Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 668 OF 2013

IN

CHAMBER SUMMONS NO. 251 OF 2011

IN

CHAMBER SUMMONS NO. 1006 OF 2010

IN

EXECUTION APPLICATION NO. 21 OF 2004

IN

ARBITRATION PETITION NO. 261 OF 2000

IN

AWARD NO. 22 OF 2000

Unique Integrated Transport & Management Consultants Pvt Ltd ...Applicant

Versus

Mahanagar Telephone Nigam Ltd ...Respondent

None *for the Decree Holder.*
Ms SI Shah *, for the Respondent-MTNL.*

CORAM: G.S. PATEL, J
DATED: 31st July 2018

PC:-

1. None for the Decree Holder. Heard Ms Shah for the Respondent judgment debtor ("**MTNL**"). There is a typographical error in the order of 10th July 2018: the appearance will be corrected to read as *Ms SI Shah for MTNL, the Respondent* and *none for the Decree Holder/Applicant*.

2. Despite this matter having been adjourned on several occasions, neither the Applicant nor its Advocate have ever remained present. It is not for any Advocate, or let alone any party, to decide for himself or themselves, before which Court he or they will or will not appear. If they choose to remain away without leave or sufficient cause, they must take the consequences. The matter cannot be indefinitely adjourned like this. Ms Shah has tendered written submissions. These are taken on record. A copy is to be served on the Advocate for the Decree Holder.

3. The Chamber Summons seeks that the Taxing Master make corrections in the calculations to the amount due under the Decree obtained by the Applicant-Decree Holder against the Respondent.

4. For the present purposes, there are two Taxing Master's Reports that are material. The first is dated 28th January 2011 at Exhibit "C" from pages 54 to 56 of the paper book. That Report was made pursuant to an order of 6th September 2010, by which the Decree Holder was directed to make a representation and the Taxing Master was required to hear both sides. The Decree Holder made an Application to amend an earlier Report dated 27th October 2010. The principal ground was in regard to the calculation of interest. The submission by the Decree Holder was that interest ought to have been calculated up to the date of the Award and thereafter further interest ought to have been calculated. The Taxing Master then held that the interest awarded was not compound interest. The interest computed was up to the date of the deposit and hence it would make no difference whether it was calculated up to the date of the deposit or to the date of the Award. The second contention was that an amount of Rs.93,000/- shown as paid in the previous report of 27th October 2010 had not in fact been paid. The department was directed to submit a report. It confirmed that the amount of Rs.93,000/- was unpaid. The Taxing Master made the necessary amendment and recomputed the amount due to the Decree Holder arriving at an aggregate amount of Rs.2,01,008.55 with further interest at 15% per annum from 7th September 2010 till payment or realisation.

5. On 18th April 2013, a learned Single Judge of this Court passed an order directing the Taxing Master to decide a fresh Application made by the Decree Holder for a further correction. On this, the present Taxing Master made an order on 5th August 2013 (Exhibit "G" at page 78 to 81). This application specifically sought a reconsideration of the previous report of 20th January 2011. The Decree Holder said that the amount computed as due under the award was incorrect. The Decree Holder, therefore sought a correction. The Taxing Master set out the amounts awarded against each of the claims and totalled these to Rs.8,59,159/- and then said that this amount would carry interest at 15% per annum from the date of the claim 1st August 1993 to 7th May 1998 and further interest from 22nd April 2000 till payment or realisation. The Decree Holder, however said that the principal amount was Rs.12,64,701/-. This, the Taxing Master found, was not reflected in the amount and the Decree Holder could not demonstrate before the Taxing Master how it had arrived at this figure. Consequently, the Taxing Master rejected the claim for the principal amount being corrected to Rs.12,64,701/-. From the Affidavit in Support to the present Chamber Summons, it is difficult to see how this contention of the Decree Holder can be said to be correct or what error there can be said to be in the Taxing Master's Report.

6. The Taxing Master then proceeded to consider the question of interest at 15% per annum. She also found that from the first report until the date of her report the Decree Holder had never challenged this amount in addition to the claims and costs. These were the only claims. Accordingly this contention was rejected.

7. The second contention of the Applicant was that the interest computation was incorrect and that the date of 27th April 2004 has been wrongly taken as date of payment as this was not the actual date of realisation which was 12th May 2004. The Taxing Master noted that the Decree Holder had not seen the further calculation of interest for the intervening period from 28th April 2004 to 10th May 2004 amounting to Rs.4236.95 or that this was actually reflected in the report of 20th January 2011. The Taxing Master noted that the interest was calculated up to the date of issue of cheque dated 10th May 2004 and was not calculated to the date of the order, 27th April 2004. The Claimant said that it had realised the amount on 12th May 2004 and therefore was entitled to interest for a further period of two days. In addition the Decree Holder made a grievance that the rate of interest ought to have been taken from 22nd April 2000 onwards. This overlooked the fact that in the very first report dated

24th September 2008, the then Taxing Master computed interest on the principal claim from 1st August 1993 to 7th May 1998 and from 22nd May 2000 onwards. The Decree Holder's contention was again found to be incorrect. As to the question of the actual receipt of the claim i.e. realisation of the cheque, the Taxing Master held that it was the usual practice of the registry that interest was always computed up to the date of cheque. The recipient of that cheque would deposit it at any time thereafter during the validity of the instrument but that would not increase the interest liability. This is a correct position in law because the cheque is valid tender and if deposited is immediately realisable. Interest will stop running on the date of cheque. I will extend this to mean that the date when the cheque is actually handed over, and, in this case, there is no dispute about the date of handing over of the cheque either.

8. Consequently, in my view, the Report of the Taxing Master dated 5th August 2013 is unexceptionable and calls for no interference. The Chamber Summons is dismissed. There will be no order as to costs.

9. Ms Shah confirms that the payment as per the order of 5th August 2013 has been made. The decree is to be got marked fully satisfied within four weeks from today. The Execution Application and all chamber summonses are disposed of accordingly.

(G. S. PATEL, J)