ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.102/2000

Date	Order with signature of Judge

Date of hearing : 12.02.2008

Pakistan Television Corporation
Plaintiff : through Mr.Munawer Ghani Advocate.

M/s. Board Advertising (Pvt) Ltd.,
Defendant : None present.

JUDGEMENT

KHALID ALI Z. QAZI.J.- This is a suit for recovery of Rs.5072996.74 filed by the Plaintiff on 14.12.1999 and summons were issued to the defendant. Mr.Khalid Latif Advocate on 17.2.2000 filed vakalatnama on behalf of the defendant. On 29.5.2001 written statement and counter-claim by the defendant was filed. Mr.Khalid Latif on 25.2.2000 appeared for the defendant at the time of settlement of issues and since then matter was listed several time but no one was appeared on behalf of the defendant.

Brief facts of the case requisite for disposal of this suit are that the plaintiff is a corporation incorporated under the Companies Ordinance, 1984 for establishment of Television station in Pakistan and for organizing and telecasting programs for the viewers and the defendant is a company incorporated under the Companies Ordinance, 1984 and is engaged in the advertising business. In memo of plaint it is stated that through March 1995 and February, 1999 the plaintiff at the request of the defendant through following contracts, telecast advertisement spot for the defendant's clients/customers from its T.V. Stations.

	Invoice No.	Contract No.	Date	Amount
i)	06156/03/95	2188/94-95	1-3-95	Rs.1,439,809.71
ii)	06157/0495	2188/94-95	1-3-95	Rs.466,549.32
iii)	06158/04/95	2495/94-95	14-3-95	Rs.279,014.79
iv)	06200/05/95	2495/94-95	14-3-95	Rs.1,105,064.24
v)	06904/06/95	2651/94-95	15-6-95	Rs.266,745/75
vi)	01026/09/95	0316/95-96	23-8-95	Rs.210,054.47
vii)	D-0011/00/95	K-2495/94-95	31-8-95	Rs.48,135.82
viii)	01108/09/95	0547/95-96	25-9-95	Rs.364,452.54
ix)	01435/10/95	0547/95-96	25-9-95	Rs.48,879.87
x)	02457/12-95	1128/95-96	6-12-95	Rs.148,608.05
xi)	00017/07/98	K-66/97-98	9-7-98	Rs.159,705.15
xii)	00455/08/98	K-360/98-99	19-8-98	Rs.624,970.11
xiii)	01048/09/98	K-491/98-99	8-9-98	Rs.535,688,65

It is contended that under the above contracts the defendant agreed to pay late surcharge @ 15% per annum to plaintiff on the over due invoices. It is further stated that under the above mentioned contracts; the plaintiff telecast advertising spots for defendant's clients/customers on TV from its TV Stations network. It is stated that out of the sum of Rs.5,440,618,34 receivable from defendant, the defendant through various cheques made total payment of Rs.624,940.60 against Rs.5,440,618.34, thus a sum of Rs.5,072,996.74 including late payment surcharge remains outstanding against the defendant, the details of part payments made by the defendant is as under:-

	Receipt No.	Date	Cheque No.	Amount
a)	K-0197/99	27-08-1999	232493	Rs.536,601.60
b)	K-0198/99	27-08-1999	232494	Rs. 80,529.00
c)	JV-0055/99	30-09-1999	Income Tax Sep. 1999	Rs. 7,810.00
				Rs.624, 940.60

It is further stated that the defendant by letters dated 06.02.1997 and 30.06.1998, acknowledged the liability and promised to pay the plaintiff's dues., but the defendant failed/neglected to pay.

Hence Plaintiff claims a sum of Rs.5,072,996.74 with interest @ 18% per annum from the date of suit till payment from the defendant.

