

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****SUMMONS FOR JUDGMENT NO. 67 OF 2015
IN
SUMMARY SUIT NO. 500 OF 2015**

Mega Bollywood Pvt.Ltd.

...Plaintiff

vs.

Mr.Mohammed Fasih & Anr.

...Defendants

Mr.Ashish Kamath, Kunal Parekh i/b. Thakore & Jariwala for Plaintiff.
None for Defendants. .

CORAM : S.C. GUPTE, J.**11 JANUARY 2016****P.C. :**

The summons for judgment is taken out in a summary suit filed by the Plaintiff for recovery of a sum of Rs.7,62,32,800/- as of the date of the suit. The suit is on a written contract contained in an agreement titled as "Film Rights Acquisition Agreement" dated 9 February 2013. This agreement is entered into between the Defendants as 'assignees' and M/s.Soundarya Productions as 'owner / producer' and the Plaintiff as 'World Rights Controller' for assignment of exploitation and distribution rights for the whole world including India in respect of the film "Zilla Ghaziabad" produced in Hindi. Under this agreement, the owner / producer and the World Rights Controller assigned the exploitation and distribution rights defined in clause 4.1.1. of the agreement to the Defendants at or for a total consideration of Rs.26 crores. Out of this amount of Rs.26 crores, Rs.20 crores was towards Indian theatrical rights, Rs.2 crores for overseas rights and Rs.4 crores for satellite rights. The payment was to be made as follows :

- I) The Plaintiff - Rs.17.80 crores;
- II) VIP Movies (India) Ltd – Rs.5 crores, and
- III) Soundarya Productions – Rs.3.20 crores.

A payment schedule was provided under this agreement. The payment schedule was as follows :

<u>Sr.No.</u>	<u>Amounts</u>	<u>Mode of Payment</u>
(a)	Rs.2,25,00,000/-	Paid vide cheque No.744628 dated 21 st December, 2012
(b)	Rs.2,25,00,000/-	Paid vide cheque No.744629 dated 26 th December, 2012
(c)	Rs. 50,00,000/-	Paid vide cheque No.981995 dated 8 th January, 2013
(d)	Rs.2,50,00,000/-	Paid vide NEFT 20130171340011001 dated 18 th January, 2013
(e)	Rs.2,50,00,000/-	Paid vide RTGS DLXBHI3022000628 dated 22 nd January, 2013
(f)	Rs.3,00,00,000/-	Payable before Overseas Delivery of Oversea Prints by RTGS
(g)	Rs.4,80,00,000/-	Payable before Indian Theatrical Release by RTGS

Out of the last two payments referred to in the table above, payment of Rs.31 lakhs remained outstanding from out of the sum of Rs.3 crores (mentioned at Serial No.(f) above), whilst the sum of Rs.4.80 crores was fully outstanding, making up an aggregate sum of Rs. 5.11 crores, as due and payable by the Defendants to the Plaintiff. In partial discharge of this liability, the Defendants issued two cheques in the sum of Rs.2.50 crores each, the details whereof are as under :

<u>Sr.No.</u>	<u>Cheque No.</u>	<u>Cheque date</u>	<u>Amount</u>	<u>Drawn on</u>
1	981996	11 th January 2013	Rs.2,50,00,000	Dhanlaxmi Bank, New Marine Lines Branch
2	981997	14 th January 2013	Rs.2,50,00,000	Dhanlaxmi Bank, New Marine Lines Branch

Both these cheques, upon presentation for payment, were dishonoured by the bankers of the Defendants, M/s.Dhanlaxmi Bank, and were returned unpaid to the Plaintiff's bankers. The respective returning memos issued by the bankers together with copies of dishonoured cheques are produced by the Plaintiff. Even after dishonour of these cheques, in a writing addressed by the Plaintiff to the Defendants on 16 February 2013, the Defendants have acknowledged and confirmed their liability to pay the last installment of Rs.4.80 crores. Despite this acknowledgement and confirmation, the payment was not made. In the premises, the Plaintiff addressed several communications to the Defendants for payment of Rs.5.11 crores. There were no replies to these communications. Finally, the Plaintiff issued Advocates' notice on 10 January 2014 calling upon the Defendants to pay the outstanding sum of Rs.5.11 crores. The Plaintiff also communicated to the Defendants through this legal notice that in the event of the Defendants' failure to pay the said sum, the Plaintiff would be compelled to sell the satellite rights of their film at the best offer received. The Defendants through their Advocates' reply dated 21 January 2014 denied the liability. The only ground in support of such denial urged by the Defendants was that they were forced to assign the distribution rights of the film to the Plaintiff's own concern M/s.VIP India Pvt.Ltd. for the territory of Mumbai. Apart from this bare statement in the Advocates' reply, there is nothing on record to support this contention.

2 There is no reply by the Defendants to the summons for judgment. In the premises, based on the averments of the Plaintiff in the plaint and the documents produced by the Plaintiff, there is a clear case for grant of a decree. The outstandings of Rs.5.11 crores clearly arise out of a written contract. The quantum of the outstandings also stands proved on the basis of the dishonoured cheques as well as acknowledgement and admission of the liability referred to above. It also transpires from the record of the case that the Plaintiff was unable to sell the satellite rights in respect of the film having regard to the objections of the Defendants through their Advocates. Learned Counsel for the Plaintiff confirms that there is no sale of satellite or overseas rights in respect of the subject film by the Plaintiff to any third party.

3 In the premises, the summons for judgment is made absolute and the suit is decreed in favour of the Plaintiff. The Defendants are ordered and decreed to pay to the Plaintiff a sum of Rs.5.11 crores due as on 11 March 2015 together with *pendente lite* interest on the principal sum of Rs.5.11 crores at the rate of 18% per annum from the date of the filing of the suit till payment and / or realisation.

(S.C. Gupte, J.)