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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 900/2018
MAHESH CHAUDHRI & ANR. Plaintiffs
Represented by: Mr. Deepak Khadaria, Advocate.

versus

IMV INDIA PVT. LTD. Defendant
Represented by: Mr. Kishan Rawat, Advocate.

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+ CS(COMM) 470/2019
IMV INDIA PVT LTD Plaintiff
Represented by: Mr. Kishan Rawat, Advocate.

versus

MR. MAHESH CHAUDHRY & ANR Defendants
Represented by: Mr. Deepak Khadaria, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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30.01.2020

1. Since the two suits are cross suits, they are required to be tried together.
2. On perusal of the record and with consent of learned counsels for the parties, following issues are settled in CS (COMM) No.900/2018 :-

“1. Whether the plaintiffs are entitled to the amount of ₹11,02,275/- as ‘Differential Commission’ as claimed in the suit or any other amount? OPP

2. *Whether the plaintiffs are entitled to the amount of ₹29,75,508/- (Item No.2 of Table II), ₹3,61,200/- (Item No.3) and ₹1,00,000/- (Item No.4) of Table I of the suit as 'Excess Rates Charged' as claimed in the suit or any other amount? OPP*
3. *Whether the plaintiffs are entitled to the amount mentioned in Item Nos.3, 4, 5, 6, 7, 8, 9, 10 & 12 of Table II and Item Nos.1 and 2 of Table I of the suit as 'Commission' as claimed in the suit or any other amount? If yes, at what rate? OPP*
4. *Whether the plaintiff are entitled to the amount of ₹1,12,50,000/- as 'commission from supporting cover bids' as claimed in the suit? OPP*
5. *Whether the plaintiffs are entitled to compensation for two years towards average commission, amounting to ₹42,92,804/- on account of termination of agency by the defendant unilaterally? OPP*
6. *Whether the plaintiffs are entitled for pendente lite and future interest? If yes, at what rate and for what period? OPP*
7. *Whether the suit is barred by limitation? OPD*
8. *Relief."*

3. On perusal of the record and with consent of learned counsels for the parties, following issues are settled in CS (COMM) No.470/2019 :-

- “1. *Whether the plaintiff is entitled to the principal amount of 19 invoices and the accrued interest thereof as claimed in the suit or any other amount? OPP*

2. *Whether the amount mentioned in the 19 invoices were in contravention of the rates agreed as per PFI No.11234 dated 09.11.2011, at the time of submitted the tenders with the Animal Husbandry Department, Andhra Pradesh, for the years 2011-2013, thereby charged excess amount as mentioned in para 10 of the reply on merits? OPD*
3. *Whether the plaintiff is entitled for pendente lite and future interest? If yes, at what rate and for what period? OPP*
4. *Whether the suit is barred by limitation? OPD*
5. *Relief.”*

4. Since the issues involved in the two suits are based on the same facts and the two suits are cross suits, common evidence will be led.

5. CS (COMM) No.900/2018 is treated as the lead suit.

6. The plaintiff in CS (COMM) No.900/2018 will lead the evidence in the first instance on all the issues in the two suits followed by that of the defendant, who would rebut the evidence in both the suits.

7. List of witnesses and evidence by way of affidavit of the plaintiffs' witnesses be filed within four weeks.

8. List of witnesses and evidence by way of affidavit of the defendant's witnesses be filed within four weeks thereafter.

9. Learned counsel for the defendant-IMV India Pvt. Ltd. states that the Local Commissioner be appointed for examination of the witnesses, entire cost whereof will be borne by the defendant, however, subject to the condition that the trial is not delayed by the plaintiffs or their counsel and no

adjournment is granted on their request.

10. Consequently, Mr.M.R. Chawla, Advocate (Mobile No.9868152997) is appointed as the Local Commissioner to record the evidence.

11. Both the learned counsels state that they would examine 2-3 witnesses each. Fee of the learned Local Commissioner is thus fixed at ₹1 lac plus out of pocket expenses to be borne by the defendant-IMV India Pvt. Ltd. It is, however, clarified that no adjournment will be granted to the plaintiffs before the learned Local Commissioner and in case the matter is adjourned and there is no effective hearing on account of default of the plaintiffs, the expenses of that day will be borne by the plaintiffs.

12. List before the learned Local Commissioner for fixing the dates of trial on 5th March, 2020.

13. List before court for monitoring the recording of the evidence on 27th July, 2020.

MUKTA GUPTA, J.

JANUARY 30, 2020

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