

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

**SUMMONS FOR JUDGMENT NO.26 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO.417 OF 2017
WITH
CHAMBER SUMMONS NO.337 OF 2017
WITH
NOTICE OF MOTION NO.780 OF 2017
WITH
GARNISHEE NOTICE NO.32 OF 2018
WITH
GARNISHEE NOTICE NO.33 OF 2018
WITH
GARNISHEE NOTICE NO.35 OF 2018**

Orchard Advertising Pvt. Ltd. ... Plaintiff
Versus
LE Ecosystem Technology India
Pvt. Ltd. ... Defendant

Mr.Gaurav Joshi, Senior Advocate with Amrut Joshi and Mansi Mahida
I/b.Udwadia & Co. for Plaintiff.
Mr.Manoj Khatri with Arnab Ghosh for Defendant.

CORAM : S.C. GUPTE, J.

DATE : 2 MAY 2018

P.C. :

Heard learned Counsel for the parties.

2 This summons for judgment is taken out in a commercial summary suit seeking a decree for principal amount of about Rs.2.65 crores and interest of about Rs.31 lakhs. The suit claim is in respect of services rendered by the Plaintiff to the Defendant.

3 Under a broad umbrella agreement called “Marketing Service Agreement” entered into between the parties on 23 April 2016, the Plaintiff agreed to provide services to the Defendant of the nature as set out in Exhibit 1 to the agreement. It is not in dispute that the Plaintiff had in fact provided various services to the Defendant and periodically raised invoices on the Defendant. It is also not in dispute that under these invoices, principal amount of over Rs.2.65 crores is due and payable by the Defendant to the Plaintiff. The only defence raised by the Defendant at the hearing of the summons for judgment is that the Marketing Service Agreement contains an exclusive jurisdiction clause conferring exclusive jurisdiction for any disputes arising out of or under the agreement on the courts in Bangalore. It is submitted that a part of the cause of action in the present case does arise in Bangalore. So also the Defendant carries on business in Bangalore. It is submitted that in the premises, the Bangalore courts have jurisdiction to decide disputes between the parties and under the exclusive jurisdiction clause, their jurisdiction must be treated as exclusive. Learned Counsel relies on the judgment of the Supreme Court in the case of **Globe Transport Corporation vs. Triveni Engineering Works**¹, and judgment of our court in the case of **M/s.Girisons Distributors vs. M/s.Parekh Brothers**², and of the Delhi High Court in the case of **Wollaque Ventilation & Conditioning Pvt.Ltd. vs. Sterling Tools Ltd.**³. Relying on these judgments, it is submitted that the jurisdiction to decide disputes under the agreement lies exclusively with the courts at Bangalore.

1(1983) 4 SCC 707

21983 SCC OnLine Bom 24 : (1983) 2 Bom CR 309

32011 SCC OnLine Del 893 : (2011) 177 DLT 731

4 No doubt, the Marketing Service Agreement is an umbrella agreement under which the parties operated but it is equally not in dispute that before rendering services, an estimate was served by the Plaintiff to the Defendant containing various clauses. One of the clauses was on the applicable laws and jurisdiction of the courts, providing that the courts in Mumbai would have exclusive jurisdiction in matters arising out of services rendered in pursuance of the estimate. Even this estimate is duly signed by both parties, i.e. the Plaintiff and the Defendant. Even the invoices issued by the Plaintiff to the Defendant for the services rendered contain a jurisdiction clause, which provides that disputes arising in respect of the invoices shall be referred to the jurisdiction of courts located in the metropolis where the registered office of the company is situated. The same clause gives addresses of the administrative office, the branch office and the registered office of the company, i.e. the Plaintiff. The registered office of the Plaintiff is admittedly in Mumbai. Thus, though the umbrella agreement between the parties confers exclusive jurisdiction on Bangalore courts, the individual services rendered under the estimate issued under this agreement and services which are covered by the individual invoices are governed by an exclusive jurisdiction clause conferring exclusive jurisdiction on the courts in Mumbai.

5 Learned Counsel for the Defendant submits that in the face of the signed agreement between the parties, written conditions contained in the estimate or invoices do not form part of the contract between the parties. Learned Counsel for this purpose relies on the judgment of our court in the case of **M/s.Girisons Distributors** (supra). The case of **M/s.Girisons Distributors** was decided before the Supreme Court decided

the case of **A.B.C. Laminart Pvt.Ltd. vs. A.P. Agencies, Salem**⁴. As held by the Supreme Court in that case, a printed order form containing exclusive jurisdiction clause signed by the other side can and does give rise to a contract between the parties providing for exclusive jurisdiction of the courts named therein. There is nothing special about printed agreements or forms. The question in all such cases is whether the other side assented to the printed form or agreement. In the present case, the estimate as well as the invoices under which the individual services were rendered contain exclusive jurisdiction clause conferring jurisdiction on Mumbai courts. In the premises, the only defence on which the summons for judgment is resisted, namely, want of jurisdiction in Mumbai courts, cannot be termed as a probable defence.

6 The defence may at best be termed as a plausible defence and under the principle of the case of **IDBI Trusteeship vs. Hubtown**⁵ may earn a conditional leave to defend for the Defendant by deposit of the principal amount claimed in the suit, for which there is no defence on merits.

7 This court was approached when the suit was filed with a leave petition. The court granted leave under Clause 12 of the Letters Patent on the basis that a part of cause of action had arisen in Mumbai and that under the estimates as well as individual invoices, jurisdiction had been conferred on the courts in Mumbai. As the law is discussed above, there is no warrant for taking a different view at this stage. The plaint, as it stands, calls for a leave and no fault can be found with the leave granted merely on the pleadings before the court. The chamber summons of the

4 (1989) 2 SCC 163

5 (2017) 1 SCC 568`

Defendant, which seeks revocation of that leave, need not, in the premises, be decided at the outset. The question of accrual of any part of cause of action in Mumbai and the validity of grant of leave under clause 12 may well be left for a decision at the trial, if conditional leave to defend is availed of by the Defendant. The hearing of the chamber summons may accordingly be adjourned to the hearing of the suit. This Court, in the case of **Edelweiss Finance & Investments Limited vs. Ashish Jhunhunwala**⁶, has considered the question whether, in a summary suit where evidence is called for on the issue of revocation of leave, the application for revocation must be decided upfront, i.e. at the stage of Summons for Judgment, or can be adjourned to the hearing of the suit. This court held that even in a summary suit, it is open to the court, where it is of the view that the defence raised as a ground for revocation of leave is not probable, though plausible, to leave the ground to be decided as a trial issue.

8 The following order is accordingly passed:

(I) The Defendant is granted leave to defend the suit on a condition of deposit in this court of a sum of Rs.2.65 crores within six weeks from today. The amount, if any, deposited by the Defendant shall be invested by the Prothonotary & Senior Master in Fixed Deposit/s of Nationalised Bank/s initially for a period of 13 months and renewable thereafter from time to time and to abide by further orders that may be passed in the present suit.

(II) The Defendant may file written statement within four weeks after deposit of the amount referred to in Clause (I) above.

6 **Summons for Judgment No.257/2010 in Commercial Suit No.30 of 2010 decided on 9.2.2018**

(III) Place the suit for directions after ten weeks.

(IV) The summons for judgment is disposed of.

(V) Chamber Summons No. 337 of 2017 is adjourned to the hearing of the suit. The question of jurisdiction would form part of the trial, if the Defendant avails of conditional leave to defend provided for hereinbelow.

(VI) The Notice of Motion and Garnishee Notices to come up later.

(S.C. GUPTE, J.)