

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO. 442 OF 2022

Sumer Radius Realty Pvt. Ltd.	 Appellant
v/s.	
M/s. Estek	 Respondent

Mr. Anmol B. i/b. Juris Consillis for the Appellant.
Mr. Rajkumar Mishra i/b. R.K. Mishra and Co. for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 16th DECEMBER, 2022.

P. C. :-

1. This Appeal is directed against the order dated 25/10/2021 whereby the learned City Civil Court, Borivali Division, Dindoshi, Goregaon, Mumbai partly allowed the Notice of Motion No.2112/2021 in Commercial Suit No.478/2021 in terms of prayer clauses (a) and (c). By the impugned order, the Trial Court has directed the Appellant who is the original defendant to deposit an amount of Rs.18,16,094/- before the Court or to provide bank guarantee as security towards the balance claim in the suit. The learned Judge has also directed the Appellant to disclose on oath all his assets and liabilities as well as bank balance to the Court.

2. Heard learned counsel for the Appellant and learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The Respondent – plaintiff is a partnership firm engaged in the business of advertisement. It is stated that the Appellant was required to give publicity and advertisements in respect of various projects. The Appellant engaged the services of the Respondent for outsourcing as per the rates agreed between them. Accordingly, various advertisement were published from time to time. The Respondent raised invoices aggregating to Rs.17,63,198/- of the work done between 16/02/2018 to 10/10/2019. The Appellant having failed to pay the said amount, the Respondent filed the suit for recovery of the said amount.

4. Learned counsel for the Appellant states that there is no material on record to show that the Appellant had placed orders for various advertisement and publication. He further submits that there is absolutely no material on record to prove that there was any business transaction between the Appellant and the Respondent and that the Appellant is liable to pay an amount of Rs.18,16,094/-.

5. The records prima facie indicate that the Respondent had raised several invoices for total sum of Rs.17,63,198/-. The Appellant has not disputed having received the said invoices. The Respondent has raised several demands by e-mail for payment of the said amount. Copies of the

said e-mail are placed on record from pages 50 to 81. With reference to the e-mail dated 06/07/2020 which was in respect of the outstanding dues, the Appellant had replied that it was not possible to make any payment for next six months. The Respondent had also issued legal notice dated 05/04/2021 giving the details of the transaction and the amount due and had called upon the Appellant to make the payment. The Appellant had not replied to the said notice. Under the circumstances, it is too late in the day for the Appellant to say that there was no transaction between him and the Respondent. The learned Judge has considered the material on record and particularly the principles laid down in the decision of the Apex Court in ***Rahul S. Shah v/s. Jitendra Kumar Gandhi and ors. 2021 DGLS (SC) 250*** and has observed that the interest of the Respondent – plaintiff needs to be secured.

6. In view of the above, I do not find any infirmity or illegality in the impugned order. Hence, the Appeal is dismissed. Pending Applications stand disposed of in view of dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)

PREETI
H JAYANI

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