

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**SUMMONS FOR JUDGMENT NO.38 OF 2022
IN
COMMERCIAL SUMMARY SUIT NO.53 OF 2023**

PVR Ltd.

Through its Authorised Signatory

Mr. Mahesh R. Dalvi

Age : 47 years, Occ.: Service,

Having its registered office at 7th Floor,

Lotus Grandeur Building, Veera Desai Road,

Andheri West, Mumbai : 400053.

... Applicant

In the matter between

PVR Ltd.

Through its Authorised Signatory

Mr. Mahesh R. Dalvi

Age : 47 years, Occ.: Service,

Having its registered office at 7th Floor,

Lotus Grandeur Building, Veera Desai Road,

Andheri West, Mumbai : 400053.

... Plaintiff

Vs.

1. M/S Proetus Ventures LLP

Office At.: A4, Raturaj Apartments,

Juhu Road, Santacruz (W), Mumbai-400 049.

Through its Authorized Partners

2. Shardul Bayas

Age : Adult, Occ.: Business

Partner of M/S Proetus Ventures LLP

Flat No.C-4/4, Koregaon Raksha Lekha Society,
Pune-411 001.

3. Abhinay Ramesh Deo
Age : Adult, Occ.: Business,
Partner of M/S Proetus Ventures LLP
Flat No.C-4/4, Koregaon Park,
Raksha Lekha Society, Pune-411 001. ... Defendants

**WITH
INTERIM APPLICATION NO.123 OF 2023
IN
COMMERCIAL SUMMARY SUIT NO.53 OF 2022**

Proetus Ventures LLP,
Office At A-4, Raturaj Apartments,
Juhu Road, Santacruz (W), Mumbai-400 049.
Through its Authorised Partner ... Applicants

In the matter between

PVR Ltd.

Through its authorised Signatory

Mahesh R. Dalvi

Age : 47 years, Occupation : Service,

having registered address at Basant

Lok Vasant Vihar, New Dehli 110 057 and

Regional office at 7th Floor,

Lotus Grandeur Building, Veera Desai Road,

Andheri (W), Mumbai : 400 007

... Plaintiff

Vs.

1. Proetus Ventures LLP
Office At.: A-4, Raturaj Apartments,

Juhu Road, Santacruz (W), Mumbai-400 049.

Through its authorised Partner

2. Shardul Bayas

Age : Adult, Occupation : Business

Partner of M/S Proetus Ventures LLP

Flat No.C/4, Koregaon Park, Rakshalekha Society,

Pune-411 001.

3. Abhinay Ramesh Deo

Age : Adult, Occupation : Business,

Partner of M/S Proetus Ventures LLP

Flat No.C/4, Koregaon Park,

Rakshalekha Society, Pune-411 001.

... Defendants

WITH

INTERIM APPLICATION NO.131 OF 2023

IN

COMMERCIAL SUMMARY SUIT NO.53 OF 2023

1. Shardul Bayas

Age : Adult, Occupation : Business

Partner of M/S Proetus Ventures LLP

Flat No.C/4, Koregaon Park, Rakshalekha Society,

Pune-411 001.

2. Abhinay Ramesh Deo

Age : Adult, Occupation : Business,

Partner of M/S Proetus Ventures LLP

Flat No.C/4, Koregaon Park,

Rakshalekha Society, Pune-411 001.

... Applicants

In the matter between

PVR Ltd.

Through its authorised Signatory

Mahesh R. Dalvi

Age : 47 years, Occupation : Service,

having registered address at Basant

Lok Vasant Vihar, New Dehli 110 057 and

Regional office at 7th Floor,

Lotus Grandeur Building, Veera Desai Road,

Andheri (W), Mumbai : 400 007

... Plaintiff

Vs.

1. Proetus Ventures LLP

Office At.: A-4, Raturaj Apartments,

Juhu Road, Santacruz (W), Mumbai-400 049.

