned Counsel appearing on behalf of the Plaintiff vehemently opposed this request and submitted that even on the last occasion the same request had been made. Additionally, the learned Counsel appearing on behalf of the Plaintiff submitted that an appeal from an order granting conditional leave to defend in a Summons for Judgment filed in a Commercial Summary Suit was not maintainable and placed reliance upon a judgment of this Hon^{ble} Court in the case of **SKIL-Himachal Infrastructure & Tourism Ltd. & Ors. Vs. IL & FS Financial Services Ltd.** ¹(G. S. Patel & Gauri Godse, JJ.). He invites my attention to Paragraph 52.1, which reads thus :-

¹ Commercial Appeal (L) No.95 of 2020 in Summons for Judgment No.83 of 2019 in Commercial Summary Suit No.923 of 2019 with Interim Application No.1801 of 2020 in Commercial Appeal (L) No.95 of 2020.

“52.1 An appeal from an order granting conditional leave to defend in a Summons for Judgment in a Commercial Summary Suit is not maintainable in view of Section 13 of the Commercial Courts Act.”

4. He submitted that thus there was no impediment on this Hon’ble Court for taking up the Commercial Summary Suit for hearing and passing of a decree under the provisions of Order XXXVII of the Code of Civil Procedure, 1908.

5. Without commenting on the maintainability of the appeal, that has been filed presently, there is no stay granted by the appeal court. Admittedly, the Defendant has not complied with the order dated 03rd October 2022 nor has the Defendant obtained any stay from this Court preceding with the present Suit.

6. This Court had already on a previous occasion granted the Defendant time of two weeks in view of the pendency of the appeal. Thus, today there is no reason for not proceeding with the matter.

7. The material facts in the plaint are as follows :-

(i) Both, the Plaintiff and the Defendant are engaged in the business of construction and property development within the State of Maharashtra. The Defendant had approached the Plaintiff and informed the Plaintiff that the Defendant had acquired certain rights in respect of the immovable property situated at Borivali, being a piece and parcel of land bearing Survey No.42-A (Part), CTS No.874-B (Part) and CTS No.874-D (Part) ('the said land'). The Plaintiff and the Defendant had entered into a Joint Development Agreement dated 31st August 2019 ('the said JDA'), whereby the parties to the said JDA had agreed to jointly develop a portion of the said land.

(ii) The Plaintiff, from time to time, had spent various monies for the development of the said land and performance of the said JDA. As per the terms and conditions of the said JDA, in addition to Plaintiff paying a sum of Rs.25,00,00,000/- (Rupees Twenty Five Crores Only) towards the security deposit charges to the Plaintiff, the Plaintiff was also required to spend various amounts on the development of the said land.

(iii) The Plaintiff had, from time to time, spent various monies for the development of the said land and performance of the said JDA. However, the Defendant communicated to the Plaintiff that on account of certain unavoidable internal circumstances faced by the Defendant, the Defendant

would be unable to complete and fulfill the compliances and commitments made by the Defendant under the said JDA. The amounts were to be paid by the Defendant to the Plaintiff in the following manner :-

- (a) Rs.10,00,00,000/- (Rupees Ten Crores only) on or before 15th September 2021;
- (b) Rs.10,00,00,000/- (Rupees Ten Crores only) on or before 30th September 2021; and
- (c) Rs.19,12,43,595/- (Rupees Nineteen Crores Twelve Lakhs Forty Three Thousand Five Hundred Ninety Five only) on or before 30th October 2021.

(iv) The Defendant, along with the execution of the Memorandum of Understanding, issued post-dated cheques, bearing Nos.100289, 100290 and 100311, dated 15th September 2021, 30th September 2021 and 31st October 2021 respectively, for the aforesaid amounts. The aforesaid cheques, however, were all returned dishonoured. It was thus that the Defendant was in breach of their obligations under the Memorandum of Understanding.

(v) The Plaintiff, vide its advocate's letters dated 19th October 2021 and 13th November 2021, called upon the Defendant to make the payment of the aforesaid amount of Rs.39,12,43,595/- (Rupees Thirty Nine Crores Twelve

Lakhs Forty Three Thousand Five Hundred Ninety Five only). It was thus that the Defendant by its letter dated 03rd December 2021, in reply to the Plaintiff's letter dated 13th November 2021, admitted a sum of Rs.39,12,43,595/- (Rupees Thirty Nine Crores Twelve Lakhs Forty Three Thousand Five Hundred Ninety Five only), was due and payable, however expressed its inability to pay the amount mentioned and requested the Plaintiff to consider some alternate proposal made by the Defendant's sister company one M/s. Ravi Developments.

(vi) It was thus that the Plaintiff filed the present Commercial Suit under the provisions of Order XXXVII of the Code of Civil Procedure, 1908.

