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IN THE HIGH COURT OF DELHI AT NEW DELHI
RFA No.452 /2003
7th February, 2012

M/S. FLASH SPORTS PVT. LTD. Appellant
Through: Mr. Sanjeev Bahl, Advocate

VERSUS

M/S. DELHI LAWN TENNIS ASSOCIATION Respondent
Through: Mr. Surinder Goel, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal filed under Section 96 of Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree of the trial Court dated 15.03.2003 decreeing the suit of the respondent/plaintiff for recovery of ₹ 2.5 lakhs along with pendente lite interest @ 9% per annum and future interest @ 6% per annum with costs.

2. The facts of the case pleaded by the respondent/plaintiff are that the appellant/defendant was given the Delhi Lawn Tennis Association (DLTA) complex for the use of holding of a tournament being ITF Women's

Tournament for a week w.e.f. 30.11.1998. It was pleaded that as per the Memorandum of Understanding (MoU) entered into between appellant/defendant and the All India Tennis Association (AITA) it was agreed that the appellant/defendant shall pay to the respondent/plaintiff a sum of ₹ 2.5 lakhs. It was pleaded that since the amount of ₹ 2.5 lakhs was not paid, a legal notice dated 24.10.2001 was served upon the appellant/defendant and thereafter the subject suit for recovery of ₹ 3.85 lakhs came to be filed.

3. The appellant/defendant contested the suit and averred that the claim of ₹ 2.5 lakhs was waived inasmuch as no sponsor was coming forward for the event. It was pleaded that this aspect was specifically informed to the appellant/defendant by the AITA vide its letter dated 20.01.1999. It was pleaded that the suit was filed to pressurize the appellant/defendant to withdraw another suit filed against the AITA for recovery of the telecast charges received by AITA from Doordarshan. Reliance is placed upon the correspondence between the parties by the appellant/defendant in the written statement. It is also pleaded that the suit was barred by time.

4. After completion of pleadings, the trial court framed the following issues:

“i). Whether the plaintiff is entitled to recovery of suit amount with interest as claimed ? OPP

ii) Whether the suit is without any cause of action, if so, its effect ? OPD

iii) Whether the suit is bad for non-joinder of necessary parties ? OPD

iv) Whether the suit as framed is not maintainable ? OPD

v) Whether the plaintiff has waived its rights to recover the suit amount as claimed by the defendant? OPD

vi) Whether the suit filed by the plaintiff is within limitation or not ?

vii) Relief.”

5. On the issue with respect to limitation, the trial court held the suit to be within limitation as the tournament in question was held for the period from 30.11.1998 to 04.12.1998 and the suit was filed within three years from 04.12.1998 i.e. on 03.12.2001. On the main issue of the liability, the trial court has held that by virtue of the MoU dated 31.7.1998 the appellant/defendant was liable to pay the amount of ₹ 2.5 lakhs. The trial court held that the amount of ₹ 2.5 lakhs was to be waived by the respondent/plaintiff, however, the final waiver would have taken place only

if a resolution had been passed by the respondent/plaintiff society but since no such resolution was passed it could not be held that there was a waiver with respect to payment of ₹ 2.5 lakhs.

6. Learned counsel for the appellant/defendant argued before this Court that the suit was barred by time inasmuch as the due date of payment as per the MoU dated 31.7.1998, Ex. DW-1/1, was on or before 01.11.1998 and, therefore, the suit filed on 03.12.2001 was clearly barred by time. It is argued that the date when the tournament is played is an issue which has no relevance to the due date of incurring of the liability and which in the present case was 01.11.1998.

7. Since the MoU would be relevant, even with respect to the other issues, I would reproduce the complete MoU dated 31.7.1998, Ex. DW-1/1, as under:

“MEMORANDUM OF UNDERSTANDING

This M.O.U. made on this 31st day of July, 1998 between All India Tennis Association (hereinafter called ‘AITA’), Flash Sports Private Limited (hereinafter called ‘FSPL’) and the Delhi Lawn Tennis Association (hereinafter called ‘DLTA’).

1. Whereas it is proposed to hold an ITF Women’s Tournament (hereinafter called ‘The Tournament’) having prize money of US\$ 75,000 at the R.K. Khanna Tennis Stadium, DLTA Complex, New Delhi in the week of 30th November, 1998.

2. Whereas AITA will be the Tournament Owner, FSPL will be the Promoter/Sponsor and DLTA will be the Tournament Organiser.
3. Whereas FSPL will finance the tournament. FSPL will have complete advertising and broadcasting rights including Doordarshan based on the agreement entertained into between AITA and Doordarshan.
4. Whereas DLTA will organise the Tournament in close liaison with FSPL and will be responsible for its successful conduct. DLTA will appoint The Tournament Director. However, FSPL may appoint an Asst. Tournament Director.
5. Whereas FSPL may appoint a committee(s) with Cdr Ashok Sinha as Chairman for the smooth conduct of the tournament. AITA and DLTA representatives may be included.
6. Whereas 6% of the prize money will be forwarded to ITF as Tournament Application Fee and ₹ 1 lac will be given to AITA as Sanction Fee.
7. Whereas ₹ 2.5 lacs will be given by FSPL to DLTA as infrastructure charges to use the stadium for all promotional activities during the tournament period by 1st November, 1998.
8. WHEREAS FSPL will have the first priority to run the tournament for five years.