Through its authorised Partner

2. Shardul Bayas

Age : Adult, Occupation : Business

Partner of M/S Proetus Ventures LLP

Flat No.C/4, Koregaon Park, Rakshalekha Society,

Pune-411 001.

3. Abhinav Ramesh Deo

Age : Adult, Occupation : Business,

Partner of M/S Proetus Ventures LLP

Flat No.C/4, Koregaon Park,

Rakshalekha Society, Pune-411 001.

... Defendants

Mr. Abhijeet A. Desai a/w Mr. Karan Gajra and Mr. Vijay Singh i/by Desai Legal for the Plaintiff.

Dr. Abhinav Chandrachud, Mr. Samsher Garud and Ms. Juhi Valia i/by Jayakar and Partners for Defendants and for Applicants in Interim Application No.123 of 2023 and Interim Application No.131 of 2023.

CORAM : ARIF S. DOCTOR, J.
RESERVED ON : 27th APRIL 2023
PRONOUNCED ON : 16th JUNE 2023

JUDGMENT :-

1. The present order will dispose of the following:-
 - (i) Summons for Judgment No.38 of 2022, by which the Plaintiff seeks a decree in the sum of Rs.1,13,06,080/- along with interest thereon at the rate of 20% compounded annually, as per tax invoices, issued by the Plaintiff to Defendant No.1.
 - (ii) Interim Application No.123 of 2023 taken out by Defendant No.1 under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") for rejecting the Plaint on the ground of jurisdiction.
 - (iii) Interim Application No.131 of 2023 taken out by

Defendant Nos. 2 and 3 under the provisions of Order-I Rule 10(2) of the CPC. seeking deletion of their names from the array of Defendants.

BRIEF FACTS: –

2. Before dealing with the rival contentions, it is useful to set out the following facts as stated in the Plaint: –

- (i) The Plaintiff is a Company, which operates various multiplexes across the Country. Defendant No.1 is a Limited Liability Partnership Firm under the provisions of the Limited Liability Partnership Act, 2008 (“the LLP Act”). Defendant Nos. 2 and 3 are the partners of Defendant No.1.
- (ii) Defendant No.1 had between December 2019 and February 2020 placed various purchase orders on the Plaintiff for the screening of certain promotional content/material, which the Defendants wanted to have screened in the Plaintiff’s

multiplexes. It is not in dispute that the screening of this content/material was to be only in multiplexes, which were situated within the State of Maharashtra i.e. in Mumbai and Pune.

- (iii) The Plaintiff on receipt of the purchase orders and instructions issued by the Defendant would execute the same by screening the promotional material/content in terms of the said purchase orders. The Plaintiff would after the promotional material/content was screened, raise invoices against the said work done. The essential terms and conditions of each of the invoices were identical and Clauses 3 and 5 thereof were as follows viz. :-

“3. Any Discrepancy in this bill should be notified within 5 days of receipt, else acceptance shall be deemed.

5. In the event payment is not received within 7 (seven) days from the due date, an interest of 18% shall be levied on the amount due from the due date till the date of realization. Beyond 7 (seven) days from

the due date, you shall be liable to pay twice the amount due with an interest of 20% from the due date till the date of realization. GST as applicable on the interest amount shall also be charged. This shall be in addition to the rights available to PVR under law and equity."

- (iv) The first purchase order bearing No.33-2019-20 was dated 24th December 2019 and was received by the Plaintiff vide the Defendants' covering letter/e-mail of the same date. Thereafter, the Plaintiff received various purchase orders pursuant to which the promotional content/material would be screened.
- (v) Though having received the tax invoices the Defendants admittedly did not point out any discrepancy in respect of any of the said invoices. Despite repeated follow-ups and reminders, the Defendants failed and neglected to make payment of the amounts due and payable under the said invoices.

(vi) It was thus that the Plaintiff addressed a legal notice dated 14th August 2020 to the Defendants calling upon the Defendants to make payment of the sum of Rs.1,13,06,080/- along with interest at the rate of 20% compounded annually. Admittedly, the Defendants did not reply to the said legal notice nor make any payment pursuant thereto.