2. After taking about 18 months the defendant filed written statement and counter claim through its Managing Director Jamshed Qureshi wherein defendant raised the following preliminary objections.

a) It is stated that the suit is barred under Order XXIX rule 1 C. P.C. in so far as neither a resolution authorizing the institution of the suit has been filed or even mentioned in the body of the plaint nor the alleged power of attorney has been produced nor the Memorandum & Articles of Association of the plaintiff have been filed. It is further stated there is no resolution granting the power of attorney of Mr. A. Hussaini who is neither the Secretary of the plaintiff nor its Director nor Principal Officer and therefore the very institution of the suit is un-authorized, defective and illegal.

b) It is further stated that the claim of the plaintiff is untenable in the absence of the alleged contracts which are repeatedly referred to in the body of the plaint and no copies of contracts have been filed with the plaint. Only invoices have been filed and there were no contracts as such although their alleged numbers are mentioned in the invoices.

c) It is contended that the suit is barred by limitation in so far as the claim of the plaintiff in para 3

(i) to (x) is concerned. As regards the invoices at para 3 (xi) and (xii) the same have been paid by the defendant to the plaintiff against receipts No. K-0171 dated 19-8-1998 and No. K-0442 dated 16-10-1998 respectively. Out of the amount of the invoice mentioned in para 3 (XIII) a sum of Rs.4,92,715/- was paid by the defendant to the plaintiff in advance vide Bank Draft No.088134 dated 3-7-1996 drawn on Bank Al-Habib Karachi. the balance of Rs. 42,923.65 was adjusted in other credits of the defendant.

It is stated that without prejudice to the above preliminary objections there were no contracts as alleged. The particulars of the alleged contracts given therein are merely numbers of invoices as would be obvious from a cursory glance on annexures. It is further stated that there were no concluded contracts between the parties nor was there any agreement as such for payment of any late surcharge at the rate of 15% per annum or at any other rate.

It is further stated that the defendant repudiates that there were any contracts. However, the defendant did place orders on the plaintiff for telecasting the advertisement and the plaintiff did so. It is further submitted that the total of the amount claimed in para 3 of the plaint comes to Rs. 56,97,678,47/- which is at variance with the figure mentioned in para 6 of the plaint. The plaintiff has not clarified as to how the sum of Rs.54,40,618.34/- has been worked out. The payment of the sum of Rs.6,24,940.60/- is admitted but it was not against the alleged amount of Rs.54,40,618.34/-. It is absolutely false that there is any outstanding amount against the defendant or the defendant is liable to pay any amount to the plaintiff.

It is stated that the defendant is not liable to pay anything to the plaintiff. On the contrary the plaintiff is liable to the defendant as will be shown hereunder. The contents of annexure-D to the plaint are misconstrued and misconceived and are denied. Similarly the alleged statement of account dated 31-10-1999 and the statement of unpaid invoices dated 3-12-1999 are incorrect and are denied. The defendant has paid to or on behalf of the plaintiff the sum of Rs.15,06,856.82. Accordingly the defendant claims this amount from the plaintiff. It is stated that the defendant is not liable to pay the sum of Rs. 50,72,996/74 to the plaintiff on the other hand the plaintiff is liable to pay Rs. 15,06,856/02 to the defendant.

It is stated that the suit of the plaintiff is a frivolous and vexations one and deserves dismissal. On the other hand the claim of the defendant against the plaintiff is well founded and substantial and is otherwise un-exceptionable and defendant, therefore prays that this Hon‘ble Court be pleased to dismiss the suit

of the plaintiff with special compensatory costs under section 35-A C.P.C. and decree the counter claim of the defendant with costs.

3. In reply to written statement and counter claim of the defendant Mr.Munawer Ghani learned counsel for the plaintiff filed written statement / reply to the counter claim of the defendant duly signed and verified by attorney of plaintiff wherein learned counsel denied the preliminary objection raised under para (A). Learned counsel contended that it is incorrect that the suit has been filed by the Plaintiff by unauthorized person. The suit has been filed by Mr. Mazhar A. Hussaini who is an Attorney of the Plaintiff and copy of Power of Attorney has been filed with the plaint. Learned counsel vehemently denied that Mr. Mazhar A. Hussaini has no authority or power to file the suit.

Learned counsel denied the preliminary objection raised under para (B), learned counsel stated that there is a contracts between the Plaintiff and the Defendant. Learned counsel reiterated what has been submitted in para (3) of the plaint.

