

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

**SUMMONS FOR JUDGMENT NO.78 OF 2015
IN
SUMMARY SUIT NO.774 OF 2015**

Realm Media Solutions Pvt. Ltd.Plaintiff

V/s.

Mahuaa Media Pvt. Ltd. & Anr.Defendants

Mr. Rohaan Cama a/w. Ms. Jaymala Ostwal i/b. J J Associates for the plaintiff.

Mr. Rahul Singh i/b. Legal Catalyst for the defendants.

**CORAM : K.R.SHRIRAM,J
DATE : 17th OCTOBER,2016**

P.C.:-

1 The plaintiff has filed this suit claiming a summary decree in the sum of Rs.2,88,74,496/- comprising of Rs.1,87,83,804/- towards principal and the balance towards interest at 18% p.a. from the date of the outstanding invoices till 27th April, 2015, the date on which the plaint was declared.

2 It is the case of the plaintiff that they are Specialist Media Agency and possesses the requisite ability and expertise in conceptualizing, planning, designing, procuring and executing outdoor media services across India. The defendants engaged the services of the plaintiff to provide outdoor media implementation

planning services within India for various television channels owned by the defendants. The plaintiff and the defendants entered into outdoor services agreement dated 1st December, 2010. The agreement was for a period of 12 months though erroneously it provides 60 months, commencing from 1st December, 2010 upto 30th November, 2011. The remuneration receivable by the plaintiff has been set out in clause 5 of the agreement. It is stated that the plaintiff successfully carried out the defendant company's campaign during the term of the agreement and infact the defendants had by a letter dated 20th October, 2011 even appreciated the work done by the plaintiff and expressed satisfaction to the work handled by the plaintiff.

3 During this period of one year when the agreement was in force, the plaintiff raised 37 invoices totaling to Rs.2,47,23,003/- upon the defendants. The defendants paid a sum of Rs.59,40,200/- in four tranches after deducting TDS leaving a balance of Rs.1,87,37,803/- as principal. At this point, it is necessary to note that clause 15 of the agreement provides that the payment will be made within 60 working days and incase of delay, interest at 18% p.a. will be charged. This 18% interest has been agreed though the invoices raised by the plaintiff provided for interest at 24% p.a. and that the payment should

be made within 15 days.

4 It is the plaintiff's case that the defendants by a letter dated 30th April, 2012 acknowledged the sum of Rs.1,87,37,803/- was due and payable to the plaintiff. A copy of the letter is annexed as Exhibit 'D' to the plaint. As the defendants did not made any further payment, the plaintiff through their earlier advocates notice dated 16th August, 2012 called upon the defendants to pay this amount of Rs.1,87,37,803/- plus interest. It was stated by Mr. Cama, counsel for the plaintiff that no reply was received to this notice from the defendants. The plaintiff has also filed two further affidavits annexing thereto communications from the earlier advocates – Wadia Ghandy & Co. in which it is explained and confirmed that this notice dated 16th August, 2012 has been received by the defendants at their Bombay address.

5 The defendants have filed an affidavit in reply and the defences raised are as under :-

- (a) the suit is barred by limitation;
- (b) this court has no jurisdiction and;

(c) Mr. Nikhil Sheth, who the plaintiff claimed has signed the agreement and the letters dated 20th October, 2011 and 30th April, 2012 had no authority to sign the agreement and these letters and therefore, they are not binding on the defendants.

6 All the three defences raised by the defendants, in my view, are inter connected. This is because the plaintiff is relying on documents signed by Mr. Nikhil Sheth and it is the case of the defendants that Mr. Nikhil Sheth had no authority to sign on behalf of the company or to bind the defendant company.

7 It is the case of the defendant no.2 that during the period July, 2012 to October, 2012 he was in jail due to some investigation by the Central Bureau of Investigation and after he obtained bail, he realised that Mr. Nikhil Sheth has saddled the company with various liabilities and the services of Mr. Nikhil Sheth was terminated some time in November, 2012. In the affidavit filed in 2015 the defendant no.2 states that the defendants are contemplating taking legal action against Mr. Nikhil Sheth. At the same time, it is quite clear that during the period of contract, i.e., 1st September, 2010 to 30th November, 2011 and the last invoice dated 13th October, 2011, defendant no.2 was certainly not in jail. Defendant no.2 was in-charge of the company - defendant no.1, as the Managing Director.

8 The plaintiff have annexed to their rejoinder a copy of the letter dated 3rd November, 2011 addressed to defendant no.2 to which the plaintiff have enclosed a statement of receivable from defendant no.1 and have also mentioned that a sum of Rs.1,87,37,803/- was payable by defendant no.1 to the plaintiff. The defendant no.2 has denied having received this letter and it is also stated that the letter was addressed to Mr. P.K. Tiwari, Chairman, Century Communication Ltd. and not as Managing Director of defendant no.1. The plaintiff have however, annexed proof of delivery of the said letter at the address given in the letter. At the same time, it will be noted that the defendants have not stated anywhere that Century Communication Limited had nothing to do with defendant no.1. I would, therefore, believe the said communication dated 3rd November, 2011 was received by defendant no.2.

9 The plaintiff has produced documents wherein Mr. Nikhil Sheth as President of Sales of defendant no.1 has entered into an agreement, has acknowledged services rendered and also has acknowledged liability of defendant no.1. Whether he had authority or not to bind the company is the internal matter of defendant no.1.

10 As regards the issue of limitation, it is the plaintiff's case that the letter dated 30th April, 2012 extends the period of limitation and the plaintiff having lodged this plaint on 20th April, 2015, the suit filed is within limitation.

11 As regards jurisdiction, this court certainly has jurisdiction for two reasons (a) the defendants carry business in Mumbai and (b) as per the agreement entered into between the plaintiff and the defendants clause 17.3 provides that parties may seek legal redress through the exclusive jurisdiction of the courts in Mumbai.

12 The defendants have not raised any substantial defence and from the documents available on record, it is quite obvious that the plaintiff should be entitled to decree in the sum of Rs.1,87,37,803/-. At the same time, I would grant defendant no.1 liberty to defend the suit, subject to depositing in this court the principal amount of Rs.1,87,37,803/-. I am not inclined to grant any order so far as the interest component is concerned because even though the agreement provided for 18% p.a. interest, the acknowledgement of liability is only towards the principal amount and therefore, whether the amount claimed as interest is within limitation or not is a triable issue. Having

said this, there is nothing in the plaint to show that defendant no.2 is liable to the plaintiff.

13 Therefore, unconditional leave to defend is granted to defendant no.2. The defendant no.2 to file written statement and serve a copy thereof within eight weeks from today.

14 So far as defendant no.1 is concerned, the defendant no.1 to deposit a sum of Rs.1,87,37,803/- with the Prothonotary and Senior Master, High Court, Bombay within six weeks from today. The Prothonotary and Senior Master to invest this amount in fixed deposit with a nationalised bank initially for a period of one year and to be extended from year to year until the hearing and final disposal of this suit.

15 Within two weeks of depositing the amount the defendant no.1 to file the written statement and serve a copy thereof upon the plaintiff.

16 Within two weeks thereafter parties to file their respective affidavit of documents and complete discovery and inspection and

within one week thereafter parties to file and exchange their statement of admission and denial with reasons for denial.

The suit to be listed for issues on 16th January, 2017.

17 If the amount is not deposited by defendant no.1 as mentioned above, the suit to be listed for directions on the first Friday after the completion of the six weeks period.

18 The summons for judgment accordingly stands disposed.

(K.R.SHRIRAM,J)