(vii) The Plaintiff thereafter in terms of Section 12A of the Commercial Courts Act, 2015 instituted mediation. The mediation however did not prove fruitful.

3. It was thus that the Plaintiff filed the present Suit.

SUBMISSIONS OF MR. DESAI ON BEHALF OF THE PLAINTIFF

4. Mr. Desai, Learned Counsel appearing on behalf of the Plaintiff, at the outset submitted that the amounts due under the said notices were not disputed. He pointed out that Defendants had not prior to the filing of the Suit ever raised any dispute in terms of Clause 3 of the said invoices despite having

duly received the same. He therefore submitted that there was no dispute that the services rendered by the Plaintiff was to the full satisfaction of the Defendants. He therefore submitted that the Defendants were bound and liable to make payment in terms of the said invoices to the Plaintiff. He then pointed out that the Defendants had not replied to, much less denied what had been set out in the Plaintiff's email dated 8th April 2020 as also the Plaintiff's notice dated 14th August 2020. Learned Counsel therefore submitted that there was and could be no dispute as to the Defendants' liability to make payment to the Plaintiff under the said invoices. He thus submitted that the Summons for Judgment must necessarily be made absolute.

5. Learned Counsel then submitted that it was well settled that a Summary Suit based on invoices was maintainable. In support of his contention that an invoice had been construed to be a written contract upon which a Summary Suit would lie, he placed reliance upon a judgment of this Court in

the case of *Jatin Koticha Vs. VFC Industries Pvt. Ltd.*¹ . in which it was held as follows viz.:-

“5. Now it is clear that there is no written contract signed by both the parties relied on by the plaintiff. It is not the requirement of the law that it should be a written contract signed by both the parties. What is necessary is that the suit should be based on a written contract. That, one can find in this case, in the form of invoices which were raised on the defendants along with delivery of the goods in pursuance of each purchase order. The invoices, as stated above, contained the terms and conditions. There is a clear parole acceptance of the invoice on the part of the defendants. The defendants accepted delivery of the goods along with the invoice without any demur or suggestion that they do not accept any of the terms whether pertaining to the rate, price, quantity etc. It makes no difference therefore that the invoices are not signed by both the parties. I am of view that the invoices must be treated as a written contract and the suit based on such invoices is a suit based on the written contract.

6. Basis the above, Learned Counsel submitted that the Defendants did not have any defense much less any bonafide defense to the Plaintiff's claim. He submitted that the Defendants had not raised any triable issue, much less any bonafide triable issue. He pointed out that the defense taken in the Affidavit in Reply was entirely frivolous and vexatious. He submitted that the Plaintiff was entitled to a decree as prayed for and the Summons for Judgment was

1 (2007) SCC OnLine Bom 1092

required to be made absolute.

7. He then submitted that it was because the Defendants did not have any defense on merits, that the Defendants had filed the said Interim Applications. He submitted that the said Interim Applications were entirely untenable since (i) same were not Applications for leave to defend as contemplated under Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908 ("CPC") and (ii) that the same had in any event been filed beyond the time prescribed under Order XXXVII Rule 3(5) of the CPC.

8. He then, without prejudice submitted that Interim Application No.123 of 2023 was entirely misconceived both in fact and in law. He pointed out that the question of (the Courts in) Delhi having jurisdiction in this case would not arise since no part of the cause of action had arisen within Delhi. He, therefore, submitted that the Defendants were effectively seeking to confer jurisdiction upon a Court which did not have jurisdiction. He pointed out it was

well settled that the parties could not even by consent, confer jurisdiction upon a Court which did not otherwise have jurisdiction or where no part of cause of action had arisen. He pointed out that the entire cause of action had arisen within the jurisdiction of this Court since (i) all the promotional content/material was screened only in multiplexes which were situate within the State of Maharashtra (ii) that both the Plaintiff and the Defendant had offices in Mumbai and (iii) the purchase orders were received in Mumbai and the invoices were also generated in Mumbai. He therefore submitted that infact no part of cause of action had arisen outside/beyond the jurisdiction of this Court. He then placed reliance upon the following judgments to *inter alia* submit that Clause 8 of the invoices was non-est since the parties by consent could not confer jurisdiction on a Court which otherwise did not have jurisdiction.

