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

SUMMONS FOR JUDGMENT NO.48 OF 2022
IN
COMMERCIAL SUMMARY SUIT NO.53 OF 2021

Jaganmitra Builders and Contractors Private Limited)… Plaintiff

Vs.

Srushti Raj Enterprises Architects, Engineers and Builders and anr.)… Defendants

Mr.Shanay Shah with Mr.Arsalan Thaver and Mr.Vishal S. Shriyan i/by Mr.Vishal S. Shriyan, Advocates for the Plaintiff.

Mr.Harindar Toor with Mr.Ravi Kotian, Advocates for the Defendants.

CORAM : ABHAY AHUJA, J.

DATE : 31st OCTOBER, 2023.

P.C. :

1. The Plaintiff has filed the Summary Suit for a decree of a total sum of Rs.1,28,04,335/- on the basis of work order dated 14th November, 2016 as well as four dishonoured cheques. Since Vakalatnama on behalf of the Defendants was filed, a Summons for Judgment was taken out by the Plaintiff seeking a decree in the sum of Rs.87,45,154/- towards principal amount outstanding under the unpaid invoices as described in paragraph No.10 of the plaint and also a decree in the sum of Rs.20,00,000/- being the aggregate amount of

dishonoured cheques (four cheques of Rs.5,00,000/- each) issued by the Defendants with interest at the rate of 12% p.a. on the two claims.

2. Although this matter was heard on 21st September 2023, however, it was listed under the caption 'For Directions' on 31st October 2023 as this Court needed certain clarifications from the learned Counsel for the parties.

3. Mr.Shanay Shah, learned Counsel for the Plaintiff would submit that the plaintiff is a building contractor appointed by the Defendant No.1, who was a developer who had undertaken a project at Building No.103, 13th road, Tilak Nagar, Chembur, Mumbai 400089 (the "project"). Defendant No.2 is the proprietor of Defendant No.1.

4. It is submitted that initially the parties entered into work order No.204/SRE.SITE: 103 dated 10th March, 2016, which was issued by the Defendants for construction and civil work of 70,000 square feet at the rate of Rs.353/- per square feet in favour of the Plaintiff. Subsequently, the parties revised the area of construction on the project and agreed to revise the original work order by executing work order dated 14th November, 2016 for construction and civil work of an increased area of 95,500 square feet at the same rate of Rs.353/- per square feet.

5. Learned Counsel would submit that in accordance with the work order, the Plaintiff commenced work on site i.e. foundation work, RCC work, brick work, internal and external plastering, curing and applying water proof solutions on terrace, construction of overhead tanks and underground tanks, paving and repairing etc. Learned Counsel would submit that it was the duty of the Plaintiff to procure labourers for construction on site which cost was to be borne by the Plaintiff.

6. Accordingly, the Plaintiff raised the following invoices under the work order and the Defendants have made payments towards some of the invoices. Learned Counsel has given the said information in the form of a table which is set out as under:-

Sr.No.	Date	Invoice No.	Amount Billed (in Rupees)	Amount Received (in Rupees)	Paid Unpaid
A.	15/01/2016	JBC/003/16	19,38,412	18,02,723	Paid on 21/07/2016
B.	15/09/2016	JBC/006/16	29,15,911	25,26,525	Paid on 30/09/2016
C.	04/04/2017	JBC/002/17	1,17,731	1,82,626	Paid on 11/04/2017
D.	04/05/2017	JBC/003/17	19,38,412	5,00,000 (Part	Paid on 02/05/2017

				payment)	
		JBC/003/17		4,00,000 (Part payment)	Paid on 05/06/2017
		JBC/003/17		2,50,000 (Part payment)	Paid on 15/06/2017
		JBC/003/17		2,00,000 (Part payment)	Paid on 17/06/2017
E.	05/06/2017	JBC/005/17	15,50,729	Nil	Unpaid
F.	02/10/2017	JBC/008/17	23,86,774	Nil	Unpaid
G.	12/12/2017	JBC/009/17	37,79,059	Nil	Unpaid
		Total	1,46,27,028	58,81,874	

7. Learned Counsel would submit that the invoices at Serial Nos.E, F and G remained unpaid and at D is partly paid. He would submit that it is clear from the above figures that invoices in the aggregate amount of Rs.1,46,27,028/- have been raised by the Plaintiff, out of which only part payment to the extent of Rs.58,81,874/- was made and the balance amount of Rs.87,45,154/- remained outstanding. That the Defendants have not raised any objections to these invoices and have not even disputed the contents of the said invoices at the relevant time.