4. Learned counsel for the plaintiff stated that the preliminary objection raised under para (C) are also not admitted. It is emphatically denied that the suit is barred by limitation. The claim in suit is very much alive against the Defendant on the basis of acknowledgement of liability by the Defendant made by letters dated 6-2-1997 and 30th June, 1998 as well as part payments made by the Defendant. It is also denied that the Defendant paid a sum of Rs. 492,715.00 to the Plaintiff in advance. In fact the said sum of Rs. 492,715.00 was paid by the Defendant to the Plaintiff a part payment on 3rd July, 1996 against Invoice No. 6156/03/95 dated 1-3-1995 for Rs. 1,439,809.71. It is further denied that the balance of Rs. 42,923.65 was adjusted in other credits of the Defendant.

5. Learned counsel stated that there were contracts between the Plaintiff and the Defendant. It is admitted that the Plaintiff at the request of the Defendant telecast adverting spots for the clients/customers of the Defendant from its T.V. stations. The present suit is based on unpaid invoices which the Defendant has failed/neglected to pay. It is denied that there was no agreement between the parties nor was there any agreement as such for payment of any late surcharge @ 15% per annum or at any other rate. It is, however, admitted that the Defendant did place orders on the Plaintiff for telecasting the advertisement and the Plaintiff did so, but the Defendant failed to pay the amounts against the invoices. It is stated that it is absolutely false that there is no amounts outstanding against the Defendant and/or the Defendant is not liable to pay any amount to the Plaintiff. The Plaintiff however, encloses herewith certified copy

of statement of account giving details/breakup of amount appearing outstanding against the Defendant. It is further denied that there are any glaring discrepancies in the documents of the Plaintiff and many of them contradicts the contents of each other as would appear from the Statements given by the Defendant in para (6) of the Written-statement are incorrect. The correct statements are as under:-

i	06156/03/95	1439809.71	1,364,382.35	75427.36
ii	06157/04/95	466549.32	218,293.12	248256.00
iii	06158/04/95	279014.79	29,369,98	249644.81
v	06904/04/95	266745.75	238,762.21	27983.50
xi	00017/07/98	159705.15	159705.15	0.15
xii	00455/08/98	624970.11	593,721.00	31249.11

6. It is stated that from the perusal of the Statement of Account filed by the Plaintiff it is crystal clear that the Defendant owes a sum of Rs. 5,072,996.74 to the Plaintiff which amount or any part thereof the Defendant has failed/neglected to pay. The accounts shown by the Defendant in its Written-Statement are incorrect and misconceived. In fact the statement of account filed with the plaint as well as the details break-up submitted reflects the true position of accounts and outstanding against the Defendant.

7. Learned counsel stated that it is denied the Defendant is not liable to pay anything to the Plaintiff and/or on the contrary the Plaintiff is liable to pay to the Defendant. The Defendant has malafidely denied the Annexure ‘D’ to the plaint as well as the statement of unpaid invoices and statement of account in order to avoid payment which the Defendant legally owes to the Plaintiff.

8. That the contents of para (11) are mischievous and absolutely false and unfounded that the Defendant has paid to or on behalf of Plaintiff a sum of Rs.1,056,856.82 as per annexures filed with the Written-statement. It is submitted that the Defendant has not paid any amount over and above the claim of the Plaintiff which could entitle the Defendant to claim of the Plaintiff which would entitle the Defendant to claim from the Plaintiff. It is reiterated that the Defendant has failed to pay the suit amount against the unpaid invoices, the details of which are set out in para (3) of plaint as well as copies whereof are filed as Annexure A/1 to A/13. The Defendant by letters dated 6-2-1997 and 30-6-1998 acknowledge the liability and promised to pay the Plaintiff’s dues, but failed to pay as such the suit is liable to be decreed against the Defendant for suit amount and the counter claim of the Defendant be dismissed against the Plaintiff.

9. Learned counsel stated that the Defendant is liable to pay Rs. 5,072,996.74 to the Plaintiff. It is also denied that on contrary the Plaintiff is liable to pay Rs.1,506,856.02 or any part thereof to the Defendant. The Defendant has malafidely set up a false and imaginary claim against the Plaintiff which has no basis whatsoever and therefore it is liable to be dismissed with special costs.

10. Learned counsel for the Plaintiff vehemently denied that the claim of the Defendant against the Plaintiff is well sounded and substantive and is otherwise un-exceptional. He reiterated that the Defendant has set up a false and imaginary counter claim against the Defendant with ulterior motives to avoid its liability which it owes to the Plaintiff and which it has not discharged. The claim in suit of the Plaintiff is well founded and based on documents which the Defendant has not disputed and, therefore, the suit of the Plaintiff is liable to be decreed against the Defendant as prayed and the counter-claim of the Defendant be dismissed against the Plaintiff with special costs under Section 35-A Cr.P.C.

