

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

**SUMMONS FOR JUDGMENT NO.76 OF 2015
IN
SUMMARY SUIT NO.291 OF 2015**

Mural Bulldozing Pvt. Ltd.	...Plaintiffs
V/s.	
Akash Dredging & Marine Services Pvt. Ltd.	...Defendants

Mr.Karl Shroff i/by R.M.Partners for plaintiffs.
Ms.Shivani Soni i/by Deven Dwarkadas & Partners for defendants.

**CORAM : K.R.SHRIRAM,J
DATE : 2.5.2016**

P.C.:-

1 The plaintiffs had offered to supply an excavator to the defendants as per the offer letter dated 12.3.2013. The hire charges was mentioned as Rs.3,800/- per hour exclusive of diesel for minimum 300 chargeable hours per month (minimum Rs.11,40,000/- per month). The billings and payments were to be made within seven days.

2 In response to the offer letter, the defendants issued a work order dated 18.3.2014 accepting the rate of Rs.3,800/- per hour exclusive of diesel for minimum 300 chargeable hours per month. Beyond 300 hours the billing was to be on pro-rata basis. However, the payment according to the defendants, was to be made within 10 days on submission of the bill as against 7 days.

3 The excavator was utilized at the site requested by the defendants from March-2013 to February-2014 and the plaintiffs raised 18 invoices of Rs.1,40,50,625/- including service tax. The details of the invoices can be found in paragraph-4 of the plaint. The defendants made part payments from time to time and as mentioned in paragraph-5 of the plaint, made payment in the sum of Rs.55,58,326/- leaving a balance of Rs.84,87,243/-. In January-2014 the defendants issued 4 cheques to the plaintiffs for Rs.15,00,000/-, Rs.17,00,000/-, Rs.20,00,000/- and Rs.17,15,116/-, all dated 7th April 2014, with a request to deposit the same on their due dates in the event the defendants did not make payment of the entire hire charges that were outstanding by then. The excavator was demobilized on 1.3.2014. The defendants however, did not make any payment and therefore, the plaintiffs by an e-mail dated 5.4.2014 called upon the defendants to settle their claim. In fact, after receiving the e-mail the defendants made payment of Rs.30,00,000/- which forms part of Rs.55,58,326/-. Subsequently the defendants in response to e-mail from the plaintiffs admitted that an amount of Rs.57.17 lakhs was due and payable though the plaintiffs disputed that figure. The four cheques when they were deposited, were dishonoured for "insufficient funds". The plaintiffs have, independently, commenced proceedings under

the Negotiable Instruments Act 1881. The plaintiffs thereafter sent notices through their Advocates to which the defendants replied stating that the plaintiffs had agreed to reduce rate from Rs.3,800/- to Rs.3,000/- and based on that, only Rs.52,18,902/- was payable. In reply, the plaintiffs have denied any such understanding. In any event, it is necessary to note that even the amount of Rs.52,18,902/- has not been paid. An ingenious defence has also been taken stating that the defendants have been taken over by another group and therefore, no amounts are payable.

4 In the affidavit in reply, the defendants state that there was no privity of contract and why so, is not explained. It is also stated that there was a change in the situation of defendant-company and it has been taken over with limited liability by Shri K.S.R. Infracon Pvt. Ltd. and therefore, the defendants are not liable. Again these are bald averments and no document has been annexed. In any event, that would not absolve the company from their liability, even if the shares are purchased by somebody else. The management of the company is transferred to K.S.R. Infracon Pvt. Ltd. and thirdly Shri Madhava Varma who has issued the 4 cheques has not been in control of the affairs since 7.4.2014 and therefore, cheques issued by Shri Madhava Varma are not binding on the company. But the fact that these

cheques were given in January-2014 has not been denied on which date Shri Madhava Varma was there in the company. The defence that the rate was agreed to be reduced from Rs.3,800/- to Rs.3,000/- has also been raised. It is also stated that as per defendants' statement of accounts they had to pay only Rs.52,18,902/-. Again there is no document annexed where the plaintiffs have agreed to reduce the amount from Rs.3,800/- to Rs.3,000/-. The counsel also pointed out from Exhibit-B annexed to the reply that the rate was agreed to be reduced from Rs.3,800/- to Rs.3,000/- because the excavator did not function to their satisfaction. Again there is no document except a bald allegation.

5 In the circumstances, in my view, the defences raised are bogus and moonshine. It is also required to be noted that the defendants had also issued 4 cheques for Rs.69,15,116/- though according to them today the amount payable is only Rs.52,18,902/- as per the alleged understanding revising the rates.

6 In my view, it would meet interest of justice if the defendants are directed to deposit in the Court sum of Rs.69,15,116/- the amount for which they had issued cheques and then defend the suit. The defendants to deposit this amount

within six weeks from today with the Prothonotary & Senior Master, High Court, Bombay. If they do not deposit this amount within six weeks, the suit shall be listed for directions on 27.6.2016. If they deposit the amount then within two weeks of deposit the defendants to file their written statement. Within 2 weeks thereafter the parties to file their respective affidavit of documents and complete discovery and inspection. Within one week thereafter parties to exchange statement of admission and denial of documents with reasons for denial. The suit to be placed for issues on 25.7.2016.

Summons for Judgment accordingly disposed.

(K.R.SHRIRAM,J)