8. That, despite repeated follow-up, the Defendants failed to make the balance payment and repeatedly assured to clear the same despite the Plaintiff continuing to perform its obligation under the work order. Mr.Shah would submit that since the Defendants failed to make payments to the Plaintiff in terms of the invoices raised, it became difficult for the Plaintiff to continue the work and in view of the defaults, the Plaintiff was constrained to discontinue the work at the Project site.

9. Learned Counsel would submit that since only a sum of Rs.58,81,874/- was paid by the Defendants towards the invoices raised, by letter dated 6th November, 2017, the Plaintiff called upon Defendant No.2 to make payments due under the work order, failing which the Plaintiff would stop work at the Project site. It is submitted that as on the date of issuance of the said notice, an aggregate amount of Rs.87,45,154/- was outstanding against the invoices referred to in the table. Learned Counsel submits that the Plaintiff also put the Defendants to notice that the Plaintiff would claim interest unless the dues were paid by them in the time stipulated in the notice. The Defendants replied to the said notice vide letter dated 7th November, 2017 and contended that only an amount of Rs.11,85,033/- was outstanding and due and payable to the Plaintiff.

10. The Plaintiff, therefore, issued a legal notice dated 10th November, 2017, whereby the Defendants were called upon to pay a sum of Rs.87,45,000/- under the unpaid invoices alongwith interest.

11. In response the Defendant No.2 threatened the Plaintiff that he would appoint another contractor and would forcibly detain the material and equipment of the Plaintiff at the Project site.

12. This led the Plaintiff to file a complaint with the Senior Police Inspector, Tilak Nagar Police Station, Chembur on 25th November, 2017 against Defendant No.2. Police protection was also sought.

13. Mr.Shah would submit that on 26th November 2017, the Defendants forcibly threw the Plaintiff's workmen and labourers out from the construction site and retained the majority of the machineries, equipments and materials belonging to the Plaintiff at the construction site. Learned Counsel would submit that therefore the Plaintiff was constrained to approach the Police Station seeking action against the Defendants for the same. The Plaintiff also filed a complaint vide a letter dated 24th January, 2018 with the Deputy Commissioner of Police, Zone 6, Chembur against the Defendants for necessary action to be taken.

14. On 3rd February, 2018, a joint meeting was convened by the Tilak Nagar Police Station in the presence of the Police Inspector where the Plaintiff through the Defendant No.2 and the representative of the Architects appointed by the Defendants for the project i.e. Setsquares Architects (Mr.Swapnil Sawant)

were present. It is submitted that both the parties agreed before the Police Authority that Setsquares Architect (who Mr.Shah indicates is incidentally the same architect through whom the Defendants have submitted their plans to the Mumbai Municipal Corporation to obtain sanction) would prepare a report *inter-alia* considering the scope of work to the extent that was accepted by both the parties to be complete and submit the same to the parties. Vide an e-mail dated 8th February, 2018, Setsquares Architect forwarded its report to the Plaintiff and the Defendants. Mr.Shah submits that the report records that the value of the work completed exclusive of taxes as per the work order aggregates to Rs.1,22,35,815/- and was based on the work order presented by the Plaintiff and the Defendants and on the basis of the description mentioned therein, the total amount was quantified by the Architect. It is submitted that this report was prepared on the basis of the joint consent of the parties and the Defendants cannot resile from the same now.

