(sr. no.47)
Tuesday,1.9.2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 924 OF 2015
IN
SUMMARY SUIT NO. 2489 OF 2012

M/s. Interactive Avenues Pvt. Ltd ....Applicant
(Orig. Plaintiff)

IN THE MATTER BETWEEN :-

Interactive Avenues Pvt. Ltd .....Plaintiff
: V/S :
Tikona Digital Network Pvt. Ltd .....Defendant

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Mr. J.P. Sen, Senior Counsel a/w. Mr. P. Dholakia a/w. Ms. Sujata Melekar i/by. Dholakia Law Associates, Advocate for the plaintiff.

Mr. Snehal Shah a/w. Ms. Dipti Panda, Mr. Viraj Maniar, Mr. Nakul Jain and Mr. Harsh Behany i/by. Maniar Srivastava & Associates, Advocate for the defendant.

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Coram :- Smt. R.P. SondurBaldota, J.

1st September, 2015.

P.C. :-

1). This Notice of Motion is taken out by the plaintiff under Order 12 Rule 6 Civil Procedure Code for decree on admission. The application is filed in a summary suit, wherein the defendant has been granted unconditional leave to defend the suit. By the order dated 17th

February, 2014 the plaintiff had tested the order on the Summons for Judgment in the higher Court without any success. The only order passed by the Apex Court in favour of the plaintiff is for expeditious hearing of the suit.

2). The admissions relied upon by the plaintiff for grant of decree is allegedly the letter dated 22nd May, 2015 sent by the auditors of the defendant to the plaintiff for confirmation of the amounts stated in the Accounts of the defendant as due to the plaintiff. By the letter, the auditors informed the plaintiff that, the record of the defendant showed that Rs.87,94,948/- was the amount due to the plaintiff as on 31st March, 2015 and sought confirmation of the same. The letter ends with a statement that the letter is not a request for payment and the remittances should not be sent to the auditors.

3). The summary suit as filed by the plaintiff was in respect of the amounts due under the work orders for the period August, 2011 to December, 2011 and several invoices raised on the basis of the work orders. When the Summons for Judgment was being argued, one of the arguments on behalf of the plaintiff was admission by the defendant of the debt in the form of TDS Certificates. It was contended that, since the tax had been deducted at source, it would be evidence of admission of the debt by the defendant to the plaintiff. This Court, however, while deciding the Summons for Judgment, had accepted the explanation offered by the defendant to the deduction of tax at source and rejected the contention of the plaintiff that deduction of the tax was an admission of the debt by the defendant.

4). The defendant has offered an explanation in the affidavit of reply to the letter of the auditors. It states that, in the accounting practice adopted by them, such letters are sent by the auditors directly to the debtors and creditors of the plaintiff in a routine manner only for the purpose of accounts without verifying the actual debt. It is submitted that since the amount relates to the same property in respect of which the deduction on TDS had been made and rejected by this Court, there cannot be any different explanation for the same.

5). Mr. Sen, the learned Senior Counsel appearing for the plaintiff relying upon the decision of Single Judge of this Court in **Sun N Sand Hotel Limited V/s. V.V. Kamat, reported in AIR 2003 Bom 168**, submits that if a summary suit can be maintained on the balance confirmation letters, there can be no difficulty in treating the letter of the auditors of the defendant as admission on the part of the defendant for grant of decree on admission to the extent of the amount mentioned in the letter. The reliance by Mr. Sen on the decision in **Sun N Sand** case (supra) is not correct. The confirmation letter considered therein was the balance confirmation letter sent by the plaintiff and accepted by the defendant. Mr. Shah, the learned Advocate appearing for the defendant, on the other hand, relies upon decision of Division Bench of this Court in **M/s. Shantez, a partnership firm V/s. M/s. Applause Bhansali Films Private Limited Company reported in (2009) 3 AIR Bom R 460 (DB)** to submit that for a decree to be passed on admission, the same must be unconditional, clear and unambiguous and can be read and construed as admission. Simply, any and every admission cannot form the basis of a decree.

6). In the case on hand, since there is some explanation offered by the defendant, which is akin to the explanation offered for another argument of admission, the same cannot be the foundation of decree on admission. Further, as has been pointed out by Mr. Shah, the claim of the plaintiff in the suit is much larger than the amount mentioned in the balance confirmation letter. Therefore, in any case, the plaintiff has to proceed with the trial atleast for the balance amount. In such circumstances, an opportunity ought to be given to the defendant to lead evidence in support of the explanation offered. Hence, the Notice of Motion is dismissed.

(SMT. R.P. SONDURBALDOTA, J)

CERTIFICATE

. Certified to be true and correct copy of the original signed order.