

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

+ **RFA 362/2002**

% **25th August, 2011**

ASIAN CENTRE FOR ORGANIZATION, RESEARCH AND DEVELOPMENT
(ACORD), & ANR. Appellants

Through: Ms. Mohini Narain, Mr. Mohit
Mudgal and Mr. Rajan Narain,
Advocates.

VERSUS

M/S DOTS ADVERTISING AND MARKETING CONSULTS PVT. LTD. & ANR.
..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC), is to the impugned judgment dated 2.3.2002 of the trial court which has decreed the suit for recovery of the respondent no.1/plaintiff against the

appellants/defendants with respect to advertisements given by the respondent no.1/plaintiff in newspapers on behalf of the appellants/defendants.

2. The facts of the case are that the respondent no.1/plaintiff was doing a business of advertising for various parties. The appellants sometimes in the beginning of March, 1995 approached the respondent no.1/plaintiff to release advertisements in various newspapers and requested the respondent no.1/plaintiff to submit a quotation for designing of the advertisements and release thereof. Pursuant thereto, the respondent no.1/plaintiff submitted a quotation along with the design to the defendant no.1 on 16.3.1995 and the same was duly approved and accepted by the appellants on the same date i.e., 16.3.1995. The respondent no.1/plaintiff designed and prepared advertisements at the specified request and order of the appellants and released them as per instructions of the appellants in various newspapers being Times of India, Lucknow, Delhi on 22.3.1995, Patna on 24.3.1995, Ahmedabad on 27.3.1995, Mumbai on 27.3.1995, Bangalore on 29.3.1995. Advertisements were also given by the respondent no.1/plaintiff on behalf of the appellants in the Economic Times Delhi on 21.3.1995, Calcutta on 29.3.1995 and Ahmedabad, Bangalore, Madras and Mumbai on 28.3.1995, Hindustan Times on 28.3.1995 and also other newspapers.

All these advertisements as mentioned were published as per the instructions of the appellants and thereafter, the respondent no.1/plaintiff raised an invoice dated 31.3.1995 for a total amount of Rs.2,52,528/- accompanied by the vouchers in support of the above advertisements published. On receipt of the invoice, the appellants released part payment of Rs. 15,000/- by cheque on 5.6.1996 and further released a sum of Rs.1,00,000/-(rupees one lac) in the month of December, 1996. Since in spite of reminders and requests on telephone, the balance outstanding payment was not made, a legal notice was sent by the respondent no.1/plaintiff on 30.8.1997 to which no reply was given and therefore the subject suit came to be filed.

3. The main issue which was argued on behalf of the appellants in the court below, and which has also been argued before me, is that the appellants were only acting as agents for Dalmiya Group and therefore by virtue of Section 230 of the Contract Act, 1872, it was the Dalmiya Group which was responsible to make payments and not the appellants. The relevant issues in this regard as framed by the trial court are issues no.3,6 and 7 and the same read as under:-

- “3. Whether the suit is bad for non-joinder as well as mis-joinder of necessary parties? OPD
- 6. Whether the plaintiff is entitled for recovery of suit amount, if so, what amount? OPP

7. Whether the plaintiff is entitled for interest, if so, at what rate and for which period? OPP”
4. The relevant observations of the trial court in this regard as under:-

“On the other hand, learned Counsel for the plaintiff has strongly refuted the arguments made by the counsel for the Defendant and stated that there is no triparty agreement between plaintiff, Defendant no.1 and M/s Dalmiya Brothers as advertisement published in the newspaper, order was given by Defendant No.1 to the plaintiff and on their instruction design approved by them on 16.3.95. The plaintiff acted and published the advertisement and he has also drawn the attention of the testimony of PW-1 and stated that PW-1 has deposed that the Defendants sometime in the beginning of March 1995 approached the plaintiff Co. to release advertisement in various newspaper and requested the plaintiff to submit a quotation for designing of the and its release. Thereafter the plaintiff submitted the quotation alongwith design to the Defendant No.1 on 16.3.95 and the same was duly accepted and approved by the Defendant on the same date and he has proved the original quotation dated 16.3.95 as Ex.PW-1/1. The said advertisements was duly released in the newspaper Times of India, Lucknow, Delhi dated 22.3.95, Patna dated 24.3.95 and Ahmedabad dated 27.3.95. The advertisements released for the Defendants is mark B. After releasing the said advertisements in various newspapers the bill were duly raised by the plaintiff to the defendant vide invoice dated 31.3.95 photocopy of the same is mark C and those will was sent alongwith voucher copy in support of the advertisement released in the newspaper. But the defendant paid initial amount as Rs.15,000/- by cheque and after 9-10 months, the defendant further paid a sum of Rs.1.00 lac on account to the plaintiff in Dec. 96 by way of cheque and he has also drawn the attention of the court at the time of approaching the defendant no.1 to publish the advertisement in the newspaper, he has not disclosed that

