

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

+ **C.R.P. No.11 /2014**

% **18th December, 2014**

NORTH DELHI MUNICIPAL CORPORATION & ORS. Petitioners
Through: Ms. Biji Rajesh, Advocate.

VERSUS

M/S. GRAPHISADS PVT. LTD. Respondent
Through: Mr. R.K. Mittal, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit namely North Delhi Municipal Corporation and its two officers impugning the order of the trial court dated 17.8.2013 which has dismissed the application filed by the petitioners/defendants for rejecting the plaint under Order VII Rule 11 CPC on the ground that the suit is barred by limitation.

2. The subject suit for recovery of Rs.20 lacs has been filed by the respondent/plaintiff, who was a registered advertiser of the petitioner no.1. It was the case of the respondent/plaintiff in the plaint that it was given on

15.5.2009, a NOC for displaying advertisements at the site of Nathu Sweets, Okhla-II, Delhi for one signage of 20' X 8', however, this NOC was cancelled and the advertisement/display was illegally removed on 30.3.2010. These facts are averred in para 5 of the plaint. In para 6 of the plaint, it is averred that on account of removal of the advertisement/display, the plaintiff is shown as a thief in the eyes of his clients and that the respondent/plaintiff has been mentally tortured and tensed by the illegal actions of the petitioners/defendants. In this para 6, it is also stated that the image and reputation of the plaintiff has been affected by the illegal actions of the petitioners/defendants. Thereafter in para 7 of the plaint it is stated that the plaintiff had withdrawn the illegal demand notices issued for removal of the advertisement. It is further pleaded in para 7 of the plaint that the respondent/plaintiff has suffered irreparable loss of money, image, reputation and experienced mental tension, agony, harassment at the hands of the petitioners/defendants and therefore the defendants are liable to compensate the respondent/plaintiff an amount of Rs.50 lacs and which as per para 9 has been reduced to Rs.20 lacs for the purpose of recovery in the suit. Paras 5 to 7 and 9 of the plaint read as under:-

“5. That in the year 2008, the Defendant No.1 to augment their revenue, had planned to allow the Parking Contractors to put up the display advertisement signages in the parking areas on revenue

sharing basis. Under the said scheme, our client had entered into various agreements in respect of the various parking sites authorized by them. In pursuant to the said scheme, on the request of the Plaintiff, the Defendant No. 1 had issued NOC on 15/05/2009 in respect of the site of Nathu Sweets, Okhla-II for the signage of 20' x 8' vide NOC dated 15/05/2009 and the Plaintiff had been regularly paying their licence fees to them for the said site and was continuing to display the advertisement for their client, M/s. Essar Hypermart, Essar Steel Limited when on 19/03/2010, the Defendant No.1 illegal cancelled the NOC so granted for the site of the Plaintiff and resorted to illegal removal of the advertisement so displayed on the said side on 30/03/2010 and confiscated the material of the Plaintiff which was so displayed on the site. The Hon'ble High Court of Delhi vide its Order dated 09/04/2010 had set aside the illegal cancellation dated 19/03/2010 of the said site. The Defendants have removed the display material of the Plaintiff without giving any reasonable opportunity or time to the Plaintiff without giving any reasonable opportunity or time to the Plaintiff to take the remedies available to then under law. Not only this, after removal of the advertisement material, the Defendants have claimed removal charges from the Plaintiff vide their letter dated 16/04/2010. Even further at the instance and instructions of the Defendants, the Defendant No.2 and 3 under the powers of the Defendant No.1 have issued demand notices dated 22/04/2010 claiming damage charges to the tune of Rs. 4,23,334/- from the Plaintiff as well as from the client of the plaintiff. The issuance of the said illegal demand notice not only caused immense tension and torture to the Plaintiff but also has resulted in **maligning the image of the Plaintiff** in the eyes of their client namely, M/s.Essar Hypermart, Essar Steel Limited who with the act of the Defendants were made to believe that the Plaintiff is indulged in illegal advertisements.