15. Upon intervention of the Police Authorities, the Defendants *inter-alia* proposed to purchase the centering material and machinery of the Plaintiff which was lying at the construction site for a consideration of Rs.30,00,000/-. Learned Counsel would submit that thereafter one Shree Suktam Contractors being a sister concern of Defendant No.2 issued a letter dated 12th February, 2018 to the Plaintiff where it was stated that they have purchased the Plaintiff's centering material and the construction machinery at the Project site. Learned

Counsel would submit that the said material and machinery was at the same Project site under the subject work order. That, a cheque bearing No.332305 dated 15th February, 2018 of Rs.30,00,000/- was drawn on Bharat Bank by letter dated 10th February, 2018, for purchase of the said materials and machinery. The Plaintiff, however, by letter dated 12th February, 2018, intimated the Defendants and Shree Suktam Contractors that the amount of Rs.30,00,000/- for which a cheque was issued by Shree Suktam Contractors was not towards any settlement but towards purchase of material and construction machinery at the Project site.

16. Shree Suktam Contractors requested the Plaintiff not to deposit the said cheque and only made part payment of Rs.10,00,000/-. It is submitted that on 3rd October, 2018, the Defendant No.1 addressed a letter to the Plaintiff and informed the Plaintiff that since cheque No.392829 for Rs.20,00,000/- was returned due to insufficient funds and therefore, Defendant No.1 was issuing fresh four cheques of Rs.5,00,000/- each, which would be cleared by them. Mr.Shah would submit that this is how the Defendant No.1 took over the liability of Shree Suktam Contractors.

17. Learned Counsel further submits that these four cheques on presentation were dishonoured. The dishonour memos alongwith the cheques have been exhibited as Exhibits Q, Q-1, Q-2 and Q-3 of the plaint. Learned Counsel would

submit that these four cheques issued by the Defendants form the subject matter of the present suit as they were issued towards purchase of centering material and construction material of the subject project.

18. Mr.Shah would submit that after adjusting the payments received from the Defendants, the principal liability towards the unpaid invoices under the work order was quantified by the Plaintiff at Rs.87,45,154/- as on 12th December, 2017. Learned Counsel would submit that a reminder letter dated 16th May, 2018 was sent to the Defendants demanding payment of outstanding amounts.

19. The Plaintiff on the advice of its erstwhile lawyers, also issued a statutory demand notice in Form 3 under the provisions of Insolvency and Bankruptcy Code, 2016 on 19th March, 2019 and filed a petition under the said Code against the Defendants before the National Company Law Tribunal (NCLT), Mumbai. However, on being advised that the petition was not maintainable, the same was subsequently withdrawn.

20. Learned Counsel submits that therefore, this Summary Suit has been instituted by the Plaintiff on the basis of the unpaid invoices and dishonoured cheques.

21. Learned Counsel would submit that the Defendants actually have no defence and have failed to raise any genuine triable issues. He would submit that the defences sought to be raised are only frivolous and vexatious and hence leave to defend is required to be rejected and the Plaintiff is entitled to judgment in the full sum as claimed.

22. On the other hand, Mr. Harinder Toor, learned Counsel for the Defendants would oppose the submissions made on behalf of the Plaintiff.

23. Learned Counsel would firstly submit without prejudice to the contentions on merits that the suit is not maintainable as a summary suit as there are two separate causes of action and if the Court tests these causes of action, it would be below the pecuniary jurisdiction of this Court and therefore, the suits have to be tried by the City Civil Court at Bombay and not this Court. Learned Counsel would submit that the pecuniary value of the cause of action on the invoices is only Rs.87,45,154/- which is with respect to the work order, whereas the claim of Rs.20,00,000/- with respect to dishonoured cheques is not with respect to the work order and the said causes of action are separate and distinct and cannot be clubbed. That, adding the second cause of action is only to meet the pecuniary jurisdiction of this Court which cannot be permitted. Learned Counsel would submit that the adding up of the claim with respect to the bounced cheques is only to meet the pecuniary jurisdiction of this Court, although the claim of the work order and the bounced cheques are two separate and distinct claims.

Learned Counsel would also refer to the particulars of claim at page 74 to reiterate this point. He would submit that therefore, Serial No.1 contains the first part of the cause of action and Serial No.2 contains the second part of the cause of action. That the interest component of Rs.29,59,181/- has also been added to bring it within the pecuniary jurisdiction of this Court and that cannot be permitted.

