

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

CHAMBER SUMMONS NO.955 OF 2014

IN

SUIT NO.1302 OF 2011

Mumbai Metropolitan Region
Development Authority

...Applicant/Def. No.1

IN THE MATTER BETWEEN :

Tata Communications Limited
V/s.

....Plaintiff

Mumbai Metropolitan Region
Development Authority & Anr.

....Defendants

Ms. K.R. Daviervalva a/w. Mr. Y.P. Jijina i/b. Mulla and Mulla and CBC
for the plaintiff.

Mr. N. Walawalkar, senior advocate a/w. Mr. Atul Daga and Mr. Ashir
Amin and Ms. Anita Irani i/b. Kanga and Co. for the
applicant/defendant no.1.

CORAM : K.R.SHRIRAM,J

DATE : 5th OCTOBER,2016

P.C.:-

1 This chamber summons is taken out to frame additional
issues. The issues were settled on 24th March, 2014. The subject
matter of the present chamber summons relates to issue no.4, which is
worded as under :-

*“4. Whether the defendant is liable to pay interest @ 14% on the
amounts so withheld?”*

2 Heard the parties and also considered the affidavit in
support of the chamber summons and affidavit in reply. In my view,

the chamber summons can be disposed by substituting following issue in place of issue no.4 as originally framed. The following issue be read as issue no.4:-

“4. Whether the plaintiff proves that there was a valid and existing mutual agreement and/or there existed any reciprocity of contract between the plaintiff and defendant no.1 under which defendant no.1 is required to pay interest to the plaintiff at the rate of 14% p.a. on amount refunded to the plaintiff and that defendant no.1 agreed to the same as pleaded?”

3 Since issue no.4 is recast, issue no.5 as originally settled may be struck off. The issues, therefore, are now recast as under :-

1. Whether the suit is barred by law of limitation?
2. Whether the suit is barred by Section 80(2) of the CPC?
3. Whether the defendant caused loss of interest to the plaintiff by keeping an excessive amount with the defendant?
4. Whether the plaintiff proves that there was a valid and existing mutual agreement and/or there existed any reciprocity of contract between the plaintiff and defendant no.1 under which defendant no.1 is required to pay interest to the plaintiff at the rate of 14% p.a. on amount refunded to the plaintiff and that defendant no.1 agreed to the same as pleaded?
5. Whether the plaintiff has waived any interest?
6. What relief, if any, by way of interest is the plaintiff entitled to?

4 The chamber summons accordingly stands disposed.

5 The counsel appearing for the plaintiff states that since issue no.4 has been recast, they would like to reconsider the statement made on 17th July, 2014 that all the issues are issues of law and the plaintiff does not wish to lead any oral evidence and would rely only on documents.

6 Should the parties wish to lead oral evidence, parties to file their respective affidavit of documents, give inspection and file and exchange their statement of admission and denial with reasons for denial. Within four weeks from today the plaintiff to file their list of witnesses and affidavit in lieu of examination in chief of the first witness and serve a copy thereof upon the defendants.

7 If the plaintiff files the list of witnesses and affidavit in lieu of examination in chief of the first witness, then the suit be listed for marking of documents on 18th November, 2016 on which date the plaintiff's first witness to remain present in court or else the suit to be listed for directions on 18th November, 2016.

(K.R.SHRIRAM,J)