8. The learned Counsel appearing on behalf of the Plaintiff invited my attention to the order passed by this Hon'ble Court dated 03rd October 2022 (N. J. Jamadar, J.) and points out that admittedly the Defendant had failed and neglected to deposit the sum of Rs.30,89,25,064/- (Rupees Thirty Crores Eighty Nine Lakhs Twenty Five Thousand and Sixty Four only) within a period of six weeks from the date of the order. For the ease of reference, the operative part of the said order is reproduced hereunder :-

"a/ Leave to defend the suit is granted to the defendant subject to deposit of a sum of Rs.30,89,25,064/- (Thirty Crores Eighty Nine Lakhs Twenty Five Thousand and Sixty Four) in the 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 defendant 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 defendant after obtaining a Non-Deposit Certificate from the Prothonotary and Senior Master of this Court.*
- d/ Summons for Judgment stands disposed of accordingly.*
- e/ The Interim Application also stands disposed."*

9. He submits that in accordance with the provisions of the Order XXXVI Rule 3 of the Code of Civil Procedure, 1908, the Plaintiff is, therefore, forthwith entitled to a decree.

10. Mr. Vikram Garewal, the learned Counsel appearing on behalf of the Plaintiff submitted that the liability of the Defendant to make payment of the amount of Rs.39,12,43,595/- (Rupees Thirty Nine Crores Twelve Lakhs Forty Three Thousand Five Hundred Ninety Five only) under the said Memorandum of Understanding was clear from the following facts :-

- (a) The Defendant had issued three post-dated cheques, dated 15th September 2021, 30th September 2021 and 31st October 2021, all of which had been returned dishonoured.

- (b) The Defendant had, vide its advocate's letter dated 03rd December 2021, admitted their liability as follows :-

"Further we would like to request you to revert on the Mira Road proposal which was offered/proposed by our sister concern company i.e. M/s. Ravi Developments to you as we are unable to repay you the amount mentioned in the said MOU due to present market condition, we are facing difficulty to comply with the terms and conditions of the said MOU on immediate basis and We want to maintain a cordial relation with you.

Thus, we would like to request to you to fix a meeting and will try to resolve the queries if any in respect of the Mira Road Proposal proposed to you as we are willing to repay you the aforesaid amounts mentioned in the said MOU."

11. He, thus, submitted that there was no matter of doubt of the Defendant's liability as also Defendant's failure to make payment of the said amount. He, thus, submitted that the Plaintiff was entitled to a decree as prayed for.

12. The learned Counsel for the Plaintiff has filed the following :-

- (a) Non-Deposit Certificate dated 21st November 2022.
- (b) Affidavit of Examination-In-Chief.
- (c) Affidavit of Documents.
- (d) Compilation of the Original Documents.

13. I have heard the learned Counsel appearing on behalf of the Plaintiff and considered the relevant documents and I am satisfied that the Plaintiff is entitled to a claim, as prayed for.

14. The Defendant did not comply with the said condition. A Non-Deposit Certificate dated 21st November 2022, came to be issued by the Master and Assistant Prothonotary. Armed with the said certificate, the Plaintiff has moved for a decree against the Defendant.

15. In view of the provisions contained in Sub-rule (6) of Rule 3 of Order XXXVII of the Code of Civil Procedure, 1908, on failure of the Defendant to give security or to carry any other directions as may have been given by the Court, the Plaintiff forthwith becomes entitled to the judgment. Nonetheless, this Court has considered the justifiability of the claim and its admissibility under provisions of Order XXXVII of the Code and after considering the same, has come to the conclusion that the Plaintiff is entitled to a decree, as prayed for, based upon the fact that the Defendant has issued three post-dated cheques, as referred above, as also admitted its liability in the letter dated 03rd December 2021. Hence, the following order :-

ORDER

- (i) The Suit stands decreed.
- (ii) The Defendant do pay to the Plaintiff a sum of Rs.39,12,43,595/- (Rupees Thirty Nine Crores Twelve Lakhs Forty Three Thousand Five Hundred Ninety Five Only) alongwith interest at the rate of 12% per annum from the date of the dishonour of the cheques till payment and/or realisation.
- (iii) The Plaintiff is entitled to the refund of Court Fees, if any, as per Rules.
- (iv) Decree be drawn up and sealed expeditiously.

16. The Commercial Summary Suit is disposed of accordingly.

17. In view of disposal of the Commercial Summary Suit, the Interim Application became infructuous and disposed of accordingly.

(ARIF S. DOCTOR, J.)

After the order was pronounced, the learned Counsel appearing on behalf of the Plaintiff sought return of original documents. The original documents to be returned to the Plaintiff's Advocate by the office, after all due necessary compliance.

(ARIF S. DOCTOR, J.)