

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

+ **RFA No. 893/2017**

% **25th October, 2017**

M/S MANEESH PHARMACEUTICALS LTD. Appellant

Through: Mr. Ashish Mohan, Mr. Rohan
Ahuja and Mr. Mohit, Advocates.

versus

SUSHIL KUMAR BUBNA Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 38074/2017 (for exemption)

1. Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. Appl. Nos. 38072-73/2017 (for delays)

2. These are applications seeking condonation of delays of
128 days in filing the appeal and 145 days in re-filing the appeal.

3. For the reasons stated in the applications the same are
allowed and the delays are condoned.

C.Ms. stand disposed of.

RFA No. 893/2017 and C.M. Appl. No. 38071/2017 (for stay)

4. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the trial court dated 24.9.2016 by which the trial court has decreed the suit for recovery of Rs.12,36,933 along with interest at 18% per annum on account of balance due of the bills raised by the respondent/plaintiff against the appellant/defendant, and which bills were raised for the advertisements of the appellant/defendant aired/exhibited on television by the respondent/plaintiff through independent cable television in the regions of Rajasthan, Western Uttar Pradesh, Eastern Uttar Pradesh and Uttranchal.

5.(i) The facts of the case are that the respondent/plaintiff filed the subject suit pleading that he is carrying on business in the name and style of M/s Panorama Info Media as the sole proprietor thereof. It is pleaded that the respondent/plaintiff aired and exhibited advertisements for the appellant/defendant on cable television as per the instructions/orders placed by the appellant/defendant. For the services rendered by the respondent/plaintiff three bills were raised

upon the appellant/defendant and as detailed in para 1.2 of the impugned judgment:-

“1.2 It has been further stated by the plaintiff, in the plaint, that the plaintiff aired and exhibited certain advertisements on Cable Television namely Independent Cable as per the instructions/orders placed by the defendant. It has been further stated that for the services rendered by the plaintiff, the plaintiff issued bill no. A2Z/07-08/0727 dated 31.07.2007 for the amount of Rs.11,57,308/-, bill no. A2Z/07-08/0817 dated 31.08.2007 for the amount of Rs.11,57,308/- and bill no. A2Z/07-08/0910 dated 29.09.2007 for the amount of Rs.11,57,308/- totaling to Rs.34,70,924/-.”

(ii) With respect to the subject three bills the appellant/defendant issued cheques for part-payment and details of which are stated in para 1.3 of the impugned judgment as under:-

“1.3 It has been further stated by the plaintiff that towards the payment of the amount of the aforesaid bills of the plaintiff, the defendant issued the cheques i.e. the cheque bearing no. 09555 dated 31.07.2007 for the amount of Rs.3,81,872/-, cheque bearing no. 011755 (received by the plaintiff on 28.09.2007) for the amount of Rs.7,63,766/-, cheque bearing no. 848390 dated 26.03.2008 for the amount of Rs.8,00,000/-, cheque bearing no. 687900 (credit online on 17.09.2008) for the amount of Rs.2,50,000/- and the cheque bearing no. 864605 (credited online on 26.09.2008) for the amount of Rs.2,50,000/-, totaling to Rs.24,45,638/-.”

(iii) Respondent/plaintiff pleaded in the plaint that the appellant/defendant deducted TDS of Rs.11,670/- for each bill aggregating to Rs.35,010/- and issued TDS certificates for such amounts to the respondent/plaintiff. Since the balance amount of Rs.9,91,276/- still remained to be paid, hence the subject suit came to be filed.

6. Appellant/defendant contested the suit and pleaded that respondent/plaintiff never supplied details of the advertisements which were aired either through the media or multimedia or in any manner whatsoever. Appellant/defendant pleaded that there was no display of advertisements by the respondent/plaintiff pertaining to the appellant/defendant. It was pleaded that the respondent/plaintiff has not placed on record Beta Tapes or art work with respect to advertisements which are said to be aired by the respondent/plaintiff for the appellant/defendant. Raising of the three bills dated 31.7.2007, 31.8.2007 and 29.9.2007 by the respondent/plaintiff upon the appellant/defendant and that the appellant/defendant received the same was admitted. It was also admitted that after deducting the TDS the appellant/defendant had issued TDS certificates to the respondent/plaintiff and that appellant/defendant had made payments totaling to Rs. 24,45,638/- to the respondent/plaintiff.