24. Mr. Toor would submit that under order XXXVII Rule 1(2) only suits upon bills of exchange, hundies and promissory notes can be filed as a summary suit in addition to suits in which the Plaintiff seeks only to recover a debt or liquidated demand in money payable by the Defendants with or without interest either arising on a written contract or on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than the penalty or on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only. Learned Counsel would submit that the claim of the Plaintiff does not fall within the clauses mentioned. He would firstly submit that the claim as far as the cheques are concerned is only of Rs.20,00,000/- and therefore, this Court would not have pecuniary jurisdiction to entertain a claim on those cheques even if the cheques were bills of exchange on the basis of which a summary suit would be maintainable. The minimum valuation to bring a suit before this court should be atleast Rs.1,00,00,000/-.

25. Coming to the work orders on the basis of which the other claim is purportedly based, the learned Counsel would submit that even if the work order was to be considered a written contract, that claim being for Rs.87,45,154/- is not only below the pecuniary jurisdiction of this Court, but the purported contract is also insufficiently stamped. Learned Counsel would submit that Exhibit "A" which is the work order dated 10th March, 2016 is only on a stamp paper of Rs.100/- is insufficiently stamped and the work order dated 11th November, 2016 at Exhibit "B" is not even stamped. Learned Counsel draws the attention of this Court to Article 63 of the Maharashtra Stamp Act, 1958 and submits that a contract for works and labour or services has to be stamped according to Article 63 @ of Rs.500 plus 0.1% of the amount above Rs.10,00,000/- subject to a maximum of Rs.25,00,000/-, and not merely Rs.100/-. Learned Counsel would submit that therefore, the work orders cannot be considered as a written contract as envisaged under order XXXVII Rule 1(2)(b)(i) of the Code of Civil Procedure, 1908, as they are insufficiently stamped.

26. On merits, learned Counsel would submit that the first work order dated 10th March, 2016 was for an approximate area of 70,000 square feet however, by work order dated 11th November, 2016, the area was increased to 95,000

square feet. Referring to the two work orders, the learned Counsel would submit that the Plaintiff has erred in its interpretation of the said work orders, and therefore, unconditional leave to defend be granted.

27. Learned Counsel refers to paragraph 1 of the work orders and submits that the rate of Rs.353/- per square feet. for an approximate area for which the Plaintiff was required to do the work. Learned Counsel would submit that clause (2) clearly mentions that the final area of the building will be fixed once the final plan of the building is finalized and approved. He would submit that at the stage of the work order, the plans were yet to be finalized or approved and therefore, the claim made on behalf of the Plaintiff on the basis of the approximate area cannot be considered as final. Learned Counsel would draw the attention of this Court to paragraph No.3(d) of the work order to reiterate that even the said clause refers to the renewal of the workers insurance policy till the completion of the entire project meaning thereby that the work order did not contain the final approved plan as that would be ascertained upon the completion of the Project. Referring to the second work order dated 11th November, 2016, learned Counsel would submit that as can be seen in clause (2), the approximate area has once again been increased to 95,500 square feet for 14 floors and that the area of the building would be fixed once 15th floor permission is received and approved. Learned Counsel submits that therefore, it cannot be said that the area in the work order was a final one so as to enable

the Plaintiff to file a summary suit as the amounts claimed by the Plaintiff cannot be said to be liquidated amounts under a written contract. Referring to clause (7) of the work order dated 11th November, 2016, learned Counsel would submit that in fact the claim by the Plaintiff should have been on the basis of the work done as the percentage of the area as sanctioned by the MHADA/BMC and not on the basis of approximate area stated in the work orders.

28. With respect to the report of the Architect pursuant to the meeting held in the presence of the Police Authorities to resolve the dispute between the Plaintiff and the Defendants, learned Counsel would submit that the said report of the Architect completely ignored the sanctioned plan and therefore, the amount of Rs.1,22,35,815/- could not be considered to be the amount which was accepted by the Defendants.

29. Learned Counsel draws the attention of this Court to the communication dated 10th February, 2018 to submit that the claim of the Plaintiff with respect to the invoices under the work orders cannot be merged with the claim against Shree Suktam Contractors which is a sister concern of the Defendants. Therefore, the claim under the work orders is a distinct cause of action from the cheques of Rs.20,00,000/- that bounced which were with respect to the purchase of Plaintiff's machinery by Shree Suktam Contractors.

