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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.52 OF 2016

IN

COMMERCIAL SUIT NO.181 OF 2015

Shree Sai Rent A-Car Pvt. Ltd.

...Plaintiff

vs

M/s. Sea Bird Tourist Centre

...Defendant

.....

Mr. Vishal Kanade, a/w. Ms. Kirtida Chandarana and Ms. Dipanwita Ghosh, i/b. Mahernosh Humranwala, for the Applicant/Plaintiff.

Mr. D.R. Ravishankar, a/w. Mr. Rajesh J. Ghag, for the Defendant.

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CORAM : S.C. GUPTE, J.

DATED : FEBRUARY 28, 2018

P.C. :

. Heard learned Counsel for the parties.

2. This summons for judgment is taken out in a summary suit, which seeks to recover liquidated sums payable under a written contract. The Plaintiff's case is that, by an agreement dated 26 February 2013, the Plaintiff undertook to provide six numbers VOLVO MULTI AXLE buses for the operations of the Defendant as per terms and conditions mentioned in the agreement. It is submitted that under this agreement (Clause 11), the Defendant was required to remit remuneration for these six buses at INR 17,75,000/- to the Plaintiff's bank account via RTGS commencing from 13 April 2013. These payments made into the bank account were

to be adjusted towards EMIs payable by the Plaintiff to the bank which had granted financial accommodation to the Plaintiff for purchase of these buses. The contract provided that on successful completion of the repayment of all EMIs for the buses, the Plaintiff and the Defendant would sell the buses as per market value then prevailing and share the sale proceeds in the proportion of 60:40. It is the Plaintiff's case that finally the Defendant availed of only four numbers VOLVO MULTI AXLE buses and, accordingly, the total remuneration was amended to INR 12,51,400/-. It is the case of the Plaintiff that the Defendant paid full monthly remuneration only upto February 2013. The claim is for remuneration for the period between March 2013 and July 2014. It is submitted that the Plaintiff raised various bills/invoices for this period. The remuneration for this period aggregates to Rs.2,18,33,075/-. It is the case of the Plaintiff that after taking into account payment made by the Defendant towards remuneration due for this period, a total sum of Rs.1,12,97,587/- is due and payable by the Defendant to the Plaintiff.

3. The Defendant contests the Plaintiff's claim on various grounds. Chiefly, it is the case of the Defendant that there was a joint reconciliation of the Plaintiff's claim for the period in question. It is submitted that this reconciliation is contained in mails exchanged between the parties. It is submitted that, according to this reconciliation, total outstanding dues payable to the Plaintiff till March 2014 on the vehicle account were for Rs.62,95,400/- without any overdue interest. It is submitted that the mode of payment of this amount was also provided for in the reconciliation. It is submitted that in pursuance of this reconciliation, a sum of Rs.27,16,600/- was paid by the Defendant to the

Plaintiff. Insofar as the balance claim of Rs.47,92,400/- is concerned, it is the Defendant's case that the parties had prepared a memorandum putting a value of Rs.1.41 crores on three out of these four buses; it was also provided in this memorandum that if the parties were to amicably settle the matter in any manner, this valuation would be taken for the purpose of further negotiations and settlement of issues. It is the Defendant's case that the memorandum accordingly provided that the Defendant would handover immediate custody of the buses of the required number to the Plaintiff to take these buses to Mumbai without any encumbrance. On this basis, it is submitted that the balance amount due and payable by the Defendant to the Plaintiff, namely, Rs.47,92,400/-, should be deemed to have been adjusted into the account of the Plaintiff. It is submitted that, in any event, considering the valuation of these three buses and the Defendant's 40% share in them, there is adequate amount to the account of the Defendant for adjustment of its dues. It is submitted that the balance amount after such adjustment in fact would have to be shared between the Plaintiff and the Defendant in the ratio of 60:40. Besides this, the Defendant has several other claims concerning non-operation of the buses since 19 October 2014 onwards. These claims form part of a separate suit filed by the Defendant before the City Civil Court at Bangalore. Even the Plaintiff has filed a separate suit claiming damages for breach of contract on the part of the Defendant. That claim of course excludes the present claim for remuneration for the period between March 2013 and July 2014.

4. On these facts and pleadings, there are several triable issues, which arise in the present suit. These triable issues are substantial and

cannot, in any way, be termed as nominal. The defence emanates from transactions between the parties prior to the filing of the suit and is evidenced by correspondence exchanged between them. On this basis, the defence can be termed as both plausible and probable. It is for the Court to assess the relative merits of the rival cases after allowing the parties to lead evidence. In the premises, the Defendant deserves an unconditional leave to defend the suit.

5. Mr. Kanade, learned Counsel for the Plaintiff, submits that since there is a clear admission on the part of the Defendant in its correspondence as also in its affidavit that a sum of Rs.47,92,400/- is due and payable by the Defendant to the Plaintiff towards remuneration for the period between March 2013 and July 2014; on the principle stated by the Supreme Court in the cases of **IDBI Trusteeship Services Ltd. vs. Hubtown Ltd.**¹, the Defendant may at least be asked to deposit this amount in Court. As I have noted above, the Defendant's case is that though this amount is due and payable by the Defendant to the Plaintiff, the Plaintiff is in possession of three buses valued at about Rs. 1.40 crores and in which the Defendant has 40% share. It is the Defendant's case that the amount due and payable by the Defendant to the Plaintiff is to be adjusted from out of this share of the Defendant. Even in this respect, the Defendant relies on documents executed/exchanged between the parties. Since the admission of the Defendant is coupled with a case of adjustment, there is no scope for ordering deposit of even this amount. The correctness or otherwise of the adjustment in the manner suggested by the Defendant is after all a matter of trial, to be decided in the suit, and as I have noticed above, the

¹ (2017) 1 Supreme Court Cases 568

Defendant's defence in this behalf is found to be not just plausible but even probable by this Court.

6. In the premises, the summons for judgment is disposed of in terms of the following order:-

- (i) The Defendant is granted unconditional leave to defend the suit.
- (ii) Written statement to be filed within a period of four weeks from today.
- (iii) Place the suit for directions after four weeks.

(S.C. GUPTE, J.)