7. After pleadings were complete trial court framed by the following issues:-

- “1) Whether the defendant has paid the entire principal amount of the plaintiff as claimed? OPD
- 2) Whether the present suit is maintainable against the defendant? OPP
- 3) Whether the plaintiff has any cause of action against the defendant? OPP

- 4) Whether this court has territorial jurisdiction to try and entertain the present suit? OPP
- 5) Whether the plaintiff is entitled for the amount as claimed by him in the suit? OPP
- 6) Relief.”

8. Respondent/plaintiff proved the three bills dated 31.7.2007, 31.8.2007 and 29.9.2007 as Ex. PW1/2 to Ex. PW1/4. The TDS certificates were exhibited as Ex. PW1/5 and Ex. PW1/6. The statement of accounts of the respondent/plaintiff was proved as Ex. PW1/7.

9. Trial court has decided the issue of liability against the appellant/defendant by observing that: once the appellant/defendant does not dispute that the bills were raised and received by it; that the appellant/defendant had made payment of TDS and issued TDS certificates to the respondent/plaintiff; and that appellant/defendant never before filing of the suit ever sent any communication to the respondent/plaintiff regarding any grievance/defence as stated in the written statement, therefore the defence of appellant/defendant had to be rejected and the suit had to be decreed for the amount as claimed by the respondent/plaintiff. The relevant paras containing necessary discussion and relevant conclusions of the trial court are *inter alia*

paras 6.3, 6.4, 16, 17, 19 and 20 of the impugned judgment and these paras read as under:-

“6.3 DW1 has admitted it to be correct that the amount shown as income tax deducted at source vide Ex.PW1/5 and Ex.PW1/6 were duly deposited by the defendant company with the Income Tax Department on the date mentioned therein as the dates of deposit i.e on 19.10.2007, 23.11.2007 and 07.01.2008. DW1 has admitted it to be correct that the bills Ex.PW1/2 to Ex.PW1/4 pertain to the details given in Ex.PW1/5 and Ex.PW1/6. DW1 has admitted it to be correct that the payments were made much after the dates of the bills.

6.4 DW1 has stated in his cross-examination that he cannot answer the question as to whether the defendant company ever sent any communication to the plaintiff company regarding its grievance/defence as stated in the written statement. DW1 has admitted it to be correct that the TDS certificates Ex.PW1/5 and Ex.PW1/6 were issued on 19.06.2008 much after the date of bills as well as much after the date of the certificates. DW1 has further stated that he has no personal knowledge about the alleged non-telecasting of the advertisements on cable TV etc. as alleged in the written statement and his affidavit. By way of volunteer, DW1 has stated that he has acquired the knowledge on the basis of the record of the company.

XXXXX

XXXXX

XXXXX

16. The case of the plaintiff is squarely based upon three bills dated 31.07.2007, 31.8.2007 and 29.09.2007, which have been placed on record by the plaintiff i.e. PW1 in the form of Ex.PW1/2 to Ex.PW1/4. The issuance of the TDS Certificates dated 19.06.2008 Ex.PW1/5 and Ex.PW1/6 stand admitted by the defendant.

17. The statement of Sh. S.S. Thakkar, the Deputy General of Manager (Sales) of the defendant company was recorded by the Ld. Predecessor of this Court on 06.08.2009. The abovesaid Sh. S.S. Thakkar, the Deputy Manager (Sales) of the defendant company has categorically admitted the issuance of the abovesaid TDS certificates. DW1, in his cross-examination, has also admitted the abovesaid two TDS certificates Ex.PW1/5 and Ex.PW1/6. The bills Ex.PW1/2 to Ex.PW1/4 have also been admitted by DW1 in his cross-examination. There is no denial on the part of the defendant in his written statement so far as the abovesaid three bills are concerned.