6) That the Plaintiff earns a **reputation and image** in the advertisement world and stands at 36th position in the best advertisement Company in the World as per the last study with the

branded clients as shown in Annexure-A and is a **well known in the business circle** for the business of advertisement through legal means but issuance of such a demand notice and removal of the display of the Plaintiff had made the **image of the Plaintiff of a thief in the eyes of the client of the Plaintiff** which had resulted in loosing of the business from the said client. Inspite of the requests made by the plaintiff to the Defendants and bringing the fact to their notice that the said notice had been illegally issued by them, they further issued demand notice under Section 154 of DMC Act, 1957 against the Plaintiff for taking coercive action for the recovery of the said amount from the Plaintiff as well as from the client of the Plaintiff. The Defendant had not stopped here but further issued their specific letter dated 06/08/2010 to the Plaintiff again reiterating their illegal demand and threatening them with the dire consequences as stated herein. A copy of the said letter dated 06/08/2010 is being filed hereto which can be read as part and parcel of the parcel of the present plaint. The said illegal demand made by the Defendants not only mentally tortured and tensed the Plaintiff but even the aforesaid client of the Plaintiff had withdrawn his entire business from the hands of the Plaintiff and further threatened to not to give any further business to the Plaintiff and as a result of which the Plaintiff had been put to a loss which **cannot be computed into money terms** as the **image and reputation** of the Plaintiff is worthless. The Plaintiff is having turnover in crores which had been affected due to the illegal acts of the Defendants.

7) That the aforesaid demands made by the Defendants are illegal and unwarranted and being terrorized by the demand made by the Defendant, the Plaintiff approached the Hon'ble High Court of Delhi by way of Writ Petition (Civil) No.8450 of 2010 wherein the Defendants had agreed to withdraw their alleged demand notices dated 14/05/2010, 17/09/2010, 20/08/2010 which itself shown that their demands and notices sent by the Defendants to the Plaintiff and the clients' of the Plaintiff are patently illegal. Earlier to the filing of the writ petition by the Plaintiff, the Defendants have not withdrawn

the said demand notices inspite of repeated requests made by the Plaintiff to the Defendants and by the time the Defendants agreed to withdraw the said demand notices before the Hon'ble High Court of Delhi, the Plaintiff had already suffered irreparable loss of money, loss of image, reputation and experienced mental tension, agony, harassment at the hands of the Defendants for which the Defendants are liable to compensate the Plaintiff to the tune of Rs. 50,00,000/-

9) That the Plaintiff is unable to pay the Court Fees on the said amount of Rs. 50,00,000/- of the loss sustained by the Plaintiff and the plaintiff is only claiming a sum of Rs. 20,00,000/- towards token damages from the Defendants in the present suit.”

(emphasis is mine)

3. On the basis of aforesaid paras constituting the cause of action, and facts of which are consolidated as per para 11 of the plaint, the reliefs are claimed and which is for recovery of Rs.20 lacs alongwith interest. Para 11 of the plaint averring facts with respect to arising of cause of action reads as under:-

“11) That the Plaintiff has got cause of action and right to sue. The cause of action has firstly arisen on 15/05/2009 when NOC for display was granted by the Defendants with respect to the site of Nathu Sweets, Okhla-II, The cause of action had further arisen on 19/03/2010, when the Defendants illegal cancelled the NOC so granted for the said site of the Plaintiff. The cause of action had further arisen on 30/03/2010 when the said advertisement material was removed by the Defendants and the material displayed was confiscated from the site. The cause of action and further arisen on 09/04/2010 when the Hon'ble High court of Delhi had set aside the illegal cancellation dated 19/03/2010 of the site. The cause of action

had further arisen on 16/04/2010 when the Defendants issued their demanding the removal charges. The cause of action had further arisen on 22/04/2010 when the damage charges to the tune of Rs.4,23,334/- were being claimed by the Defendants from the Plaintiff and its client. The cause of action had further arisen on 06/08/2010 when the defendants again issued the letter to the Plaintiff reiterating their illegal demand and threatening. The cause of action had arisen on 14/05/2010, 17/08/2010, 25/08/2010 when the demand letters/notices were issued by the Defendants against the Plaintiff and its client. The cause of action had arisen on various dates when the plaintiff had written letters/given representation against the illegal demands raised by the Defendants. The cause of action had further arisen when the Writ Petition (Civil) No. 8450 of 2010 was heard by Hon'ble High Court of Delhi. The cause of action had further arisen when the notice dated 28/02/2011 was served and issued to the Defendants and no payment was made by the Defendants as per demand made there in nor any reply thereof was sent by the Defendants. Moreover, it is a recurring cause of action which is arising and re-arising at the every moment till the payment is made."

4. It is an undisputed position before me that if the suit is a suit for damages on the basis of alleged tortious actions of the petitioners/defendants, then, the suit will have to be filed as per Articles 75 and 76 of the Schedule of the Limitation Act, 1963 i.e the suit had to be filed within one year when the libel is published or the slanderous words are spoken. So far as any illegal seizure of the goods of the respondent/plaintiff are concerned, Article 80 of the Schedule of the Limitation Act applies, and as per which one year period of limitation is

prescribed commencing from the date of the wrongful seizure of the moveable property under a legal process.

