

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RSA No. 21/2007

Date of Decision : 3 -10-2008

USHAK KAAL COMMUNICATIONS LTD. & ANR. Appellant
Through Mr. Sunil Bagai, Advocate

versus

THOMSON PRESS INDIA LTD. Respondent
Through: Mr. Manish K Verma Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the 'Digest'? Yes

REKHA SHARMA, J.

Appellant No. 1 and the respondent are the companies incorporated under the Companies Act, 1956. The former does the business of advertisement and the latter of printing .

On July 24, 1996, appellant No. 1 had placed upon the respondent, purchase order for printing of brochures. As per the respondent, the said purchase order was varied from time to time and in terms of the varied order, the requisite quantity of brochures were delivered to the appellant. The respondent claimed that in addition to the printing of brochures, it had also carried out for the appellant the work of scanning, planning, proofing of Mescos Floaters, Retailers Ad, Studio Janak Ad and Diwan Saheb Press Ad. The respondent had raised four invoices upon the appellant bearing No. (i) 97-98/2556

dated April 23, 1997, (ii) 96/1381 dated September 30, 1996, (iii) 96/1421 dated October 31, 1996 and (iv) 97-98/2358 dated October 21, 1997 of a total value of Rs. 1,46,070/-. The appellant company declined to pay the aforesaid amount whereupon the respondent filed a suit against appellant No. 1 and also against its Director – appellant No. 2 for the recovery of Rs. 1,88,566.37 with pendente lite and future interest @ 21% per annum.

The appellants disputed their liability to pay the suit amount on the ground that time was the essence of the contract and that the respondent had delivered the brochures after the delivery period resulting in huge losses to it. The appellant also alleged that the brochures were not printed as per the order and specifications. Insofar as the work of scanning, planning and proofing of Mescos Floaters – Retailers Ad was concerned, the appellant denied having placed any such order upon the respondent. The learned Civil Judge on the basis of evidence on record decreed the suit of the respondent for a sum of Rs. 1,88,566.37 with pendente-lite and future interest @ 6% per annum till the recovery of decretal amount along with the cost of the suit. Aggrieved by the decree so passed, the appellants preferred an appeal before an Additional District Judge but with no success. Hence, the present appeal.

The main plank on which learned counsel for the appellants assailed the judgment and decree of the courts below was that they committed an error in accepting the certificate of incorporation of the respondent company Ex.PW1/1 without formal proof. It was also argued that the courts below failed to appreciate that the resolution dated August 29, 1998 exhibited as Ex.PW1/2 authorizing an officer of

the respondent company to file the suit was not proved by producing minutes books of the company and, therefore, the suit ought to have been dismissed both on the ground of respondent having failed to prove the certificate of incorporation and the resolution dated August 29, 1998.

The respondent, on the other hand, contended that the appellants did not raise any objection as to the mode of proof of either the certificate of incorporation Ex.PW1/1 or the resolution Ex.PW2/2 before the learned Civil Judge. These objections were raised for the first time before the learned Additional District Judge who it was further contended ought not to have entertained the same being beyond pleadings. Having said so, learned counsel for the respondent nonetheless dealt with the objections raised by the appellants as to the admissibility of the certificate of incorporation and the resolution dated August 29, 1998. It was submitted that the appellants themselves had admitted these documents at the stage of 'admission/denial of documents' and it was only then that the certificate of incorporation was exhibited as Ex.PW1/1 and the resolution as Ex.PW1/2. Hence, no evidence was required to prove these documents.

At the outset it may be noticed that it is a matter of record that the appellants never raised any dispute as to the mode of proof of documents Ex.PW1/1 and Ex.PW1/2 before the trial court. Therefore, it was not open to them to have raised the same before the first Appellate Court. However, since the first Appellate Court has elaborately dealt with the same, I also feel inclined to deal with the question raised.

It is elementary that evidence whether oral or documentary is led only if the parties are at issues with each other. It is laid down in Order 14 Rule 1 "that issues arises when a material proposition of fact or law is affirmed by one party and denied by the other." There is no need nor requirement to lead evidence if one party accepts the document of another or admits a fact stated by the other. Here in the present case, the certificate of incorporation and the resolution dated November 29, 1998 filed by the respondent were admitted by the appellants at the time of 'admission/denial of the documents.' Therefore, the parties were not at issue with each other in so far as these two documents were concerned. Hence, there was no need to lead any formal evidence to prove the documents.

It will be apposite here to refer to a judgment of the Apex court titled R.V.E.Venkatachala Gounder v. A.V.& V.P. Temple reported in AIR 2003 Supreme Court 4548. The following paragraph is relevant in so far as the present case is concerned. It reads as under:-

Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit' an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time would

have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by this failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof.

Reference may also be made to a judgment of Division Bench of this court in the case of **Alacs Finanz Ltd. v. M/s Oksh Technologies** reported in 119(2005) Delhi Law Times 585 (DB) wherein it has held that where secondary evidence is admitted without there being a proper objection, it becomes primary.

In view of the aforementioned judgments particularly the judgment of the Apex Court (Supra) there is no merit in the contention raised by learned counsel for the appellant. As already noticed above in the present case no objection was taken as to the mode of proof of documents Ext.PW1/1 & PW1/2 before the trial court.

Learned counsel for the appellant had relied upon **Escorts Limited v. Sai Autos & Ors.** reported in 42(1990) Delhi Law Times 446. The judgment has no applicability to the facts of the present case. It may be stated even at the risk of repetition that in the present case the appellant themselves had admitted the documents and, therefore, no formal proof was required to further prove the same whereas there was no such admission in the case cited by learned counsel for the appellant.

Insofar as the merits of the case are concerned, I find that both the courts below have carefully appreciated the evidence on record and have consequently held the appellants liable to pay the suit amount. I find no reason to disturb the concurrent findings of the

courts below based on appreciation of evidence. The appeal raises no question of law much less substantial question of law. There is no merit in the appeal. The same is dismissed.

OCTOBER 3, 2008
G/sl/

REKHA SHARMA, J.