

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

RESERVED ON : 20th NOVEMBER, 2014

DECIDED ON : 27th NOVEMBER, 2014

+ CS (OS) 892/2008

SHRI ARUN BANSAL

..... Plaintiff

**Through : Ms.Manisha Agrawal Narain,
Advocate.**

VERSUS

DR.BHIMRAO AMBEDKAR UNIVERSITY Defendant

Through : Ms.Amita Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present suit for recovery of ₹ 56,67,048/- has been preferred by Arun Bansal carrying on business under the name and style of 'M/s. Confidential Enterprises'. Case of the plaintiff as set up in the plaint is as under :

2. The plaintiff is running his business under the name and style of M/s. Confidential Enterprises as sole proprietor. The defendant – Dr.Bhimrao Ambedkar University (Formerly Agra University) used to conduct entrance examination test every year. Papers for entrance

examination CPMT 2005 leaked out and the examination had to be cancelled. Thereafter, another examination in the year 2005 was conducted and it was allocated to the defendant. Sh.A.S.Kukla, Vice Chancellor of the defendant University was nominated as chairman of CPMT, 2005. Sh.A.S.Kukla contacted the plaintiff to print and provide examination papers for CPMT, 2005 as an emergency job for the rescheduled examination. On 04.06.2005, he met the Vice Chancellor at his residence No. 240, Farmers Apartment, Sector-13, Rohini, Delhi. In the said meeting, an oral agreement to print papers along with rates for such printing was concluded between the parties. It is averred that the Vice Chancellor delivered the original manuscripts of the question papers; centre-wise packing details of seventeen different destinations in Uttar Pradesh and a sum of ₹ 10 lacs in cash to the plaintiff. The Vice Chancellor obtained a written receipt of the said amount from the plaintiff.

3. Further case of the plaintiff is that he performed his part of the contract and delivered all the printed papers to the carrier Safexpress Pvt. Ltd. having their office at Safex Cargo Complex, NH-8, Mahipalpur Extension, New Delhi against acknowledgment. On 16.06.2005 and 17.06.2005, the said material was checked in the presence of Sh.Hari Mohan, Coordinator, for the examination, Nodal Officers and Police

Officers of the Uttar Pradesh who later escorted the vehicles to their destinations. Safexpress Pvt. Ltd. successfully delivered the papers at the designated destinations and the examination was duly conducted.

4. Further case of the plaintiff is that after completing his job, Bill No. 347(MP) dated 17.03.2006 for a sum of ₹ 38,08,500/- was raised and delivered to the defendant. However, the defendant failed to make the payment despite various reminders and legal notice. It is averred that the defendant is liable to pay interest @ 18% per annum compounded quarterly for the delayed payment which amounts to ₹ 18,58,548/-.

5. The suit is contested by the defendant. In the written statement, the defendant controverted the assertions of the plaintiff and pleaded that this Court has no territorial jurisdiction to entertain and decide the suit as no cause of action arose in Delhi. The defendant further contended that no such contract was executed with the plaintiff, at any time, and no payment was due to be made to the plaintiff.

6. In the replication, the plaintiff reiterated his stand taken in the plaint and controverted the defence of the defendant.

7. On the basis of pleadings of the parties and the documents on record, following issues were framed by an order dated 31.07.2009 :

- (1) *Whether this Court has no territorial jurisdiction to try and entertain this suit? OPD*
- (2) *Whether there is any contract between the parties, as alleged in the suit? OPP*
- (3) *Whether the plaintiff is entitled for the relief claimed? If so, for what amount is the plaintiff entitled to? OPP*
- (4) *Whether the defendants is liable to pay interest; if so, at what rate, for what period and on what amount? OPP*
- (5) *Relief.*

8. To prove the case, the plaintiff examined himself as PW-1 besides producing Hari Mohan as PW-2. The defendant did not examine any witness.