11. Out of the pleading of the parties on 25.2.2002 following issues were framed.

i. Whether the suit has been filed by an unauthorized person? If so, to what effect?

ii. Whether there was no contract between the plaintiff and the defendant to telecast commercial spots for the defendant's clients form plaintiff's Television Stations?

iii. Whether the suit is time barred?

iv. Whether there was no agreement with the defendant for payment of late surcharge fee @ 15% per annum on the outstanding amounts?

v. Whether the defendant owes a sum of Rs.5.072,966.74 to the plaintiff as claimed in suit? If not, what amount of is payable by the defendant to the plaintiff?

vi. Whether the sum of Rs.1,506,856.02 is payable to defendant by the plaintiff as alleged by the defendant?

vii. Whether the alleged counter claim of the defendant is unfounded and has been malafidely raised to thwart the legitimate claim of the plaintiff in suit?

viii. What should the decree be?

12. In order to prove the case plaintiff produced his witness namely Saleem Ilyas Ex.5 who produced documents from Ex.5/1 to 5/6 defendant chooses to

remain absent and did not cross examine the witness. The defendant has not led any evidence. On 15.12.2006 side of plaintiff was closed and case was listed on 23.1.2007 for evidence of defendant but defendant and his advocate were called absent and side of defendant was closed case was listed on 17.4.2007, 22.8.2007, 19.9.2007, 17.10.2007, 22.1.2008 and 12.2.2008 for final arguments but non appeared on behalf of the defendant.

13. I have heard the learned counsel for the Plaintiff at some lengths, perused the record and the relevant case laws. I will deal the issue one by one. My findings are as under:-

ISSUE No.1

After presentation of the plaint in the Court, it was thoroughly checked and then same was admitted as required under the laws. According to the material available on record. The instant suit has been filed by a duly authorized person of the plaintiff corporation. The plaint has been signed and verified by Mr.Mazher A. Hussaini Executive Manager Finance and Attorney who has been authorized for the purpose as required Order XXIX Rule 1 CPC through General Power of Attorney executed by the Managing Director in favour of Mr.Mazher A. Hussaini on 16.8.1992. The same has been produced in evidence as Ex.5/1. The facts submitted above have been confirmed by the plaintiff's representative Mr.Saleem Ilyas P.W No.1 in his evidence Ex.5 and which have not been denied or rebutted by the defendant in cross-examination. Reliance may be placed on 1988 CLC 1381, this issue is answered in negative.

ISSUE No.2

The burden in respect of this issue is on the defendant who have not led any evidence in this behalf. Under the circumstances the presumption would be that the defendant have not pressed this issue. However, the plaintiff have submitted the facts in para 3 of the plaint as mentioned in earlier part of judgment and in para 5, 6, 7 & 8 of affidavit-in-evidence of PW as Ex.5. the facts submitted in memo of plaint have been confirmed by the plaintiff's accounts officer PW-1 who has produced in evidence photocopies of 13 unpaid invoices as Ex.5/2/1 to 5/2/13 and have produce two fax letters dated 6.2.1992 and 30.6.1998 as Ex.5/3 and 5/4 respectively. He has also produced copies of 11 release orders issued by the defendant as Ex.5/5/1 to 5/5/11. He has also produced complete list of account mentioning a sum of Rs.5,072,996.74 as outstanding against the defendant as Ex.5/6 which bears the signature of P.W-1. The defendant chooses to remains absent therefore no denial or rebuttal from the

defendant's side. Since the plaintiff at the request of defendant through Ex.5/2/1 to Es.5/2/13 had admittedly telecast advertisement spot for the defendant's Ex.5/2/1 to Ex.5/2/13 be treated as valid contract, which have been acted upon as vide. This issue is answered accordingly.

ISSUE No.3

The burden of proof in respect of this issue is on the defendant who have not led any evidence in this behalf. Under the circumstances the presumption would be that they have not pressed this issue. However, prima facie the suit as filed in quite well in time as much as that the defendant by letters dated 6.2.1997 and 30.6.1998, vide Ex.5/3 and Ex.5/4 respectively, have acknowledged the liability and promised to pay the plaintiff's dues and the suit has been filed on 4.12.1999, therefore this issue answered accordingly that the suit is not time barred.

