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

SUMMONS FOR JUDGEMENT NO. 75 OF 2015
IN
SUMMARY SUIT NO. 546 OF 2015

Maharashtra State Transport Corporation Ltd. .. Plaintiff
Vs.
Reliance Broadcast Network Pvt. Ltd. .. Defendant

Mr.Simil Purohit a/w. Mr.Manish Shukla i/b Littled & Co. for plaintiff.

Dr.Birendra Saraf a/w. Mr.Sairam Subramanian & Mr. Vaisakh Shaji i/b M/s. Khaintan & Co. for defendant.

CORAM : K.R.SHRIRAM, J.
DATE : 13TH JUNE, 2016

P.C.

1 This summary suit is filed claiming a sum of Rs.1,80,92,420/- of which the principal amount is Rs.1,34,83,950/- plus interest @ 18% per annum amounting to Rs.46,08,470/-.

2 The plaintiff had published a tender notice for inviting offers for the work of grant of permission to display advertisements on the Kiosk on 217 electric poles of Airoli Bridge and also on 2 hoardings at Airoli Toll Plaza in Navi Mumbai for five years contract period on as-is-where-is basis and as-is-where-is condition. The defendant was the successful bidder. The plaintiff and defendant, therefore, entered into an Agreement dated 31st January 2008 whereby the defendant in consideration for the permission to display

advertisements on the Kiosk on electric poles (217 Nos.) and on Airoli Bridge hoardings at Toll Plaza, Airoli in Navi Mumbai agreed to make an upfront payment of the total compensation of Rs.2,01,00,000/- (Rupees Two Crore One Lac only). Clauses 2 and 3 of the said Agreement read as under :

> *2. The Contractor agrees to pay upfront the above Compensation in five (5) equal yearly instalments. The first such instalment of Rs.40,20,000/- (Rupees Forty lacs twenty thousand only) has been paid by the Contractor on 17th January 2008 receipt of which is hereby acknowledged by the Corporation. The subsequent yearly Compensation shall be paid one month before the commencement of the next year. In case of failure to comply with this terms and successful bidder shall be liable to pay interest thereon 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.*
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> *3. The contract for granting the permission to display advertisements on the kiosk on electric poles of Airoli Bridge and 2 hoardings at Airoli Toll Plaza in Navi Mumbai shall commence from 7th February 2008 and 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 permission/approvals/licenses from the competent authority, design, fabrication erection of hoarding structure and subsequent display of advertisement.*

This amount was to be paid in five equal yearly installments. The contract, itself, was for five years beginning from 7th February 2008. The first installment of Rs.40,20,000/- was paid by the defendant on 17th January 2008 and the balance installments of like amount was to be paid one month before the commencement of the next year which would be 7th January of every year. The defendant paid the installment for the first four years and when it came to the 5th year, according to the plaintiff, the defendant did not pay on the due date. Therefore, interest was payable at the rate of 18% per annum on the amount outstanding. It is also the case of the plaintiff that even for the earlier years, the defendant was not making the payment on the due date but they paid interest only for the 3rd year. According to the plaintiff, as the defendant did not make the final installment due on 7th January 2012, on 7th June 2012 the plaintiff terminated the contract.

Clauses 29 and 30 provide for security deposits to be given by the defendant to the plaintiff and the liberty of the plaintiff to terminate the contract. Clauses 31 and 32 provide for removal of advertisements on the kiosks/boards immediately on the expiry of the contract under intimation to the Contractor. It further provides that the Contractor shall ensure, at the time of vacating the sites that the said kiosk/boards including the electric wiring remains in workable condition.

Clause 40.1 provides for the entitlement of the plaintiff to terminate and which are the events, on the happening of which, the plaintiff could terminate. One such event provided is if the defendant fails to observe and perform any of the obligations or agreement on its part herein contained in the agreement or if the defendant makes any default in payment of any amount payable to the defendant under the contract for a period of thirty days after the due date for the payment thereof or if the defendant failed to comply with the instructions issued by the plaintiff. The relevant part of Clause 40.1 reads as under :-

> *…......... it shall be lawful for the Corporation, without any notice, to determine the contract and to take possession of the advertisements on the said sites displayed under the contract and the same shall be the property of the Corporation to be dealt with in any manner as deemed fit without prejudice to the rights of the Corporation to recover all sums then due under the contract and damage in respect of any breach or default on the part of the Contractor as arrears of land revenue under the provisions of The Maharashtra Land Revenue Code, 1966 and as provided herein. In that event no client of the Contractor whose advertisements may be displayed by the contractor on the hoarding shall have any cause of action of whatsoever nature against Corporation.*

3 It is the case of the plaintiff that the defendant did not remove the advertisements from the 217 poles and 2 hoardings and also did not return those sites. According to the plaintiff, they had to use police help to take back the possession of the sites and by the time they took back possession, the contract period had expired. The plaintiff also is stating that they are entitled to Occupancy Charges at double rate of compensation for the period of display of advertisements on the said hoardings beyond the date of expiry of the contract period as provided in Clause 32. The plaintiff stated that all these amounts are payable under the contract and, therefore, they are entitled to a summary decree.

4 It is the case of the defendant that the plaintiff has not given a break-up as to how they arrived at the principal amount of Rs.1,34,89,950/-. I have gone through the plaint. I do not see anywhere how they have arrived at this break-up. This is an important point because, according to the plaintiff, the defendant had not paid the compensation for the 5th year which is Rs.40,20,000/-. How this figure has jumped to Rs.1,32,83,950/- is not clear. It is the case of the plaintiff that the defendant did not hand over the sites and hence they are entitled to compensation up to the date on which the plaintiff could take back the sites. But from the letters dated 2nd May 2013, addressed by the defendant to the plaintiff, the stand taken by the defendant is that the Agreement was unilaterally terminated by the plaintiff vide their letter dated 7th June 2012 and peaceful possession of the subject sites was also handed over to the plaintiff. The defendant, of course, has not disputed that they did not pay the Annual installments that was due on 7th February 2012, but it is admitted that the plaintiff has encashed and adjusted the security deposit given by the defendant towards the dues payable to the plaintiff.

5 It is also disputed by the defendant that the plaintiff is not entitled to any charges after the date of termination. Even in the letter, dated 11th September 2013, the defendant has taken a stand that the sites were taken

over by the plaintiff on termination and it has not been in their possession in any manner whatsoever. They have also denied that the defendant has been commercially exploiting the kiosk from the date of the termination.

Therefore, whether the kiosk/sites were used by the defendant after the termination, itself, is in dispute and raises a triable issue. Whether the plaintiff is entitled to any charges after the date of termination is another triable issue. Thirdly, the date when the plaintiff took possession of the sites is another issue. Fourthly, how much is the total dues and how much security deposit amount is adjusted is another issue.

6 In the circumstances, I cannot dismiss the stand of the defendant as moonshine. Therefore, the defendant is entitled to unconditional leave to defend the suit.

7 The Summons for Judgement accordingly dismissed.

8 The defendant to file its written statement and serve a copy thereof upon the plaintiff on or before 11th July 2016. On or before 25th July 2016, both the parties shall file their respective affidavits of documents. Inspection of the documents to be given on or before 1st August 2016. Parties to file and exchange their statements of admission and denial with reasons for denial on or before 8th August 2016.

9 The suit be listed on 16th August 2016 for issues.

(K.R. SHRIRAM, J.)