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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 447 OF 2018
IN
COMM SUMMARY SUIT NO. 778 OF 2017**

Sandy Ltd

...Applicant/
Plaintiff

Versus

Diligent Media Corporation Ltd

...Defendant

**WITH
NOTICE OF MOTION NO. 604 OF 2018
IN
COMM SUMMARY SUIT NO. 778 OF 2017**

Mr Farhan Dubash, *with Meenakshi Dhanuka-Rungta and Mr
Pranesh J Gada, i/b Dhanuka & Partners, for the Applicant/
Plaintiff.*

Dr Birendra Saraf, *with KN Barfiwala, i/b Parinam Law Associates,
for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 26th March 2019

PC:-

1. The Plaintiff seeks a decree in admission in the amount of Rs.2,31,80,044.00. Prayer clause (a) of the Motion says that there is categorical admission of liability “as set out in paragraph 8 of the order dated 14th September 2017” passed by AK Menon J in Company Petition No. 1097 of 2015. A copy of that order is at page 152 of the Plaint. Menon J directed the Respondent (present Defendant) to deposit the rupee equivalent of USD 361,797 at the exchange rate prevalent on 14th September 2017. The Defendant has done so.

2. Paragraph 8 of that order says this:

8. *In the circumstances since the principal sum due is not disputed but the respondent has offered to pay the principal sum but in instalment, I am of the view that the respondent demonstrates its ability to pay its admitted debts. It is appropriate that the respondent is given an opportunity to demonstrate its solvency and I therefore pass the following order:*

(Emphasis added)

In the Motion it is only this that is said to constitute “an admission of liability”.

3. Before Menon J in the Company Court it was argued by the Respondent that there was no agreement to pay interest. There was statutory notice issued on 8th December 2014. The claim is based on unpaid amounts under various invoices going up to about January 2013.

4. The Respondent (the present Defendant) having deposited the amount, the Plaintiff filed the present summary suit. It served the Writ of Summons. The Defendant entered appearance. The Plaintiff filed a Summons for Judgment. On that, Menon J made an order on 20th August 2018. The operative portion of that order grants the Defendant unconditional leave to defend the suit “to the extent of the claim for interest”. It then issues directions for filing of the Written Statements and so on. Menon J did not pass a decree in the principal amount claimed, nor did he permit the Plaintiff to withdraw the amount deposited.

5. The present Motion therefore seeks, in my view, to add to the order on the Summons for Judgment and seeks to do this by asserting as its basis an admission of liability alleged to have been contained in a finding Menon J returned much earlier on the Company Petition. Across the Bar, there is a submission from Mr Dubash that there is also an admission in certain financial returns. But that is not the basis of the claim in the Motion at all. I do not think that it is possible in an application for a judgment on admission for a claimant to wander around in the orchards of litigation looking for low-hanging fruit of some delectable admission. If a judgment is to be entered on an admission made by the other side, that admission must be certain, unambiguous and clear. The law in that regard is extremely well settled.

6. It was always open to the Plaintiff to seek a clarification from Menon J, or even at the time of Summons for Judgment to press for a decree for the principal, or leave to withdraw the amount deposited. They did none of this. With the principal amount entirely

deposited in Court and invested, there is sufficient security in the hands of this Court for the Plaintiff's claim. Though ostensibly an application for a judgment on admission, the application is for leave to withdraw the amount deposited. But that presupposes that the Plaintiff is bound to get a decree in the entire amount of the claim. That is far from certain, for I notice that there is an issue of limitation to be decided.

7. It is not possible to grant the Plaintiff such relief. The Notice of Motion is dismissed with cost quantified at Rs.50,000. Costs are required to be awarded in view of Section 35 of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, 2015. I can see no reason to not make an order of costs.

NOTICE OF MOTION NO. 604 OF 2018:

8. This the Defendant's Motion under Order VII Rule 11 of the Code of Civil Procedure 1908 saying the suit is barred by limitation.

9. The Motion is adjourned to the hearing of the Suit.

10. The issue of limitation will be framed along with other issues in the suit.

(G. S. PATEL, J)