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

SUMMONS FOR JUDGMENT NO.71 OF 2015
IN
SUMMARY SUIT NO.517 OF 2015

Maharashtra State Road Development)
Corporation Limited)....Plaintiff

V/s.

Sanjay Knit Private Limited)....Defendant

Mr.Ali Delhiwala a/w F.Lakadawala, Mr.J.Kapadi & Ms.M.Shukla i/by Little & Co. for plaintiff.
Mr.Naushad Engineer a/w Mr.P.H.Chande for defendant.

CORAM : K.R.SHRIRAM,J
DATE : 11.4.2016

P.C.:-

1 The plaintiff had issued a tender notice on 10.5.2007 for leasing out the right to display advertisements on the vertical faces of the super structure of the 13 underpasses and 3 bridges on BOT basis and 14 unipoles on non BOT basis on the Mumbai-Pune Expressway. The defendant responded to the tender notice. The offer of the defendant was accepted by the plaintiff and the letter of acceptance dated 11.9.2007 was issued to the defendant. The defendant also complied with the requirements of letter of acceptance following which an agreement dated 15.12.2007 was executed between the

plaintiff and the defendant. The total consideration to be paid by the defendant was Rs.7,51,00,000/- payable in 5 equal yearly installments to be paid upfront. Defendant was to pay sum of Rs.1,50,20,000/- per annum. The 1st installment was paid on 14.11.2007. In subsequent years, this amount was to be paid one month before the commencement of the next year failing which interest was payable at 18% p.a. The contract also provides termination in case the defendant did not perform its obligations under the contract. Clause-16 of the agreement provided for rebate to the defendant if the hoarding size or area of the hoarding was reduced beyond 10% of the area. The defendant did not pay the entire amount of Rs.1,50,20,000/- because defendant was claiming rebate under clause-16 for certain sites. The 1st letter was written on 29.4.2009 whereby the defendant has pointed out certain sites where there was problem on display. The 2nd letter was of 9.5.2009 and later on 5.12.2009. On 5.12.2009 the defendant paid the lease rental but deducted Rs.32,39,242/- and claimed the rebate to that extent.

2 As the plaintiff did not correct the problem in the sites mentioned by the defendant, the following years also the defendant claimed rebate and paid the balance amount. The contract came

to an end on 25.12.2012. At that stage the plaintiff issued a letter dated 6.3.2013 extending contract by 3 months but at revised lease rental Rs.18,67,000/- per month as against amount of Rs.12,51,666/-, copy whereof is at Exh.AC to the plaint. The defendant immediately responded by their letter dated 8.3.2013 agreeing for the extension but not agreeing for the increased lease rental. Three months period expired on or about 25.3.2013 at which time the plaintiff once again extended by 3 more months at the same increased lease amount of Rs.18,67,000/- per month. The defendant by their letter dated 18.4.2013 informed the plaintiff that increased amount was not acceptable but they would pay the original amount of Rs.12,51,666/-. This amount has been paid but subject to rebate as claimed in the past. Therefore, the plaintiff today is claiming the amount paid less during the period 2007-2012 and the difference between Rs.18,67,000/- and the actual amount paid. The counsel for the plaintiff states that they reduced rental from Rs.18,67,000/- to Rs.14,39,416/- for the period 26.12.2012 to 25.12.2013 and Rs.15,85,358 for the period 26.12.2013 till 5.5.2014. These increased amounts were not acceptable to the defendant.

3 It is also alleged in the plaint that the defendant did not pay the service tax component in time and therefore, plaintiff was also entitled to interest @ 18% p.a. on the service tax amount. The defendant has raised the following defences :-

(i) Claim is barred by limitation ;

(ii) As regards the rebates, whether the sites were available or not and whether the defendant is entitled for the rebate or not is a triable issue ?

(iii) For the extended period of the contract i.e., beyond 26.12.2012 there is no written agreement in as much as the plaintiff only wrote letters extending the period and the amount whereas the defendant did not agree for the increased amount ?

(iv) As regards the service tax component, the invoices were not raised on time to enable the defendant to pay the service tax properly.

4 Going in the reverse order, as regards the service tax component, the first letter i.e., the plaintiff has written demanding service tax is only on 23.4.2009 that too for the period 26.12.2007 to

25.12.2008 and for 26.12.2008 to 25.12.2009. The defendant has paid the service tax amount but has declined to pay the interest. In response, the defendant replied to the plaintiff stating that they wanted proper invoices and not debit notes, differential rates of service taxes like 12.24%, 12.36%, 10.3% has not been mentioned in the debit note and due to the delay on the part of the plaintiff the defendant was not able to claim input credit etc. At the same time, admittedly the defendant has paid the service tax amount but has not paid the interest as being claimed by the plaintiff, because according to the defendant, plaintiff is not entitled to interest and the service tax was not paid earlier due to reasons attributable to the plaintiff.

5 As regards the issue as to whether there was a written agreement for the extended period, in my view, the defendant having refused to pay the increased amount, one cannot say that there was a concluded written agreement between the parties.

6 As regards the rebate claimed by the defendant, the plaintiff in the affidavit in rejoinder has admitted that the plaintiff took joint inspection of advertisement sites and noticed certain discrepancies on the sites. The plaintiff has also stated that 2 unipoles

were not found on the advertisement sites and 2 were in damaged conditions. In my view, these are triable issues.

7 On the point of limitation also, the plaintiff has simply stated in the plaint that no part of the claim is barred by limitation whereas in the rejoinder the plaintiff has tried to explain how the plaintiff adjusted the payments received from the defendant even though defendant has in the forwarding letters specified as to what the payments related to. Therefore, whether the plaintiff could adjust the amounts as they claim to is also a triable issue.

Taking overall view of the matter and the defences raised and after hearing the counsels, in my view, one cannot say that the defences raised by the defendant are moonshine. This is a matter where many triable issues arise and therefore, defendant is entitled to unconditional leave to defend.

The summons for judgment, therefore, is dismissed. Suit transferred to the list of commercial causes.

8 The defendant to file written statement within 4 weeks from today. Within 2 weeks thereafter the plaintiff and the defendant

to file their respective affidavit of documents with details of documents and the compilation of the documents. Within 2 weeks thereafter parties to give/take inspection of documents and within one week thereafter exchange statement of admission and denial with reasons for denial.

9 Matter be listed for issues on 18.7.2016.

(K.R.SHRIRAM,J)