30. Mr.Toor would therefore submit that on all counts this suit cannot be maintained as a summary suit and unconditional leave be granted to defend the said suit. Learned Counsel seeks to rely upon the decision of the Hon'ble Supreme Court in the case of ***Raj Duggal Vs. Ramesh Kumar Bansal***[1].

31. Rejoinding to the reply by Mr.Toor, Mr.Shah for the Plaintiff would submit that it has been contended on behalf of the Defendants that there are two causes of action, however, since the claims of unpaid invoices as well as the dishonoured cheques emanate from the same work order/Project, he would submit that the said causes can be united in accordance with Order II Rule 3 of the Code of Civil Procedure, 1908.

32. With respect to the contention that there are two separate causes of action and if the Court tests these causes of action, it would perhaps fall below the pecuniary jurisdiction of this Court and therefore the suits have to be tried by the City Civil Court at Bombay and not this Court, it is submitted by Mr.Shah that the said argument is fallacious as it overlooks an important facet of both these claims i.e. it relates to the same project and the relationship whereof was crystallized under the same work order. It is not as if the sum of Rs.20 lakhs was paid as an abstract sum and for a completely different contract altogether. It was for the centering material and construction material which was the Plaintiff's

1 AIR 1990 SC 2218

property lying on the Project site when the Defendants had thrown the Plaintiff's labourers and workmen out of the Project site. If things had proceeded without dispute, the Plaintiff would have used the same material for the work under the work order itself. Similarly, the equipment and machinery owned by the Plaintiff was being used in the same project and would have been taken away from the site by the Plaintiff after the work was over. It is only due to the illegal detention of the material, equipment and machinery by the Defendants, that this entire aspect of the matter has even arisen. Hence, even this claim arises from the same work order. Without prejudice to the aforesaid, it is submitted that Shree Suktam Contractor's letter referring to the purchase (at page 65 of the plaint) also refers to the Project site being Site No.103. Because the sum of Rs.20 lakhs was not cleared by Shree Suktam Contractor, Defendant no.1 stepped in and issued the letter at page no.69 / Exhibit P-4 of the plaint. The cause of action of the Plaintiff arises under the letter dated 3rd October 2018 which is in fact issued by the Defendant no.1. Therefore, the controversy created by the Defendants to suggest that there are two separate causes of action is entirely unsubstantiated. Learned Counsel submits that, in any event, the CPC permits the parties to join its causes of actions and the Plaintiff has done so by seeking reliefs in terms of both the claims i.e. on unpaid invoices and the four dishonoured cheques, arising between the same parties.

33. Learned Counsel would submit that a bare perusal of the affidavit-in-reply would indicate that this is an open and shut case for default in payment by the Defendants for the invoices raised by the Plaintiff. Learned Counsel submits that Exhibit A to the affidavit-in-reply is a clear admission of the liability by the Defendants in terms of the total area constructed by the Plaintiff i.e. 37,520 square feet and the value thereof i.e. Rs.1,32,44,560/-.

34. That, this is also a classic case where, at the very least, the Summons for Judgment ought to be allowed and the suit ought to be decreed at this stage, for a sum of Rs.20 lakhs towards the four dishonoured cheques. There is no dispute whatsoever regarding that. In furtherance to this amount, the decretal amount must also include an additional sum of Rs.11,85,033/-, the amount admitted by the Defendants in the reply dated 7th November 2017. This Court can bifurcate the order and grant a decree for the admitted sums and conditional leave to defend for the balance. This is in view of the judgment of the Full Bench of this Court in ***Sicom Ltd. vs. Prashant S. Tanna***[2].

35. Further, learned Counsel would submit that the Defendants have urged that because there is an issue in the interpretation of the work order, unconditional leave to defend ought to be granted; he would submit that this submission is fallacious in as much as it overlooks its own Exhibit A where the

2 2004 (2) Mah. L.J. 292 (FB)

Defendants themselves admitted that the total construction area by the Plaintiff was 37,520 square feet and if the rate per square feet Rs.353/- was applied, the total construction value as per its own calculation was Rs.1,32,44,560/-. Learned Counsel would submit that there is no question of interpretation of the contract in as much as it is not the case of the Defendants that the Plaintiff has not constructed 37,520 square feet area. Learned Counsel would submit that in fact the Architect's report was prepared on the basis of the agreement between the parties and the report itself lends credence to this fact. Merely by stating that there is an issue regarding interpretation of the work order does not take the case of the Defendants any further. Learned Counsel would submit that the Plaintiff is not seeking any amount over and above what it has constructed. The Defendants do not dispute the work done and in fact there is no serious dispute about the Defendants regarding the Architect's report at all.