9. I have heard the learned counsel for the parties and have examined the record. Findings on the issues are as under :

Issue No.1

10. The burden to prove this issue was on the defendant. As observed above, the defendant did not examine any witness to show how this Court had no territorial jurisdiction to decide the suit. The plaintiff has stated on oath that an oral agreement to print the question papers for the entrance exam was entered into with him in Delhi at the residence of the Vice Chancellor. Payment of ₹ 10 lacs in advance was also made by

the Vice Chancellor to him at Delhi. The question papers printed in Delhi were delivered to his authorised representative Hari Mohan as instructed by Vice Chancellor. These assertions have remained unchallenged and un rebutted. There is no denial that Sh.A.S.Kukla, Vice Chancellor was not authorised to conduct any such CPMT exam of 2005 or that he was not residing at Delhi. Receipt Ex.P9 for a sum of ₹ 10 lacs paid by Sh.A.S.Kukla, Vice Chancellor to the plaintiff has been admitted. Apparently, part of cause of action arose in Delhi and it attracts the territorial jurisdiction of this Court to entertain and decide the case. The issue is decided in favour of the plaintiff and against the defendant.

Issue Nos. 2 & 3

11. Both these issues are taken together as they are interconnected.

The burden to prove these issues was upon the plaintiff. The plaintiff examined himself as PW-1 and proved the contents of the plaint by way of affidavit Ex.PW-1/A. He also relied upon the documents exhibited as Ex.PW-1/1, Ex.PW-1/2, Ex.PW-3/A to Ex.PW-3/J and documents Ex.PW-1/4 to Ex.PW-1/8. He also proved the documents earlier marked as Ex.P1 to Ex.P9. These were admitted by the defendant

at the time of admission / denial of the documents. It is the categorical version of the plaintiff that on 04.06.2005 he was contacted by the Vice Chancellor and was called at his residence No. 240, Farmers Apartment, Sector-13, Rohini, Delhi. There, in an oral contract, he asked him to print question papers of the entrance examination, CPMT, 2005 which was rescheduled due to cancellation of previous exam. Since confidentiality was to be maintained at all level, no contract in writing was executed. Acting upon the oral agreement, payment of ₹ 10 lacs was made by Sh.A.S.Kukla, Vice Chancellor and receipt Ex.P9 was executed. There is specific mention in Ex.P9 that payment of ₹ 10 lacs in cash was advanced to the plaintiff towards the printing of confidential work related to CPMT 2005 examination. The genuineness of this receipt has not been controverted and denied by the defendant. Rather the document Ex.P9 was admitted by the learned counsel for the defendant during admission / denial. There is no substance in the plea of the defendant that no such receipt was executed and Sh.A.S.Kukla had not made any cash payment of ₹ 10 lacs. There was no occasion for the plaintiff to fabricate the receipt showing payment of ₹ 10 lacs by Sh.A.S.Kukla, Vice Chancellor.

On the contrary, it shows his bonafide whereby he admitted payment of ₹ 10 lacs towards the order for printing of question papers.

12. The plaintiff has further deposed that these question papers, after duly printed, were handed over to PW-2 (Hari Mohan), Nodal Officers and Police Officers present at Ghaziabad. PW-2 (Hari Mohan) has fully corroborated the version given by the plaintiff and has deposed that in 2005, he was the Coordinator for CPMT examination. The Vice Chancellor had directed him to proceed to Ghaziabad for taking delivery and handing over the question papers to the Nodal Officers appointed by him. He stayed in a hotel in Ghaziabad and there met the plaintiff. After getting instructions from the Vice Chancellor, he came to know that these question papers were printed by the plaintiff. The Nodal Officers had given acknowledgments (Ex.PW-1/3A to Ex.PW-1/3J) and also (Ex.P2 to Ex.P8) in token of receipt of the papers. He further deposed that the papers printed by the plaintiff were used in the examination and there was no complaint at all. In the cross-examination, he identified the receipt Ex.P9 and stated that an advance of ₹ 10 lacs was given to the plaintiff. He elaborated that an advance of ₹ 10 lacs was made to him by the University as a Coordinator. Then the Vice Chancellor asked him to submit ₹ 10 lacs in cash because he had to give it to the printer. It was

highly confidential and only the Vice Chancellor knew as to who was the printer. Vice Chancellor made the payment to the printer and handed over the receipt Ex.P9 to him. Later on, when the plaintiff sent the reminder, he gave the said receipt along with reminder and other papers to the Vice Chancellor.

