IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
(COMMERCIAL DIVISION)

SUMMONS FOR JUDGMENT NO. 87 OF 2017
IN
COMMERCIAL SUMMARY SUIT NO. 510 OF 2017

ARUN MEHRA … PLAINTIFF.

V/s.

BOHRA BROSS PRODUCTION PVT. LTD., … DEFENDANT.

Mr. Prasad Shenoy, Advocate a/w. ms. Apeksha Sharma, Sanjeel Kadam, Ms. Saylee Rajpurkar i/by Kadam & Company, Advocates, for the Plaintiff.

Ms. Priya Rombade, Advocate a/w. Prerna Shewani i/b Deven Dwarkadas & Partners for the Defendant.

CORAM : S. C. GUPTE, J.

DATE : APRIL 24, 2018

P.C.

1 This Summons for Judgment is filed by the Plaintiff for recovery of a sum of Rs. 1,65,55,412/-, which comprises of a sum of Rs. 1,10,80,251/- towards principal and the balance towards interest.

2 It is the case of the Plaintiff that by a written agreement dated 30.04.2014, the Defendant, who is the producer of the Film “Mastram” , a film in Hindi language, granted to the plaintiff its theatrical distribution rights for what is widely known and understood in the film trade circle as Mumbai Circle. The Agreement records a condition of advance payment of Rs.1.50/- crores by the plaintiff to the defendant towards the consideration for such distribution rights. As against this payment, the plaintiff was entitled to a revenue share of 15% as the distributor's share of the revenue. It is the case of the plaintiff that as per the trade practice, the net revenue generated from theatrical exhibition of the film was first to be appropriated by the plaintiff towards recoupment of the refundable advance and if such recoupment was inadequate, the defendant was obliged to refund the unrecouped advance within 60 days from the date of release of the film or prior to the release of the next film of the defendant, whichever is earlier. Thereafter, by another agreement dated 06.05.2014, the defendant granted to the plaintiff corresponding distribution rights in respect of the film

for the territory of Mysore, as widely known and understood in the trade circles. This second agreement was executed on a commission basis. Though in terms of the first agreement the defendant had to incur publicity / advertisement expenses for the said film, the plaintiff claims to have incurred, at the request of the defendant, the publicity / advertisement expenses to the extent of Rs.25 lakhs. It is the plaintiff's case that after adjusting the publicity / advertisement expenses of Rs. 25 lakhs against the refundable advance, the plaintiff paid to the defendant the balance amount of the refundable advance, i.e. sum of Rs. 1.25 crores through RTGS. The details of all these payments are reflected in the plaint. The plaintiff also claims to have incurred total expenses of Rs. 20.70 lakhs on behalf of the defendant for the territory of Bihar and Jharkhand, based on which the former claims equitable distribution rights for the film. The plaintiff accordingly claims to have paid to the defendant a total sum of Rs. 1,45,75,000/- as and by way of refundable advance towards grant of distribution rights for the territories of Mumbai Circuit, Bihar and Jharkhand and distribution rights on commission basis for the territory of Mysore. The plaintiff also claims to have incurred further expenses towards pre-release and post-release publicity of the film within the territories of Mumbai, Mysore, Bihar and Jharkhand. The aggregate amount claimed to have been incurred in this behalf is Rs. 24,22,609/-. The plaintiff's claim is thus said to be of an aggregate amount of Rs. 1,69,92,609/-. The plaintiff claims, after adjusting the amount recouped/refunded, a sum of Rs. 1,10,80,251/-. This amount, together with interest, forms the suit claim.

3 The agreements between the parties for distribution of theatrical rights, which gives a share of the revenue of 15% for Mumbai as also 10 % commission for the territory of Mysore, as also the agreement for distribution of theatrical rights for the eastern circuit of Bihar and Jharkhand, are not matters of dispute. It is the defendant's case that since the defendant suffered huge monitory loss in the film and did not get adequate revenue, the defendant had the right to adjust the payment to be made to the plaintiff in their next movie and accordingly, grant a fresh contract for distribution rights for the next upcoming

movie of the defendant for Mumbai and eastern circuit. The defendant accordingly claims to have offered to the plaintiff the distribution rights of its next movie. It is submitted that it was for the plaintiff to revert back to the defendant on this offer. It is submitted that the plaintiff, in spite of this offer, approached this court by way of the present suit. Secondly, it is submitted that even on a reduced amount of collection, the plaintiff has deducted a 20% commission, which exceeds the quantum of commission as per the agreement between the parties. It is submitted that this excess 5% commission is unauthorizedly recovered by the plaintiff.

4 None of these defences really explains or accounts for the plaintiff's suit claim. The statement of revenue share/commission of the plaintiff, on the basis of which the present claim is worked out, does not indicate 20% commission for the territory of Mumbai or Bihar. The territory of Mumbai's share is worked out at 15% in accordance with the agreement between the parties. As for the territory of Mysore, the commission of 10% is reflected in the statement. The

defendant's correspondence indicates that the plaintiff's claims for refund of the advance or recoupment of the returns was never contested by the defendant. On the other hand, the defendant, even in its pleadings, accepts that the plaintiff could not recoup his advance from the returns of the distribution of the film and that, as a result, the plaintiff was offered the distribution rights of the next film of the defendant. It was for the plaintiff to accept or reject the offer of the next contract. The defendant cannot insist on recoupment of the commission or advance from the next contract. Nothing is pointed out in the contract between the parties requiring the plaintiff to do so.

5 There is, thus, no probable defence raised in the reply to the Summons for Judgment. In the premises, though this court is of the view that the defendant ought to be given leave to defend the suit at the trial, such leave must be on a condition of depositing the entire principal amount in the court.

6 Accordingly, the following order is passed :

i) The defendant is granted leave to defend the suit on the condition of depositing in this court a sum of Rs. 1.10 crores within a period of six weeks from today;

ii) The amount, if any, deposited by the defendant shall be invested by the Prothonotary and Senior Master of this court in fixed deposit/s with nationalized 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;

iii) Written statement to be filed by the defendant within four weeks of deposit of the monies, as mentioned in clause (i) above;

iv) Place the suit for directions after ten weeks.

7 The summons for judgment is disposed of in the above terms.

(S. C. GUPTE, J.)