36. Learned Counsel would submit that none of the clauses of the work order suggest that prescribed percentages for the specified items of the work would apply to the BMC sanctioned area based on a FSI of 2.5 or otherwise. He would submit that this is a figment of imagination of the Defendants created with a view to wriggle out the payment obligations to the Plaintiff.

37. Learned Counsel would submit that it is for the first time that the Defendants have raised the contention of the work order being insufficiently

stamped. Learned Counsel would submit that the proposition by the Defendants is untenable as Article 63 of the Maharashtra Stamp Act, 1958 has no application to the present case. Learned Counsel would submit that Works Contract under Article 63 would mean, *"a contract for works and labour or services involving transfer of property in goods (whether as goods or in some other form) in its execution and includes a sub-contract.....".* The words "transfer of property" though not defined in the Maharashtra Stamp Act, is defined in Section 5 of the Transfer of Property Act, 1882, which reads thus :

> *"In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons; and "to transfer property" is to perform such act...."*

38. That, therefore, from what is mentioned above, it is quite clear that for transfer to take place, there must be "conveyance". The term conveyance is defined in Section 2(g) of the Maharashtra Stamp Act, which has no application to the contract between the parties.

39. Learned Counsel submits that, in any event, the suit is based on unpaid invoices raised under the work order and the dishonoured cheques. Therefore, the entire contention of the work order being insufficiently stamped is bogus and untenable for the reasons mentioned above.

40. Without prejudice to the above, learned Counsel submits that the stamp duty, if any, payable on the work order, is a curable defect and if at all this Court is of the view that such stamp duty ought to be paid, the work order can be impounded and sent for adjudication and it ought not to derail the proceedings since the Plaintiff is ready and willing to pay any deficient stamp duty, if any, payable. Merely by stating that under Article 63 of the Maharashtra Stamp Act, stamp duty is payable, does not suffice. It must also be shown that how the stamp duty is calculated. Learned Counsel would submit that it is actually clear that there is no controversy whatsoever regarding the payment for the work done by the Plaintiff and the Defendants are trying to raise frivolous defences after having taken advantage of the Plaintiff's work and having proceeded with construction. It is not that the Defendants are suggesting that no work is done. Therefore, this defence regarding stamp duty deserves no merit.

41. Learned Counsel would submit that the value of the suit is above Rs.1,00,00,000/- and that is on the basis of the definition of specified value of the suit as contained in section 12 of the Commercial Courts Act, 2015 which stipulates that the claim amount is inclusive of interest upto the date of the filing of the suit and therefore, the said objection with respect of lack of pecuniary jurisdiction raised by the Defendants is ex-facie untenable and meritless.

42. Without prejudice to the aforesaid submissions, learned Counsel for the Plaintiff would submit that in the event this court is inclined to grant leave to defend the same be granted on the basis of deposit of the entire outstanding amount in this court. Learned Counsel fairly submits that the Plaintiff has already received an amount of Rs.58,81,874/- from the Defendants and credit of an amount of Rs.2,00,000/- received as compensation in the 138 proceedings also be given, and therefore, the outstanding amount of Rs.91,62,686/- be directed to be deposited as a precondition in the event this court is inclined to grant leave to defend.

