

**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

Ravindra Hegde,
M.A., LL.M.,
LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru

Dated on this the 30th day of March 2022

COM.O.S.No.338/2019

Plaintiff

Bangalore Metro Rail Corporation Ltd.
3rd Floor, BMTC Complex, K.H.Road,
Shantinagar, Bangalore-560 027.
Represented by its Authorized
Signatory, Sri. Thontadarya,
Deputy General Manager (Taxation &
Revenue) Bangalore Metro Rail
Corporation Ltd.

(By Sri.V.P.D., Advocate)

// versus //

Defendant

M/s. Akka Communications Pvt.Ltd.
No.337, Sowrabha Complex
2nd Floor, 10th Main,
BSK 1st Stage, 2nd Block
Bangalore-560 050.
Represented by its Director
Sri.B.S.Lingadevaru.

(Exparte)

Date of Institution of the suit	:	07.11.2019
Nature of the suit	:	Recovery of Money
Date of commencement of recording of the evidence	:	15.03.2022

Date on which the Judgment was pronounced.	:	30.03.2022		
Total duration	:	Year /s	Month/s	Day/s
		02	04	23

JUDGMENT

This suit is filed by the plaintiff against defendant for recovery of Rs.12,26,218/- from the defendant with interest @ 24% per annum from the date of suit till realization.

2. The case of plaintiff in brief is as under:

The plaintiff Bengaluru Metro Rail Corporation Limited has floated a tender on 30/1/2016 for selecting a bidder for advertisement on its piers and portals and defendant was successful and license agreement was executed between the parties on 11/4/2016 by incorporating several terms and conditions of the advertisement. As per the license period granted in favour of defendant was from 11/4/2016 to 21/3/2021. Agreement provided for material breach which may lead to termination of the agreement. The plaintiff has issued license to the defendant to advertise along the panels fixed at the Viaduct piers from S.V.Road Metro Station to Indiranagar Metro Station. The defendant was chronic defaulter in making payment of license fee and demand notices were issued to the defendant. On 31/7/2018 defendant wrote letter and sought extension of time for make payment of the defendant. Since the payments were not

made, plaintiff issued notice terminating the license agreement for non payment of the license fee on 3/8/2018. Defendant was due to a sum of Rs.20,87,330/- as on 3/8/2018 including delayed period interest, cheque return charges and TDS. The defendant sent reply to the notice requesting to revoke the termination notice and seeking permission to continue the advertisement activities. Defendant sent two post dated cheques which were not acceptable and are returned to the plaintiff. Out of the balance of Rs.20,87,330/- the defendant has made some payments on 16/10/2018 and after deduction of last payment, Rs.12,26,218/- is due from the defendant as calculated in the plaint. For recovery of this amount with interest, plaintiff has filed this suit.

3. The summons sent to defendant returned unserved. Thereafter summons was issued through paper publication. In spite of paper publication, defendant has not appeared and is placed Ex parte.

4. Now the points that arise for my consideration are:

1. Whether the plaintiff is entitled for recovery of the suit claim amount with interest as claimed?

2. What decree or order?

5. In support of the plaintiff's case PW.1 is examined. Ex.P.1 to Ex.P.20 documents are marked.

6. Heard arguments. Perused records.

7. My answer to the above issues are :

Point No.1 : Partly in the affirmative.
Point No.2 : As per final order for the following:

REASONS

8. Point No.1: The case of the plaintiff is that the plaintiff and defendant entered into lease agreement on 11/4/2016 giving license to the defendant to advertise along panels fixed at the Viaduct piers during the period from 11/4/2016 to 21/3/2021. According to the plaintiff, defendant has not made payment of license fee as agreed, as and when it became due. It is stated by the plaintiff that inspite of several demand notices issued, due amount of license fee is not paid. The plaintiff has stated that as the amount is not paid, plaintiff issued termination notice on 3/8/2018 and thereafter though the defendant sent reply requesting revocation of termination notice, he has not cleared the due amount. According to the plaintiff as on the date of suit Rs.12,26,218/- is due from the defendant. For recovery of this amount with interest @24% per annum, plaintiff has filed this suit. The defendant inspite of paper publication has not appeared and is placed exparte.