13. The plaintiff has further proved on record the quotation Ex.PW-1/1 whereby the rates and other details find mention. Ex.PW-1/2 is the letter written by the plaintiff to Manager, Safexpress Pvt. Ltd. whereby the material contained in the boxes was dispatched. It bears the seal / stamp of Safexpress Pvt. Ltd. showing receipt of the printed material. Ex.P1, an admitted document, bears signatures of Sh.A.S.Kukla, Vice Chancellor on the letterhead of the defendant University. It confirms that the bearer of this letter was carrying highly confidential material for Uttar Pradesh government. The trucks were duly sealed and the wagons should not be opened without his prior permission. Ex.PW-1/3A to Ex.PW-1/3J are the documents which contain signatures of Nodal Officers whereby different boxes containing printed materials with details for morning / evening session were received by them. Bill Ex.PW-1/4 was raised and an amount of ₹ 38,08,500/- was claimed which the defendant failed to pay.

14. PW-2, an independent witness from the defendant University further deposed that he had received the reminder and copy of the bill. He had signed the copy of that bill and acknowledgment of the copy of the receipt contained his signatures at point 'A'. He received another reminder of the plaintiff in 2006 on which, the Vice Chancellor made a noting to make payment of the remaining amount to the plaintiff and it was marked to him by the Vice Chancellor. He made his noting at point 'A' on the document Ex.PW-2/1. Perusal of the document Ex.PW-2/1 clearly reveals that the payment of ₹ 38,08,500/- was due from the defendant and the Vice Chancellor, who has unfortunately expired, had directed to pay the balance.

15. Despite lengthy cross-examination, version narrated by PW-1 and PW-2 could not be shattered. There is no basis for the defendant to urge that no such agreement had taken place with the plaintiff in the absence of any written contract. Since printing of question papers was a matter of secrecy / confidentiality, it appears that no such instructions, in writing, were given to the plaintiff. The anxiety of the Vice Chancellor was to conceal the source from where the question papers were to be printed. The defendant did not deny that no such exam (CPMT 2005) was conducted at the relevant time. Nothing has been elaborated / explained by

the defendant as to how the question papers meant for CPMT 2005 were printed from any other source and how much payment for the same was made from the accounts of the defendant University. The defendant has suppressed all the relevant documents despite specific directions to preserve the record. Adverse inference is to be drawn against the defendant for not examining any witness in evidence to controvert the specific assertion of the plaintiff supported by PW-2 (Professor Hari Mohan). It was imperative for the defendant to prove on record as to how much payment was given by him to any other particular individual for printing the question papers for CPMT 2005. No such information has been made available and no such record has been produced. Apparently, the payment for the question papers were to be made to the plaintiff. It is not the case of the defendant that any payment for the said exam was made to any specific individual.

16. The plaintiff has proved that pursuant to the oral agreement executed with the defendant, he was entitled to get ₹ 48,08,500/- for the work done by him. He fairly admitted payment of ₹ 10 lacs by receipt Ex.P9. Apparently, the defendant have withheld the payment ₹ 38,08,500/- without any sufficient cause. The plaintiff is entitled to

receive the same. The issues are decided in favour of the plaintiff and against the defendant.

Issue No.4

17. The burden to prove this issue was upon the plaintiff. However, nothing has come on record to infer if there was any agreement between the parties to pay interest on the delayed payment. The plaintiff in his affidavit Ex.PW-1/A did not reveal if at the time of meeting with the Vice Chancellor, at his residence, there was any time schedule for making the payment and in case of delayed payment, interest was to be charged. No such amount as 'interest' was claimed by the plaintiff even when he raised bills (Ex.PW-1/4 & Ex.PW-1/5) on 17.03.2006 after about one year. The plaintiff has claimed the interest as there is mention of it at the bottom of Ex.PW-1/4. This unilateral term and condition mentioned in the printed proforma does not show if the defendant had agreed to pay interest for the unpaid amount. Ex.PW-1/4 and Ex.PW-1/5 do not bear signatures of any of the representative of the defendant. Accordingly, the plaintiff cannot be permitted to claim any interest for the delayed payment. This issue is decided in favour of the defendant and against the plaintiff.

Issue No.5 – Relief

18. In view of the findings on the above issues, suit of the plaintiff is decreed in the sum of ₹ 38,08,500/- with proportionate costs. The plaintiff shall, however, be entitled for interest @ 8%, from the date of filing of the suit, till the date of payment of the decretal amount.
19. Decree-sheet be prepared accordingly.

(S.P.GARG)
JUDGE

NOVEMBER 27, 2014 / tr