43. I have heard the learned Counsel and also considered the rival contentions.

44. The Plaintiff has been awarded the work by the Defendants for construction and civil work at the rate of Rs.353/- per square feet with respect to the Project. That, pursuant to work that was done by the Plaintiff, invoices were raised by the Plaintiff upon the Defendants. It is also not in dispute that the Defendants have paid certain bills raised by the Plaintiff's on the Defendants. Typed copy of the summary of the bills for the work done by the Plaintiff and the receipt of payment are at page 33-A of the plaint. It is not in

dispute that the bills A, B and C have been fully paid. Bill D has been partly paid and bills E, F and G are unpaid. This is in addition to the payment of Rs.20,00,000/- by Shree Suktam Contractors who purchased the centering equipment and material from the Plaintiff for Rs.20,00,000/- in respect of which by letter dated 3rd October, 2018 by the Defendants to the Plaintiff an assurance was given by the Defendants that the cheques would be honoured on respective dates. The Defendants seek to interpret the terms of the work orders to submit that the area mentioned in the two work orders was not a final area but only an approximate area and that the same would be final as per the sanctioned plan. The language in both the work orders does refer to the area to be approximate. That paragraph No. 7 of the work order dated 11th November, 2016 clearly refers to 2.5 FSI by MHADA which the Defendants interpret as meaning that the work order would be subject to the final area as sanctioned by MHADA and therefore, the payments for the work done by the Plaintiff would be a percentage of the areas sanctioned by MHADA and not the percentage as contained in the work order as the same is an approximate of the total area that would be finalized upon permissions and approvals being received. The case of the Plaintiff is that in accordance with the work orders the Plaintiff has raised the invoices on the basis of actual work done and even if the area as per the amended work order may not have been the final area, the fact still remains that the Plaintiff has in fact carried out the work for the Defendants. The Architects' report pursuant to the joint inspection of the parties indicates that the Plaintiff has completed the work described therein. The Plaintiff has while raising the invoices also allowed the amount of 5% to be retained in accordance with the work order.

45. The Defendants have not disputed the work done by the Plaintiff. On 3rd February 2018, a joint meeting was convened by the Tilak Nagar Police Station in the presence of the Police Inspector Mr.Kale where the Plaintiff, Defendant No.2 and representative of the architects appointed by Defendants for the project i.e. Setsquares Architects were present. Both parties agreed before the police authority that Setsquares Architect would prepare a report *inter alia,* considering the scope of work to the extent that it was accepted by both parties to be complete, and submit the same to the parties. Vide email dated 8th February 2018, Setsquares Architect forwarded its report to the Plaintiff and the Defendants. The report records that the value of the work completed, exclusive of taxes, as per the work order aggregates to Rs.1,22,35,815/- and was based on the work order presented by the Plaintiff and the Defendants and basis the description mentioned therein. Even on the issue of the dishonoured cheques it is not the Defendants' case that the centering material and machinery at the project site was not purchased from the Plaintiff or that the cheques of Rs.20,00,000/- had not bounced.

46. The Defendants have raised issues with respect to interpretation of the works contract, Architect's report, joinder of causes of action, pecuniary jurisdiction.

47. The Defendants have also raised issues with respect to stamping of the work orders under Article 63 of the Maharashtra Stamp Act, 1958. According to the Plaintiff, since there is no transfer of property, there would be no question of the application of Article 63 of the Maharashtra Stamp Act, whereas, according to the Defendants, under Article 63, considering that the contract between the Plaintiff and the Defendants is a works contract, the same would be liable to payment of stamp duty at the rate of Rs.500/- plus 0.1% of the amount above Rs.10,00,000/- subject to a maximum of Rs.25,00,000/-.

48. The above contentions, in my view, raise triable issues and the suit cannot be disposed in a summary manner.

49. In the circumstances, in line with the principles settled by the Hon'ble Supreme Court in the case of ***IDBI Trusteeship Services Ltd. vs. Hubtown Limited***[3] as well as in the case of ***B. L. Kashyap and Sons Ltd. vs. M/s. JMS Steels and Power Corporation and Anr.***[4], I am inclined to grant conditional leave to the Defendants. Accordingly, the following order is passed :-

3 (2017) 1 SCC 568
4 (2022) 3 SCC 294

ORDER

(i) Leave to defend the present suit is granted to the Defendants subject to depositing a sum of Rs.91,62,686/- within a period of six weeks from the date of uploading of this order.

(ii) 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 six weeks from the date of deposit.

(iii) 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.

(iv) Summons for Judgment stands disposed of in the aforesaid terms.

(ABHAY AHUJA, J.)