they are working on behalf of the M/s Dalmiya Brothers and he has also drawn the attention of the court on the testimony of DW2 and she has deposed in her examination chief that no formal written agreement was executed between the plaintiff and defendant no.1. They told the plaintiff official in the very beginning that these advertisement meant for their some clients whose name she do not want to disclose at this stage and she has further deposed that later on they told the plaintiff that those advertisements were got to be published on behalf of Dalmiya Brothers and he has also drawn the attention on the testimony of DW1 and stated that Dalmiya brother is not a necessary party and suit of the plaintiff is not bad for non-joinder as well as misjoinder of necessary parties.

In consideration of the submissions made by the counsel, I have also pursued the letter which have been proved by DW2 in her testimony from Ex.DW2/1 to Ex.DW2/9 and these are the personal correspondence between Defendant and M/s Dalmiya Brothers while the advertisements published by plaintiff when Defendant no.1 approached and it seems that at that time the Defendant has not disclosed the name of M/s Dalmiya Brothers. However, I am of the opinion that Defendant worked on behalf of Dalmiya Brothers as Dalmiya is client of the Defendant. But no where or no document has been proved and placed by the Defendant that Defendant No.1 is working on behalf of Dalmiya as an Agent. Dalmiya may be client of the Defendant and dealing for realizing the advertisements. On perusal of the Ex.DW-2/1 to Ex.DW-2/9 these are the correspondence between Defendant No.1 and M/s Dalmiya Brother as Dalmiya Brother is client on their personal capacity. So, order for advertisement was placed by the Defendant No.1 to the plaintiff and some payment of the advertisement made by the Defendant No.1 which have been proved by the plaintiff and admitted by both the DWs. So, I am of the opinion that the suit of the plaintiff is not bad for misjoinder and non joinder of necessary parties as Dalmiya Brothers is not a necessary party in the present suit and the dealings are directly between the plaintiff and the Defendant. Issue No.3 is disposed off accordingly in favour of the plaintiff and against the Defendant. **(Findings on issue no.3)**

In consideration of the submissions made by both the counsels, I have also perused the testimony of PW1 who has proved the original quotation dated 16.3.95 as Ex.PW1/1 and confirmation document dated 4.5.96 of the defendant as Ex.PW1/2 and original letter dated 5.6.95 as Ex.PW1/3. I have given my thoughtful consideration on each exhibited document Ex.PW1/1 which is quotation given by the plaintiff to the defendant and the same has been approved and accepted by the defendants and its has been proved by the defendants testimony and PW1 has stated that it is also correct that the plaintiff submitted quotation alongwith design to the defendant no.1 dt. 16.3.95 and the same was duly approved and accepted by the defendant no.1 on 16.3.95 itself. He is not aware of any document in writing by defendant no.1a on or before 16.3.95 with regard to appointment of defendant as an Agent of Dalmiya Brother as Principal. So, the defendant has failed to prove any document in respect of the Agent of Dalmiya Brother and Dalmiya Brother may be client of the defendant. On perusal of the testimony of PW2, she has admitted in her cross examination that the advertisements were duly released and published after the estimate was duly approved by the defendant no.1 alongwith artwork. She has further admitted that there was no triparty agreement for release of above advertisements and subsequent payment. However, both the defendants have admitted that they have received the legal notice sent by the plaintiff which have been proved by DW1 Sh. Vijay Bhardwaj who is accountant of defendant no.1 as Ex.PW1/P1 dated 30.8.97 and he admitted that no reply was sent by them nor any payment was made thereafter and DW2 has stated that inspite of the said legal notice dated 30.8.97 and he admitted that no reply was sent by them nor any payment was made thereafter and DW2 has stated that inspite of the said legal notice dated 30.8.97, they have received the same but they have never replied the same and in chief examination DW2 has stated that after receiving the notice from the plaintiff they have consulted their legal adviser Mr. Prasad who advised not to give any reply to the notice. Both the defendants corroborated the version of PW1 regarding receiving the payment from the