- (i) *Interglobe Aviation Limited Vs. N. Satchidanand*²
- (ii) *Kusum Ingots & Alloys Ltd. Vs. Union of India & Another*³
- (iii) *VSP Acqua Mist Fire Pvt. Ltd., Nagpur Vs. Maharashtra*

2 (2011) 7 Supreme Court Cases 463

3 (2004) 6 Supreme Court Cases 254

- State Electricity Transmission Company Ltd., Mumbai*⁴
(iv) *A.B.C. Laminart (P) Ltd. & Anr. Vs. A. P. Agencies, Salem*⁵
(v) *Swastik Gases Private Limited Vs. Indian Oil Corporation Limited*⁶

9. He then, in respect of Interim Application (L) No. 37803 of 2022 pointed out that the said purchase orders were issued by Defendant Nos. 2 & 3. He submitted that, in the Joint Affidavit-in-Reply to the Summons for Judgment, Defendant Nos. 2 and 3 had failed and neglected to set out any case absolving them of their liability as partners of Defendant No.1. He submitted that the filing of Interim Application (L) No.37803 of 2022 was only by way of an afterthought and nothing more. He then without prejudice submitted that Defendant Nos.2 and 3 could not absolve themselves from their liability as partners of Defendant No.1 in view of the provisions of Section 27 (2) read with Section 28 (2) of the LLP Act. He submitted that Defendant Nos.2 and 3 had, right from inception, been at the helm of affairs of Defendant No.1, and

4 2010 (2) Mh.L.J. 575

5 (1989) 2 Supreme Court Cases 163

6 (2013) 9 Supreme Court Cases 32

were therefore, jointly and severally liable to pay to the Plaintiff the amounts due under the said invoices.

10. He then submitted that Defendant Nos. 2 and 3 were the only partners of Defendant No.1 who were responsible for the conduct of business of Defendant No.1. In support of his contention, he pointed out that various e-mails and purchase orders annexed to the plaint and submitted that all were addressed to the Plaintiff by either Defendant No. 2 or Defendant No.3. He pointed out that there was no non-obstante clause in the LLP Act which provided that the partners could not be sued. He pointed out that Defendant Nos.2 and 3 had not been impleaded in their personal capacity but were impleaded only in their capacity as partners of Defendant No.1. He therefore submitted that in view of Sections 27 and 28 of the LLP Act coupled with the fact that there was no bar in the said Act from joining the partners to a Suit filed against a L.L.P., the question of deletion of their names did not arise.

11. Learned Counsel then reiterated that the Application had been filed belatedly and in view of that fact alone ought to be rejected. He submitted that the issue as to whether Defendant Nos. 2 and 3 were required to be exonerated from personally making payment under the said invoices was an internal matter which was well within the purview of Defendant No.1. He reiterated that Section 27(2) of the LLP Act did not permit Defendant Nos.2 and 3 to be exonerated in their capacity as partners.

Basis the above, Learned Counsel submitted that both the Interim Applications filed by the Defendants were devoid merit and must necessarily be dismissed.

SUBMISSIONS OF DR. CHANDRACHUD ON BEHALF OF THE DEFENDANTS

INTERIM APPLICATION NO.123 OF 2023

12. At the very outset, Dr. Chandrachud submitted that the invoices expressly provided that all disputes were subject to Delhi jurisdiction only. He then submitted that the Plaintiff's contention that no part of cause of action had

arisen in Delhi was plainly misconceived, since the bank details given by the Plaintiff in the said invoices were that of the Plaintiff's bank in New Delhi. Basis this, he submitted that the amounts due and payable under the said invoices were payable in New Delhi. In support of his contention that a part of the cause of action arises where money is either expressly or impliedly payable under a contract, he placed reliance upon a judgment of the Hon'ble Supreme Court in the case of *ABC Laminart Pvt. Ltd and Another vs AP Agencies Salem*⁷.

