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

SUMMONS FOR JUDGMENT NO. 39 OF 2016
IN
SUMMARY SUIT NO. 479 OF 2015

Maharashtra State Road Development
Corporation Limited .. Plaintiff
Vs.
M/s. Solution Advertising .. Defendant

Mr.Simil Purohit a/w. Mr.Manish Shukla i/b M/s. Little & Co. for plaintiff.

Mr.Avinash Fatangare i/b P.D. Jadhav for defendant.

CORAM : K.R.SHRIRAM, J.
DATE : 29TH AUGUST, 2016

P.C.

1 The plaintiff has filed this suit claiming a sum of Rs.1,08,16,495/- of which the principal component is Rs.51,45,438/-.

2 The plaintiff had invited offers for leasing of the right to display advertisements at Dahisar Toll Plaza on Western Express Highway and Mulund Toll Plaza on Eastern Express Highway in Mumbai City for a period of five years. The defendant submitted its offer pursuant to which the plaintiff issued Letter of Acceptance dated 1st December 2005. A formal Agreement dated 21st December 2005 was executed between the plaintiff and the defendant. The total amount payable for the five years was Rs.1,02,34,567/-. As required in the Tender Documents, the defendant paid

upfront lease amount for the first year amounting to Rs.20,46,914/-. Clauses 2 and 3 of the Agreement, dated 21st December 2005 read as under :

> *IN CONSIDERATION OF THE PROMISES AND THE STIPULATED PAYMENTS TO BE MADE, the Corporation doth hereby grant to the Concessionaire the right to display advertisements at Mulund Toll Plaza in Mumbai City on the said sites on upfront payment of the total lease rent of Rs.1,02,34,567/- (Rupees : One Crore Two Lacs Thirty four Thousand Five Hundred Sixty Seven Only) by the Concessionaire to the Corporation.*
>
> *2 The Concessionaire agrees to pay upfront the above lease rent in Five (5) equal yearly instalments. The first instalment of Rs.20,46,914/- (Rupees Twenty Lacs Forty Six Thousand Nine Hundred Fourteen Only) has been paid by the Concessionaire on 14th December, 2005 receipt of which is hereby acknowledged by the Corporation. The subsequent yearly lease rent shall be paid one month before the commencement of the next year. In case of failure to comply with this term the successful bidder shall be liable to pay interest thereon at the rate of 18% p.a. till payment.*
>
> *3 The contract for display of advertisements shall commence from 26th December 2005and it shall be in force for five (5) years period only. This contract period for display of advertisements is inclusive of time required for obtaining necessary permissions/ approvals/licenses from the competent authority, erection of hoarding structure and subsequent display of advertisement.*

The amount was to be paid in five equal yearly instalments. The contract itself was for five years beginning from 26th December 2005. The counsel for the plaintiff stated that entire amount of Rs.1,02,34,567/- has been paid by the defendant but they were not paid on dates the payments were due. Therefore, interest was payable @ 18 % per annum on the amount outstanding.

3 Clause 19 of the Agreement reads as under :

> *19 The Concessionaire shall be solely responsible for obtaining electric supply required for the lighting of hoardings at his own cost and shall make payment of all necessary rates, taxes, charges, deposits, advances, monthly electricity bills and all outgoings for the same directly to the authorities concerned.*

4 It is the case of the plaintiff that the defendant was also liable to pay Service Tax on the amount of said yearly upfront payments of lease rent. But the defendant failed and neglected to pay the Service Tax. It is stated that the plaintiff issued a debit notes for the Service Tax component. The details of the debit notes are listed in paragraph 4(j) of the plaint. It should be noted that the claim of Service Tax is for the period 2006 to 2007 onwards. It is submitted by the counsel for the plaintiff that the defendant, in January 2012, paid a sum of Rs.26,206/- as Service Tax for the period 1st December 2011 to 31st January 2012 and therefore has admitted liability.

5 It is also stated that the Contract was extended on 11th August 2011 temporarily from 26th December 2010 to 31st August 2011 on the same terms and conditions as the original Contract save and except the lease amount was increased by 15% per annum amounting to Rs.2,54,428/-. This was again extended for the period 1st December 2011 to 30th November 2011 on similar terms and conditions as the original Contract and the lease rent was

retained at the increased level of Rs.2,54,428/-. Subsequently by further letters dated 4th January 2012, 9th March 2012 and 17th April 2012, the plaintiff extended the period of the Contract from 1st December 2011 upto 30th April 2012 or till appointment of new agency whichever was earlier, at an enhanced lease rent of Rs.2,92,592/- per month upto 25th December 2011 and Rs.2,92,592/- per month thereafter for the rest of the extended period. The defendant did not pay this lease rent. It is also alleged that the defendant did not pay the Service Tax of Rs.14,72,216/- plus interest @ 18% per annum.

6 It is the case of the plaintiff that all these amounts are payable under the Contract and therefore, they are entitled to a summary decree.

7 I have considered the plaint. The claim in the suit is split into three parts, as it appears from the Particulars of Claim, viz., (i) principal amount due from the defendant – Rs.36,73,222/-; (ii) Service Tax Rs.14,72,216/-; (iii) interest on the above principal amount till 17th November 2014 @ 18% per annum amounting to Rs.56,71,057/-.

I do not see anywhere how the plaintiff has arrived on the principal amount of Rs.36,73,222/- and how they have arrived at the interest component of Rs.56,71,057/-.

Now what remains is Service Tax, i.e., item (ii).

8 Shri Purohit submits that, therefore, Service Tax should be paid by the defendant. Admittedly, except one payment made in January 2012, no payment has been made towards Service Tax by the defendant. Shri Purohit stated that in law, Service Tax has to be paid by the Service Provider and therefore, it is the duty of the defendant to pay the Service Tax.

9 The Service Tax claimed in the suit is Rs.14,72,216/- as per the break-up for provided in paragraph 4(j) of the plaint. The suit itself has been lodged on 10th December 2014 whereas the claim for Service Tax is beginning from the period 2006-2007. Therefore, not only '*whether the Service Tax is payable by the defendant'* is an issue but limitation also will be an issue.

10 Therefore, unconditional leave to defend is granted to the defendant.

11 The summons for judgement accordingly stands disposed with the following order :

(a) The defendant to file written statement and serve copy thereof upon the plaintiff within four weeks;

(b) On or before 8th October 2016, parties to file their respective affidavits of documents, complete discovery and also complete discovery and inspection;

(c) On or before 15th October 2016, parties to exchange their statements of admission and denial with reasons for denial.

(d) The suit be listed on 24th October 2016 for 'issues'.

(K.R. SHRIRAM, J.)