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

**SUMMONS FOR JUDGMENT NO. 61 OF 2013**
**IN**
**SUMMARY SUIT NO. 3195 OF 2010**

Phonographic Performance Ltd. ...Plaintiff / Applicant
vs.
D.B. Corporation Ltd. ...Defendant

Mr.Sandeep Parikh, Siddhi Doshi i/b. Bilawala & Co. for Plaintiff.
Dr.Birendra Saraf with Rohan Sawnat i/b. IC Legal for Defendant.

**CORAM : S.C. GUPTE, J.**

**18 JANUARY 2016**

**P.C. :**

This summons for judgment is taken out in a summary suit, which is filed on the basis of an admission of liability by the Defendant. The disputes between the parties arise out of four licence agreements for broadcasting FM Radio channel for certain destinations. The Defendant was to pay licence fees to the Plaintiff under these agreements. It is the case of the Plaintiff, on the basis of a certificate issued by the Chartered Accountant of the Defendant, that the Defendant has admitted and acknowledged its liability to pay a sum of Rs.5,41,84,043/- towards such fees to the Plaintiff. This certificate was produced by the Defendant in a company petition filed before Madhya Pradesh High Court. On the basis of this acknowledgment and liability, the Plaintiff has filed the present suit.

2 In the first place, a summary suit cannot be founded on an acknowledgement of liability, unless such acknowledgement is coupled with a promise to pay. In the present case, the Defendant disputes that the Chartered Accountant's communication contains any promise to pay. A Chartered Accountant of the Defendant, who has certified the liability of the Plaintiff, can hardly be said to have authority to make a promise to pay on the part of his client.

Besides this, the Defendant relies upon a particular clause of the licence agreements, which *inter alia* provides that the licensee (i.e. the Defendant herein) would pay arrears, if any, from the date of the commencement of broadcast to the licensor (i.e. the Plaintiff herein) in accordance with the final orders that may be passed in pending proceedings. That was on the basis that the Copyright Board was seized of proceedings between the parties for determination of fees and final orders on the rate of fees were awaited. The agreements provide that in case rates are reduced by the final order, then the licensor shall adjust the difference against future fees payable for further usage by the licensee. According to the Defendant, by a final order passed by the Copyrights Board, licence fee was fixed at the rate of 2% of the net advertisement earnings accruing for each station prorated to the amount of PPL music actually broadcast as part of the total music broadcast by the station. According to the Defendant, this amounted to reduction of rates already paid by the Defendant and by reason of such reduction, the Defendant actually ended up overpaying the Plaintiff licence fees for the period of broadcast. All these are matters that give rise to triable issues, to be determined on evidence. The Defendant, in the premises, is entitled to an unconditional leave to defend the suit.

3 Accordingly, the Defendant is granted leave to defend the suit unconditionally. The suit is transferred to the list of commercial causes. The written statement to be filed within a period of six weeks from today. The suit to appear on board after six weeks for directions.

**(S.C. Gupte, J.)**