ISSUE No.4

In view of my findings on issue No.2 that Ex.5/2/1 to Ex.5/2/13 be treated as valid contracts, which also contained the condition in respect of payment 15% late payment surcharge in case of non-payment of amount within stipulated period. Therefore, this issued is also answered accordingly.

ISSUE No.5.

The burden of proof in respect of this issue is on the plaintiff. In order to prove the case, the plaintiff produced his witness namely Saleem Ilyas account officer Ex.5. The facts submitted in memo of plaint and in his affidavit-in-evidence alongwith document have been confirmed by him and which have not been denied or rebutted by the defendant in cross-examination. In his evidence he produced photocopies of 13 unpaid invoices as Ex.5/2/1 to 5/2/13, two copies of fax letters dated 6.2.1997 & 30.6.1998 written by defendant admitting his liability and promise to pay the plaintiff dues Ex.5/3 & 5/4, copies of 11 release orders issued by defendant as Ex.5/5/1 to 5/5/11, complete statement of account showing outstanding against defendant a sum of Rs.5,072,996.74 as Ex.5/6. He has stated on oath in evidence that no amount has been paid to the plaintiff by the defendant after filing of suit. The plaintiff have proved the case against the defendant for the recovery of Rs.5,072,996.74. This issue is answered accordingly.

ISSUE No.6.

The burden of proof in respect of this issue is on the defendant who is absent since 25.2.2002 after filing of written statement / counter claim and framing of issues by this Court. The matter came up for evidence and after some adjournments, representative of plaintiff filed affidavit-in-evidence and produced certain documents, which were exhibited as Ex.5/1 to 5/6 on 15.12.2006 while non was present for defendant, therefore no cross examination of the plaintiff was conducted. On subsequent dates, the defendant and his counsel failed to appear, therefore, their side was closed and case came up for arguments but despite intimation notice as ordered by this Court on 17.10.2007 and 12.12.2007, non from defendant's side appeared, therefore, arguments of Mr.Munawar Ghani lecarned counsel for the plaintiff were heard on 12.2.2008, who argued that in the given circumstances, the suit as filed by the plaintiff be decreed. He has relied upon 2008 SBLR SINDH 92.

From the perusal of record, it has been observed that PW has been examined in evidence, who produced Ex.5/1 to 5/6. He repeated contents of plaint in affidavit-in-evidence. The defendant failed to appear, therefore, there was no cross-examination, as such, there was no rebuttal to the statement of PW. The matter came on subsequent dates but the defendant neither filed an affidavit-in-evidence nor appeared, therefore, on 23.1.2007 side of the defendant was closed and matter was fixed for arguments. On 17.10.2007 and 12.12.2007 when the case was fixed for final arguments, intimation notices were again ordered to the defendant but none appeared and finally on 12.2.2008 arguments were heard. Under these circumstances the plaintiff's version is supported through evidence while the defendant failed to appear to defend the suit filed by the plaintiff and to support his counter claim and written statement as filed by him on 29.5.2001. It is well settled principle of law that when signatory to written statement failed to appear then even written statement cannot be exhibited and there is no rebuttal to the plaintiff's version. Reliance may be placed on PLD 2004 SC 633, PLD 2004 SC 415, 2000 SCMR 1391 and PLD 1972 SC 25. In these circumstances the written statement / counter claim filed by the defendant can not be considered in his favour and much reliance cannot be placed on such a written statement. Reliance may be placed on PLD 2003 SC 594. Under the circumstances the presumption would be that the defendant have not pressed this issue. Answered accordingly.

ISSUE No.7

In view of my findings on issue No.6 the issue No.7 has become redundant and is answered accordingly.

ISSUE No.8

The up-short of the discussion is that the plaintiff is entitled for the relief claimed against the defendant for recovery of Rs.5,072,996.74 with mark up at 18% per annum from the date of filing of suit till realization of decretal amount. The suit No.102/2000 tilted as Pakistan Television Corporation .V. M/s. Board Advertising (Pvt) Ltd., stands decreed with costs.

Karachi
Dated:_____ J U D G E