13. He thus submitted that there was no merit in the contention of the Plaintiff that no part of cause of action had arisen in New Delhi. Learned Counsel fairly accepted that while the said invoices did not make a provision that the amounts would be payable in New Delhi alone, he submitted that this factor by itself would not denude the Courts in Delhi from entertaining, trying and disposing off the present Suit since New Delhi was one of the places contemplated for making payment of the amounts payable under the invoices.

⁷ (1989) 2 SCC 163

Basis this learned counsel submitted that the question of conferring jurisdiction on a Court which did not have jurisdiction did not arise.

14. Learned counsel, then submitted that even assuming the invoices did not contain the bank details of the Plaintiffs bank in New Delhi this fact alone would make no difference to the Defendants case on jurisdiction. He submitted that the common law principle that a debtor must seek out his creditor and pay the creditor at the place where the creditor is located was well settled. In support of his contention, he placed reliance upon a Division Bench judgment of this Court in the case of *Bharumal Udhomal and Others vs Sakhawatmal Veshomal*⁸. Learned Counsel submitted that the common law principle stands to the benefit of every creditor as it implies that a creditor can file a suit where the creditor is located without having to chase a debtor across the country. Learned Counsel, then pointed out that the Plaintiff's registered office was in New Delhi and thus according to the common law principle, the

8 AIR 1956 Bom 111

Courts in New Delhi would have jurisdiction to entertain, try and dispose off the present Suit.

INTERIM APPLICATION NO.131 OF 2023

15. Learned Counsel then submitted that there was no dispute to the fact that Defendant No.1 was a limited liability partnership. He placed reliance upon Section 27(3) read with Section 28 of the LLP Act to submit that under the said Sections, a partner in a limited liability partnership was not personally liable for debts of a limited liability partnership. He invited my attention to Section 27 (3) and Section 28 of the LLP Act which read as follows :-

27. *Extent of liability of limited liability partnership.*

(1)

(2)

(3) An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

28. *Extent of liability of partner.*

“(1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the limited

liability partnership.

(2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership."

16. Learned Counsel then pointed out that, the Plaintiff had not pleaded that there was any wrongful act or omission on the part of Defendant Nos.2 and 3 or that there was any case for lifting the corporate veil. He therefore respectfully submitted that there was no cause of action/case against Defendant Nos. 2 and 3 and, their joinder was in the teeth of the provisions of the Act. Learned Counsel then placed reliance upon the following judgments to submit that it was well settled that a Plaint can be rejected in full against some of the Defendants alone viz.,

(i) Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponniamal Educational Trust, represented by its

*Chairperson/Managing Trustee*⁹

(ii) *Chetana Shankar Manapure and Another Vs. Bandu s/o Tanaji Barapatre*¹⁰

(iii) *Sheela Ram Vidhani and Another Vs. S.K. Trading Company and Others*¹¹

Placing reliance upon the aforesaid judgments, Learned Counsel submitted that Interim Application No.131 of 2023 ought to be allowed.

SUBMISSIONS OF MR. DESAI IN REJOINDER

17. Mr. Desai, then in dealing with the submissions made on Interim Application No. 123 of 2023, firstly submitted that the invoices did not state/mandate that the amounts were payable in Delhi. He submitted that the bank details had been given only to facilitate the electronic transfer of the amounts due and payable under the said invoices and for the convenience of the Defendants and nothing more. He thus submitted that the Defendants could, if they chose, make payment of the said invoices from Mumbai or for that

9 (2012) 8 Supreme Court Cases 706

10 (2020) 4 Mh. L.J. 481

11 (2021) 4 AIR Bom R 713 : Appeal No.27 of 2020 dated 19th June 2021

matter anywhere in the world.