5. Learned counsel for the petitioners/defendants argues that the suit is time barred inasmuch as the suit is only for damages on account of tortious actions which have been stated in paras 5 to 7 and 9 of the plaint, and all of which averments pertain only to either the respondent/plaintiff being mentally tortured, or suffered loss of image, reputation, mental tension, agony and harassment. It is argued that the suit therefore is only a suit for damages on the basis of the alleged tortious acts of the petitioners/defendants and therefore the suit should have been filed within one year from 30.3.2010 when the alleged illegal removal of the advertisement took place by the petitioners/defendants. Learned counsel for the respondent/plaintiff per contra argues that the cause of action and the limitation commenced only when the respondent/plaintiff sent a legal notice to the petitioners/defendants and since the legal notice was sent on 28.2.2011 claiming damages, the suit filed on 12.9.2011 is within limitation. It is also argued on behalf of the respondent/plaintiff that since the petitioners/defendants issued the demand notices on 14.5.2010, 17.8.2010 and 25.8.2010, causes of action will accrue when these demand notices were sent claiming the removal charges.

6. The admitted position before this Court is that the subject suit was filed on 12.9.2011. The question is that whether the suit filed on 12.9.2011 is within limitation with respect to the actions of the alleged illegal removal of the advertisements/display on 30.3.2010, and if cause of action would arise not when the advertisement/display was removed on 30.3.2010 but only when the respondent/plaintiff issued the legal notice on 28.2.2011.

7. Articles 75, 76 and 80 of the Schedule of the Limitation Act, 1963 read as under:-

Article	Description of suit	Period of limitation	Time from which period begins to run
75	For compensation for libel	One year	When the libel is published
76	For compensation for slander	One year	When the words are spoken or, if the words are not actionable in themselves, when the special damage complained of results.
80	For compensation for wrongful seizure of movable	One year	The date of seizure.

	property under legal process		
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8. A reading of the aforesaid Articles of the Schedule of the Limitation Act, 1963 alongwith paras 5 to 7 and 9 of the plaint leaves no manner of doubt that the subject suit is only a suit claiming damages of Rs.20 lacs on account of tortious actions of the petitioners/defendants and which damages are stated to have been caused on account of loss of image of the respondent/plaintiff before its customers and also because the respondent/plaintiff suffered tension, harassment, agony, loss of image and reputation. I may note that for the alleged tortious actions of the petitioners/defendants, a consolidated amount of Rs.20 lacs is claimed as damages. The stray averments in the plaint of loss of earnings are only general averments in the plaint and which is actually a suit claiming loss/damages on account of loss of image etc. A reading of the averments of the plaint as a whole shows that without doubt the suit is a suit for damages as per the law of torts and on account of the alleged wrongful removal of the display/advertisement on 30.3.2010.

9. In my opinion, therefore, the suit filed on 12.9.2011 would clearly be barred by limitation because cause of action with respect to loss of

reputation or damage or any mental torture or tension or agony arose when the alleged illegal action of removal of the advertisement took place on 30.3.2010. Counsel for the respondent/plaintiff is not correct in arguing that cause of action arose for the tortious actions only when the respondent/plaintiff had issued the legal notice dated 28.2.2011 because the sending of the legal notice making a claim is not an action which has caused any loss on account of loss of image, reputation etc etc. Also, sending of legal notices by any party does not cause deferment to the arising of the cause of action.

10. Counsel for the respondent/plaintiff argues that actually the suit is not only for the tortious actions of the petitioners/defendants and the suit is also filed alleging breach of contract on the part of the petitioners/defendants and the loss of earnings on account of breach of contract, however, I am not able to agree with the argument urged on behalf of the respondent/plaintiff for the simple reason that the relevant paras of the plaint which have been reproduced above show that there is no averment with respect to what is the breach of contract, and what is the specific amount of monetary loss caused on account of the so-called breach of contract, inasmuch as and as already stated above, only a consolidated amount of Rs.20 lacs is claimed and which is really the reduced amount

from Rs.50 lacs as stated in last line of para 7 of the plaint which has been reproduced above. I therefore reject the argument urged on behalf of the respondent/plaintiff that the suit is also for recovery of damages for breach of contract inasmuch as no different amounts or separate/bifurcated amounts towards damages on account of loss of reputation etc and the amount for the alleged breach of contract are pleaded, even assuming for the sake of arguments that breach of contract is pleaded. In fact no case of any breach of contract and consequent losses are pleaded in the existing plaint.

11. In view of the above, the impugned order of the trial court dated 17.8.2013 is set aside. Suit of the respondent/plaintiff is held to be barred by limitation and is therefore dismissed as such. No costs.

DECEMBER 18, 2014
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VALMIKI J. MEHTA, J.