XXXXX

XXXXX

XXXXX

19. It has to be seen that the abovesaid two TDS Certificates pertains to the abovesaid three bills Ex.PW1/2 to Ex.PW1/4. The principal amount of Rs.10,30,000/- of each of the bills has been categorically mentioned in the abovesaid two TDS certificates. The abovesaid TDS certificates categorically show that the TDS was deducted alongwith the surcharge, education cess etc. As such, I have no hesitation to hold that the submission

of the defendant, when, it is argued that no material has been placed on record by the plaintiff to show that the advertisements of the defendant were aired by the plaintiff, is of no help to the case of the defendant.

20. This Court cannot loose sight of the fact that there is no denial on the part of the defendant that the abovesaid three bills were raised by the plaintiff for the amount of Rs.34,71,924/-. There is no denial on the part of the defendant that the amount of Rs.24,45,638/-, as stated by the plaintiff in the plaint in para no. 4 of the plaint, was paid by the defendant to the plaintiff. As such, to my mind, it has been rightly argued by the plaintiff that the amount of Rs.9,91,276/- on account of the principal amount still remains to be paid by the defendant.” (underlining added)

10. I completely agree with the aforesaid discussion and conclusions arrived at by the trial court as a result of which the suit of the respondent/plaintiff has been decreed for the balance amount due on the subject three bills.

11.(i) Learned counsel for the appellant/defendant sought to argue before this Court that except the bills in question respondent/plaintiff has not filed any proof that the advertisements were every aired, and it also further argued that in terms of Income Tax Law the appellant/defendant since it maintains its books on accrual basis, thus appellant/defendant had to necessarily issue the TDS certificates for issuance of cheques in favour of the respondent/plaintiff, and hence it is prayed that the impugned judgment is erroneous and needs to be set aside.

(ii) I completely disagree with and reject the arguments urged on behalf of the appellant/defendant, inasmuch as, the appellant/defendant never after receiving of the bills and till the written statement was filed ever raised a grievance that the respondent/plaintiff had not aired the advertisements. Further, it is necessary to note that if there were any issues with respect to advertisements being not aired by the respondent/plaintiff as was alleged by the appellant/defendant then what was the need to issue the cheque for payments. Surely, a commercial entity such as the appellant/defendant would not have issued the cheques for payment (and that too on different dates spread over one year) if there were doubts as to the fact that the advertisements were never got aired/exhibited by the respondent/plaintiff. Trial court, in my opinion, has correctly analyzed the issues and has given correct relevant discussion and conclusions in the aforesaid paras which have been quoted above from the impugned judgment. I, therefore, reject the argument urged on behalf of the appellant/defendant that the impugned judgment is erroneous and has to be set aside.

12. Learned counsel for the appellant/defendant then argued that the trial court has unnecessarily awarded a high rate of interest at

18% per annum, and which argument on the first blush seemed to have substance, however, I note that admittedly transactions are commercial in nature. The Negotiable Instruments Act, 1881, provides rate of interest 18% per annum in terms of Section 80 of the said Act for payment of interest at 18% per annum on account of the dishonoured cheques, and the aforesaid aspects are to be taken with the fact that the pleas of the appellant/defendant have been found to be completely dishonest and the appellant/defendant has been unfairly contesting the suit only to deny the legitimate claim of the respondent/plaintiff which was never disputed prior to filing of the written statement by the appellant/defendant. I, therefore, in the facts of the present case, refuse to reduce the rate of interest, inasmuch as, dishonest people have no right to claim equities in their favour once there are statutory provisions for grant of rate of interest at 18% per annum.

13. In view of the aforesaid discussion, I find that the present appeal is without any merit. The appeal is accordingly dismissed.

OCTOBER 25, 2017
godara/AK

VALMIKI J. MEHTA, J