18. He then invited my attention to clause 1 of the invoices and pointed out that the same infact provided that payment was to be made by way of account payee cheque/demand draft in favour of the Plaintiff.

19. He then submitted that it was well settled that the law governing a contract is the law of the place where the contract was formed and the place where a contract was executed governed its formalities. Learned Counsel then submitted that reliance placed by the Learned Counsel for the Defendants upon the judgment of Division Bench this Court in the case of *Bharumal Udhomal and Others* was also entirely inapplicable to the facts of the present case. He pointed out that the facts in the case of *Bharumal Udhomal and Others* (supra) were entirely different since in that case the place for performance i.e. repayment of the loan was not ascertained and thus the common law of principle was applied. He also pointed out that paragraph No.19 of the said

judgment specifically provided that the ratio of the said judgment was applicable only to the facts and circumstances of that case.

20. Insofar as the submissions made in respect of Interim Application No. 131 of 2023, he submitted that the Plaintiff had in the Plaintiff itself, sufficiently pleaded the cause of action against Defendant No. 1. He pointed out that the operations of Defendant No. 1 were, admittedly, handled and managed only by Defendant No. 2 and 3. He thus submitted that there was no denial to this in the Affidavit in Reply filed to the Summons for Judgment. He submitted that the pleadings together with the documentary evidence annexed to the Plaintiff clearly reflected that it was only Defendant No. 2 and 3 who were instrumental in executing and placing the purchase orders for screening of the promotional content/activities in the Plaintiffs multiplexes. It is submitted that Defendant No. 2 and 3 were therefore proper and necessary Parties to the Suit and the question of deleting their names or rejecting the Plaintiff against them did not arise.

Reasons and conclusion

21. *First*, dealing with Interim Application No.123 of 2023 I find the same to be entirely without merit. The entire basis of the said Application is clause 8 of the said invoices which provides, viz.

“8. All Disputes subject to Delhi Jurisdiction only.”

Thus, the essential prerequisite for invoking clause 8 is the existence of a dispute. In the facts of the present case, the record bares out that infact the Defendants had at no point of time, prior to the filing of the Affidavit in Reply to the Summons for Judgment never raised any dispute whatsoever qua any of the said invoices. As noted above, clause 3 of the said invoices provides that any discrepancy in the said invoices should be notified to the Plaintiff within five days of receipt of the same *else acceptance shall be deemed*. The Defendants despite due receipt of the said invoices did not raise any dispute or discrepancy in respect of any of the said invoices. Additionally, the Defendants have also received the Plaintiffs letter dated 8th April, 2020 and legal notice dated 14th

August, 2020 both of which have remained unanswered and undisputed. Thus, in the facts of the present case, there infact exists no dispute and hence the Defendants' reliance upon clause 8 is not only entirely misconceived but also malafide.

22. *Second*, the Defendants contention that the amounts due under the invoices were payable in Delhi is also equally untenable. The invoices do not either expressly or by implication provide that the moneys are payable in Delhi. The invoices infact set out the modes of payment acceptable to the Plaintiff, i.e., either by account payee cheque, demand draft or NEFT/RTGS. The Plaintiffs bank details set out in the invoices is only to facilitate such electronic payment should the Defendant so chose to make payment by RTGS/NEFT and nothing more. This cannot in any manner be construed to mean that the monies payable under the said invoices were payable in Delhi even by implication. In today's times of electronic transfers payment can be effected from anywhere in the world. Merely because the details of the receiving bank are within the

jurisdiction of another city, this fact alone would not mean (a) that the amounts are payable in that city and (b) that part of the cause of action had arisen in that city. Additionally, even assuming that the only mode for payment under the said invoices was via RTGS/NEFT, the same would not by itself amount to monies being payable in Delhi under the contract. The details of the Plaintiff's bank are set out only to facilitate the payment by electronic mode and nothing else. This by no stretch of imagination can be construed to mean that the amounts due under the said invoices were payable in Delhi.