AUTHORISED SIGNATORY
for ALL INDIA TENNIS ASSOCIATION

AUTHORISED SIGNATORY
for FLASH SPORTS PVT. LTD.”

(underlining added)

8. A reading of the MoU shows the following salient points:
 - (i) The MoU was not signed by the respondent/plaintiff and it is only signed by the appellant/defendant and AITA.
 - (ii) It is AITA which is the owner of the tournament and the appellant/defendant was only to finance the tournament. As consideration

of financing the tournament, the appellant/defendant was to have the advertising and broadcasting revenues.

(iii) The sum of ₹ 2.5 lakhs was to be given by the appellant/defendant to respondent/plaintiff on or before 01.11.1998.

9. In my opinion, the suit was barred by time inasmuch as once there is due date for payment fixed, and which is to be on or before 01.11.1998, the period of three years under Article 113 of the Limitation Act, 1963 begins from 02.11.1998 and, therefore, the suit could have only been filed till 01.11.2001. Since the suit was filed on 03.12.2001, the suit was clearly barred by time. What is relevant is the due date of payment and not when the tournament is held. I, therefore, hold that the trial court erred in holding the suit to be within limitation. The suit is, therefore, liable to be dismissed as barred by limitation and which is accordingly dismissed as barred by limitation.

10. There are also other reasons to hold that the appellant/plaintiff was not liable to make the payment of the amount of ₹ 2.5 lakhs. Firstly, the liability for payment in law for use of the DLTA complex of the respondent/plaintiff can only be of the licensee to whom the DLTA complex was licenced for the tournament. A reference to the MoU dated

31.7.1998 shows that AITA was the tournament owner and the appellant/defendant was only a promoter/sponsor/financer. It is the licensee or the hirer of the stadium who is liable and, liability cannot be fastened of the hire charges upon a person who uses the licenced complex for and on behalf of the licensee. Since AITA was the owner of the tournament it would be the licensee of the DLTA complex. No document or any proof whatsoever has been filed by the respondent/plaintiff that the DLTA complex was hired out to the appellant/defendant. Even the respondent/plaintiff relies only upon the MoU, and the MoU shows that the appellant/defendant was only a sponsor/financer/promoter. Once the respondent/plaintiff failed to prove the hirer/licensee being the appellant/defendant, no liability could be fastened upon the appellant/defendant. The tournament owner was AITA and, therefore, it will be AITA which will be the licensee. It is no concern of the respondent/plaintiff as to the understanding between the appellant/defendant and the AITA for making payment of ₹ 2.5 lakhs by the appellant/defendant directly to the respondent/plaintiff, inasmuch as the payment of ₹ 2.5 lakhs was being made by the appellant/defendant for and on behalf of AITA inasmuch as the appellant/defendant was only a

financer/sponsor/promoter of the tournament. At the cost of repetition this aspect will have to be kept in mind that there is no document whatsoever placed on record as to the fact that it was the appellant/defendant who was the licensee of the DLTA complex for the period of the tournament. There being no privity of the contract between the respondent/plaintiff and the appellant/defendant since the MoU was only between the appellant/defendant and AITA, appellant/defendant cannot be held to be liable inasmuch as because the liability of the appellant/defendant under the MoU can be enforced only by AITA and not by the respondent/plaintiff who was not a party to the said MoU.

11. The matter can also be looked at from another angle. The respondent/plaintiff itself in the plaint relies upon the MoU for claiming the charges of ₹ 2.5 lakhs. As already stated above, the respondent/plaintiff is not the signatory to the MoU. Therefore, once the respondent/plaintiff relied upon the MoU, it becomes an admitted position that the respondent/plaintiff has agreed to accept AITA as its representative and thus would be bound by the actions of its representative. The representative, namely, AITA had written specific letters to the appellant/defendant that the liability of the appellant/defendant is waived.

These letters are the letters dated 20.1.1999 and 16.6.1999 which have been exhibited as Ex. DW-1/4 and DW-1/8. These two letters read as under:

**“ALL INDIA TENNIS ASSOCIATION
PATRON-PRESIDENT OF THE REPUBLIC OF INDIA**

PRESIDENT:
R.K.KHANNA

20th January, 1999

Mr. Sanjeev Sethi,
Flash Sports Pvt. Ltd.
402, World Trade Centre,
Babar Road,
NEW DELHI – 110 001

Dear Sir,

We thank you for your fax dated 20th January, 1999.