defendant of Rs.15,000/- as well as Rs.1,00,000/-. I am of the opinion that if the defendants are not obligatory to make the payment why they have made the part payment of Rs.1,15,000/- to the defendant towards part payment of the bills raised by the plaintiff. Moreover it is not transpired from any document that defendants are working as an agent of M/s Dalmiya Brothers of Dalmiya Brother is Principal of defendant No.1. There is no relation of Principal and agent between Dalmiya Brothers and the defendant. I also gone through each letter proved by DW2 from Ex.DW2/1 to Ex.DW2/9 and these letters shows that those are business correspondence between M/s Dalmiya Brothers with the defendant as Dalmiya Brother is the client of the defendant no.1. As the advertisement released by the plaintiff as per the order released by the defendant to the plaintiff. I also perused the different advertisements available on file as well as the advertisement which have been proved by the defendants through PW1 Shri Rajender Saini as Ex.PW1/D3 and Ex.PW1/D4 in which it is clearly mentioned that since 1981, the Asian Centre for Organisation Research and Development has been advising a select range of client companies covering JVs/TNCs/MNCs/Large; Indian Business Groups and Profitable Public Sector Enterprises. But there is no mention that Asian Centre for Organisation Research and Developemnt is agent of companies like JVs/INCs/MNCs Large Indian Business Groups and Profitabe Public Sector Enterprises. So, the plaintiff has proved the case against the defendant and plaintiff is entitled for the suit amount from the defendants and the dealings between the plaintiff and defendants is business dealings. So, the plaintiff is entitled for interest @ 17% p.a. on the suit amount. Issue No. 6 & 7 are disposed off accordingly in favour of the plaintiff and against the defendants. (***findings on issues nos.3 to 7***)” (underlining added)

5. A reference to the aforesaid findings and conclusions of the trial court and also the admitted documents Ex.PW1/1 which is the contract between the parties shows that the contract was only between

the appellants and respondent no.1/plaintiff. There is no reference in Ex.PW1/1 that the appellants acting only as the agents for the Dalmiya Group. The appellants may have many clients including the Dalmiya Group and for which, it may cause advertisements to be published in newspapers, however, that would not mean that the respondent no.1/plaintiff had any privity of contract with the said M/s Dalmiya Group. The contract of the appellants was only with respondent no.1/plaintiff. No doubt remains on this issue, inasmuch as, the appellants themselves have released two payments of Rs.15,000/- and Rs.1,00,000/- to the respondent no.1, and which would not have been if the appellants were not liable under the Contract.

6. Learned counsel for the appellants sought to place reliance upon the cross-examination of PW1 Mr. Rajender Saini wherein Mr. Saini had admitted that as per Ex.PW1/D-1, the letter dated 15.4.1996, it is mentioned that the payment has to be released by the client of the appellants i.e. Dalmiya Group, and which according to the counsel for the appellants shows that the appellants were only acting as agents of Dalmiya Group.

7. I am unable to agree with the arguments as advanced by the learned counsel for the appellants. A mere reference to the advertisements having been released for the client of the appellants

would not mean that the contract would automatically become one between the clients of the appellants and the respondent no.1. The contract in question is Ex.PW1/1 dated 16.3.1995 and which is admittedly only between the appellants and the respondent no.1. Subsequent correspondence by which the respondent no.1 states that the appellants had given advertisements for its client being the Dalmiya Group would not mean that the appellants would not be liable. It is relevant to note that in spite of the respondent no.1 sending a legal notice, the appellants failed to reply the same and therefore this is one more reason to draw an adverse inference against the appellants not only with respect to liability but also that the appellants only had a contract with respondent no.1/plaintiff.

8. This court is entitled to interfere in appeal and the impugned judgment only if the view taken by the court below is perverse or illegal. In my opinion, this is not even a case where two views can be possible. The only view which is possible and which has been taken by the trial court is that the appellants were liable because after making the respondent no.1 incur expenditure for the advertisements, the appellants failed to make any payments.

9. I may note that the trial court has granted interest at 18% per annum simple. Though this issue has not been argued on behalf of

the appellants, I find that considering the present interest regime, this rate of interest is unusually high. The Supreme Court in the chain of recent judgments reported as ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd., (2006) 7 SCC 700, Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra, 2007 (2) SCC 720 & State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd (2009) 3 Arb. LR 140 (SC)*** has mandated the courts to reduce the high rates of interest. Accordingly, I find that the appellants should only be liable to pay interest at 9% per annum simple pendente lite and future interest till payment. The appellants have deposited an amount of Rs.3,31,975/- in this court. This amount can be released to the respondent no.1/plaintiff towards the decree.

10. In view of the above, the appeal is allowed to the limited extent of reduction of the pendente lite and future interest to 9% per annum simple and rest of the impugned judgment is sustained. Decree sheet be prepared. Trial court record be sent back.

AUGUST 25, 2011/ib

VALMIKI J. MEHTA, J.