9. The authorized person of the plaintiff has given evidence as PW.1 and reiterated the plaint averments. The plaintiff has produced authorization given to PW.1 as Ex.P.1. Copy of license agreement entered between the parties is produced as Ex.P.2. The certificate issued by the plaintiff to the defendant regarding allotment of tender is produced as Ex.P.3. Copy of demand notice issued to the defendant for

license fee dues are produced as Ex.P.4 to Ex.P.7. Preliminary termination notice is produced as Ex.P.8. Letter of the defendant are marked as Ex.P.9 to Ex.P.11. Another copy of termination notice is marked as Ex.P.10 which contains calculation sheet attached to it. Copy of letter sent to the defendant while returning two post dated cheques given by the defendant is produced as Ex.P.12. Five invoices are marked as Ex.P.13 to Ex.P.17. Statement of calculation is marked as Ex.P.18. The report of PIM is marked as Ex.P.19 and Ex.P.20 is the paper publication given in this case.

10. On looking to the uncontested evidence of PW.1 and the documents produced, Ex.P.2 license agreement show that the defendant had taken license to advertise at the Viaduct piers of the plaintiff by agreeing to pay certain license fee, this license fee is not paid by the defendant. The demand notice produced to show that the defendant has not made payment. Termination notice was also given and thereafter defendant sent letter seeking time for making payment of the outstanding amount. By producing this document the plaintiff is successful in proving that in the transaction had between the parties, in terms of the license agreement there is outstanding due from the defendant. The calculation sheet produced at Ex.P.18 show that the suit claim amount is due from the defendant to the plaintiff. The defendant has not appeared in this case and has not contested the matter. As such the contention of the plaintiff remained unchallenged. By producing necessary documents at Ex.P.2 to Ex.P.18,

plaintiff has established the outstanding balance kept by the defendant. The payment made by the defendant are given deduction to in the outstanding balance. Therefore, plaintiff is successful in proving the outstanding balance of Rs.12,26,218/- from the defendant as on the date of notice. Hence, plaintiff is entitle for recovery of Rs.12,26,218/- from the defendant. Though the plaintiff has prayed interest @24% per annum from the date of suit, by considering the interest prevailing, it is proper to award interest @9% per annum from the date of suit till realization of entire amount. Accordingly point No.1 is answered **partly in the affirmative**.

11. POINT No.2 : For the discussion made on above point, following order is passed:

ORDER

Suit of the plaintiff is partly decreed with costs.

The defendant is liable and is directed to pay Rs.12,26,218/- to the plaintiff with interest @9% per annum from the date of suit till realization of the entire amount.

Draw decree accordingly.

[Dictated to the Stenographer directly on computer, then corrected, signed and then pronounced by me, in the Open Court on this the 30th day of March 2022]

**[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.**

ANNEXURE

1. List of witnesses examined on behalf of Plaintiff:

PW.1 Thontadary

2. List of witnesses examined on behalf of Defendant:

DW.1 Nil

3. List of documents marked on behalf of Plaintiff:

Ex.P.1 : Authorization letter.
Ex.P.2 : Copy of license agreement.
Ex.P.3 : Certificate issued by the plaintiff
Ex.P.4 : Copy of demand notice.
Ex.P.5 : Copy of demand notice dt:10.03.2017.
Ex.P.6 : Copy of demand notice dt:15.05.2017.
Ex.P.7 : Copy of demand notice dt:29.05.2017.
Ex.P.8 : Copy of preliminary termination notice.
Ex.P.8(a) : Calculation sheet attached to Ex.P.8.
Ex.P.9 : Letter of the defendant.
Ex.P.10 : Copy of termination notice.
Ex.P.10(a) : Calculation sheet attached to Ex.P.10.
Ex.P.11 : Letter of defendant.
Ex.P.12 : Copy of letter dt:08.08.2018.
Ex.P.12(a) : Copy of two cheque's attached to Ex.P.12.
Ex.P.13 to17: Copies of 5 invoices.
Ex.P.18 : Copy of statement of calculation.
Ex.P.19 : PIM report.
Ex.P.20 : Paper publication.

4. List of documents marked on behalf of Defendant:

Nil

**[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.**