It seems that you have misunderstood the letter written by us. DLTA agreed to waive payment of Rs.2,50,000/- for the hire charges of the entire DLTA facility as you were unable to get any sponsors for this event. However, the waiver has to be confirmed in the Committee Meeting of the DLTA, which is a formality as Mr. Anil Khanna has already agreed to the waiver with Admiral Bhatia.

Your letter of 20th January, 1999 is being taken as a request from your side for waiver and we assure you that the same will be confirmed and you will not be required to pay any amount to DLTA.

You will, however, appreciate that DLTA has not only provided their facility free to your organisation but has provided free hospitality, in the stadium, to all players and incurred substantial expenses.

With regards,

Yours sincerely,

(P.F.MONTES)
Wg.Cdr.(Retd.)
ADMN OFFICER”

**“ALL INDIA TENNIS ASSOCIATION
PATRON-PRESIDENT OF THE REPUBLIC OF INDIA**

PRESIDENT:
R.K.KHANNA

16th June, 1999

M/s. Flash Sports Private Limited
402, World Trade Centre
Babar Road,
New Delhi-110 001

Dear Sir,

This is with reference to your facsimile letter No. AITA-JUN-075 dated 4th June, 1999 addressed to Mr. R.K.Khanna, President, AITA.

As per the policy of AITA, 75% of the amount received from DD is re-imbursed to the State Associations organising the tournament. In your case Mr. Anil Khanna, Hony Secretary, DLTA (The Organiser) had agreed to give Flash Sports this sum of money. On our part we have provided you with all the facilities organisational as well as technical along with use of the Stadium, complete South Block Building except DLTA Office to run the tournament efficiently, all free of cost.

A cheque of Rs.2,70,725/- has already been sent to you on 25th May, after adjusting Rs.1,04,275/- being the amount paid to M/s. Core Links for accommodation, food, telephone bills etc. of the players as per instructions given to us by your staff.

We are taken aback at the tone and tenor of your letter where you have alleged that Mr. Aviral Sethi is our employee along with some of your other original employees. Please be assured we have not had any one of your employees on our rolls either previous or now. As such any communication of yours with such persons is futile.

I sincerely hope this letter would clarify any misunderstandings, if you have at your end.

Thanking you,

Yours faithfully,

(COL. R.M.SHARMA)(Retd.)
CHIEF ADMN OFFICER

Copy to :- Ms. Ingrid Bentzer”

(underlining added)

12. A reference to the aforementioned letters does not leave anyone in doubt that the charges of ₹ 2.5 lakhs were waived and the resolution by the respondent/plaintiff was only a formality. As already stated above respondent/plaintiff was not a signatory to the MoU and, therefore AITA was fully competent to represent the respondent/plaintiff including on the aspect of waiver of hire charges. Hire charges were to be paid on the presumption of getting a sponsor who would pay revenue for the tournament and since there was no sponsor found, there was no revenue and hence the waiver. The present is not a case where appellant/defendant is seeking unjust enrichment of having received revenue from the further sponsor but is refusing to pay the amount received to respondent/plaintiff. Therefore, in equity also there is no liability, besides the fact that there cannot be legal liability either because of the issue of lack of privity of contract or because AITA had assured the waiver of charges.

13. Learned counsel for the respondent/plaintiff sought to lay great emphasis on the fact that various letters were written to the appellant/defendant for making payment and, therefore, appellant/defendant should be held liable but admittedly there is no acknowledgement by the appellant/defendant of its liability, and therefore, in the peculiar facts of the case, and considering the totality of the facts and circumstances, it cannot be said that merely because of the letters written by the respondent/plaintiff liability can be fastened upon the appellant/defendant. As already observed above there is lack of privity of contract of the appellant/defendant with the respondent/plaintiff and that except a bare formality of a resolution to be passed, the charges were waived and which was so informed by the AITA, the representative of the respondent/plaintiff to the appellant/defendant. In the reply sent by the appellant/defendant through its lawyer dated 9.11.2001 Ex. PW-1/6 the appellant/defendant had denied its liability to pay ₹ 2.5 lakhs to the respondent/plaintiff and in this reply it is also specifically mentioned that the appellant/defendant is not liable because there is no privity of contract between the appellant/defendant and the respondent/plaintiff. This letter also makes the issue of non-liability of the appellant/defendant clear because it is specifically mentioned in this reply,

Ex. PW-1/6 that the charges were waived as no sponsor was coming forward for the event.

14. In view of the above, the appeal deserves to be allowed. The suit of the respondent/plaintiff was not only barred by time, it was also barred by the principle of lack of privity of contract of the appellants/defendants with the respondent/plaintiff and also in equity of the hire charges having been waived as no revenue was generated by the event/tournament.

15. The appeal is allowed. Impugned judgment and decree dated 15.03.2003 is set aside. The suit of the respondent/plaintiff shall stand dismissed. The amount deposited by the appellant/defendant along with accrued interest be released back to the appellant/defendant after a period of 90 days being the period of limitation for challenging this judgment.

VALMIKI J. MEHTA, J

FEBRUARY 07, 2012

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