23. *Third*, the Defendants alternate contention that Delhi would have jurisdiction based on the common law principle that a debtor must find his creditor is equally untenable in the facts of the present case. As correctly pointed out by Mr. Desai, paragraph 19 of the said judgment made specific that the findings therein were to be strictly confined to the facts in the case of *Bharumal Udhomal and Others*. Additionally, in the case of *Bharumal Udhomal and Others* this Court had held that the place for performance was not fixed

and had hence applied the common law principle. In the present case, it is not in dispute that the performance of the work done in respect of which the said invoices were raised was entirely within the State of Maharashtra and thus entirely within the jurisdiction of this Court. Thus, to apply the ratio of the judgment in the case of *Bharumal Udhomal and others* to the facts of the present case at the instance of the Defendant would be to effectively turn the proposition on its head. The common law proposition is undoubtedly based on the doctrine of *forum conveniens*, it is on this basis that the Plaintiff has filed the present suit in this Court only to be told by the Defendant who neither disputes nor denies the Plaintiff's claim that the suit must necessarily be instituted in a Court which for the Plaintiff is clearly not *forum conveniens* and within which, no part of the cause of action has arisen. Such a contention must only be stated to be rejected.

24. In so far as Interim Application No. 131 of 2023 is concerned, I find that there is merit in the same and the same deserves to be allowed for the

following reasons, viz.

- i. The provisions of section 27 of the LLP act are clear and unambiguous. Section 27 (3) expressly states that an obligation of a limited liability partnership, whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership. It is not in dispute that the present suit is a Summary Suit based upon invoices issued in the name of Defendant No. 1 and nothing else. It is the Plaintiffs own case that the said invoices are the written contract between the Parties. Given this, the provisions of Section 27 (3) of the LLP act will squarely apply and obligation for due repayment will be solely that of Defendant No. 1.
- ii. Additionally, the Plaintiffs contention that Defendant No. 2 and 3 would be liable under Section 27 (2) of the LLP since they were at the helm of the affairs of Defendant No. 1 and were thus liable for their individual acts of omission and commission also doesn't stand to reason. Section 27 (2) of the LLP Act provides that a limited liability partnership is liable to any person as a result of a wrongful act or omission on the part of its partner/s in the course of the business of the limited liability partnership with its authority. As already observed above, the present suit is based entirely on non-payment of

invoices, and not for any claim/damages on the basis of any wrongful act or omission on the part of either Defendant No. 2 and/or 3. There is not a whisper in the Plaint about any wrongful act or omission of either Defendant No. 1 and/or 2. More importantly, even assuming there was, the same would by itself would not be enough to implead Defendant No. 1 and 2. The Suit/claim must be based on such wrongful act or omission of the Defendant No. 1 and 2. In the present case, clearly it is not.

Thus, clearly, the joinder of Defendant No. 2 and 3 as party Defendants to the present suit is in the teeth of the provisions of the LLP Act. It is thus that I have no hesitation in allowing Interim Application No. 131 of 2023.

25. On merits, I find that there is absolutely no answer to the Summons for Judgment. The defenses taken in the Affidavit in Reply to the Summons for Judgment plainly baseless and vexatious. In fairness, no submissions were even advanced on merit.

26. Hence, I pass the following order :-

.ORDER.

- i. Interim Application No.123 of 2023 is dismissed.
- ii. Interim Application No.131 of 2023 is allowed.
- iii. Summons for Judgment is made absolute.
- iv. Suit stands decreed.
- v. Defendant No.1 to pay the Plaintiff a sum of Rs.1,13,06,080/-

(Rupees One Crore Thirteen Lakhs Six Thousand, Eighty only)

along with interest at 12% from the date of filing of the Suit till

payment and/or realization.
- vi. Refund of Court Fees, if any as per Rules.
- vii. Decree be drawn up and sealed expeditiously.

(ARIF S. DOCTOR, J.)