

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

% **Date of decision: 27th July, 2018**

+ **RSA 108/2018**

SANGEETA AGARWAL

..... Appellant

Through: Mr. J.M. Bari and Ms. Shweta Bari,
Advts.

versus

JAWAHAR LAL NEHRU SPORTS TRUST

.... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.29727/2018 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

RSA 108/2018.

3. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 27th February, 2018 in RCA No.13/17 of the Court of the Additional District Judge (West)] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 20th December, 2016 in CS SCJ No.9937/16 of the Court of the Civil Judge-04 (West)] of dismissal of suit filed by the appellant/plaintiff for recovery of Rs.2,85,000/- along with interest from the respondent/defendant/Trust.

4. The counsel for the appellant/plaintiff has been heard and the copies of the relevant record of the suit filed along with the memorandum of appeal perused.

5. The appellant/plaintiff instituted the suit, from which this appeal arises, pleading (i) that there was a joint organization by the appellant/plaintiff and the respondent/defendant/Trust, of a tournament called Commonwealth High Commission Cricket Tournament held from 24th February, 2007 to 15th April, 2007 at National Stadium, India Gate and Jawahar Lal Nehru Stadium, Lodhi Road, New Delhi and of a cricket match between the Members of Parliament and foreign media held at Delhi Development Authority (DDA) Siri Fort Sports Complex, New Delhi; (ii) that in connection with the said tournament and cricket match, the appellant/plaintiff was instructed to get sponsorship of Rs.3,22,000/- for tournament and of Rs.10,00,000/- for the cricket match; (iii) that there was a tacit agreement with the appellant/plaintiff and the respondent/defendant/Trust that whatever savings would come from the said two events, the same shall be shared by the appellant/plaintiff and the respondent/defendant/Trust equally; (iv) that the appellant/plaintiff came to know that there was a saving of about Rs.5,00,000/- from the said two events, after incurring all the expenses; as such the appellant/plaintiff was entitled to receive a sum of Rs.2,50,000/- from the respondent/defendant/Trust towards her share; and, (v) that the said amount was payable immediately after the said two events and since had not been paid, interest at 24% per annum was also due from the respondent/defendant/Trust to the appellant/plaintiff.

6. Thus, the suit for recovery of Rs.2,85,000/- with *pendente lite* and future interest.

7. The respondent/defendant/Trust contested the suit, *inter alia* pleading, (i) that the respondent/defendant/Trust is a registered Trust for the object of public charities and to carry on social and other charitable activities, purely on non-profitable basis and has been granted an order under Section 80(G) (V) of the Income Tax Act, 1961; (ii) that the respondent/defendant/Trust cannot and does not indulge itself in any kind of understanding/arrangement for making of profit, directly or indirectly; (iii) denying that there was any understanding/arrangement with the appellant/plaintiff, much less a tacit understanding; (iv) denying that the events aforesaid were a joint venture or joint organisation of the parties; (v) that the respondent/defendant/Trust held the said events with the support of its sponsors; (vi) denying that the appellant/plaintiff was asked to get sponsorships for the said events; (vii) the appellant/plaintiff was merely acknowledged by the respondent/defendant/Trust as one of the volunteers who, because of their own volition and charitable interest, supported the respondent/defendant/Trust in holding of the aforesaid events; (viii) denying that there was any savings from the events or in the sum of Rs.5,00,000/-;(ix) on the contrary, the respondent/defendant/Trust, to cover its expenses incurred in organising the subject events, had claimed a sum of Rs.1,37,438/- from SAB Miller and which had not been received till then and it was the stand of SAB Miller that the said payment had been collected by the appellant/plaintiff representing herself to be authorised by the respondent/defendant/Trust in this regard; (x) denying that the appellant/plaintiff arranged the sponsorship of SAB Miller; and, (xi) that the appellant/plaintiff had voluntarily offered her gratis involvement and the said request of the appellant/plaintiff was accepted and the involvement

of the appellant/plaintiff in the events was in such capacity and not as joint venture partner or as co-organiser.

8. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 15th May, 2008:-

- “1. Whether the plaintiff is entitled to decree for a sum of Rs.2,85,000/- as prayed for? OPP.*
- 2. Whether plaintiff is entitled to any relief of injunction as prayed for? OPP*
- 3. Whether plaintiff is entitled to any interest? If so at what rate and for what period? OPP*
- 4. Relief.”*

9. The appellant/plaintiff examined herself in her evidence and the respondent/defendant/Trust failed to lead any evidence.

10. The Suit Court has dismissed the suit, holding/reasoning (i) that the appellant/plaintiff had failed to prove that the respondent/defendant/Trust asked the appellant/plaintiff to arrange for sponsorships or that the sponsorships were arranged by the appellant/plaintiff or that there was any tacit understanding between the appellant/plaintiff and the respondent/defendant/Trust of sharing of any monies; (ii) that there was no merit in the contention of the counsel for the appellant/plaintiff that adverse inference under Section 114(g) of the Indian Evidence Act, 1872 is to be drawn against the respondent/defendant/Trust, because the onus of issues was not on the respondent/defendant/Trust but on the appellant/plaintiff; (iii) that Section 101 of the Indian Evidence Act makes it clear that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those

facts exist; it was thus the duty of the appellant/plaintiff to prove that the respondent/defendant/Trust was liable to pay the amount and not vice-versa; (iv) if the appellant/plaintiff felt that account books of the respondent/defendant/Trust were necessary for the appellant/plaintiff to prove her case, it was for the appellant/plaintiff to summon the same and which had not been done; and, (v) that the appellant/plaintiff had led no evidence whatsoever to show that the sponsorship of SAB Miller was arranged by the appellant/plaintiff.

11. The First Appellate Court dismissed the appeal of the appellant/plaintiff affirming the findings of the Suit Court and further reasoning, (i) that it was not the duty of the respondent/defendant/Trust to bring any evidence to prove the case of the appellant/plaintiff; (ii) that even if any evidence was in possession of the respondent/defendant/Trust, it was for the appellant/plaintiff to take requisite steps for production thereof; (iii) that it could not be believed that the respondent/defendant/Trust, which was admittedly a Trust had entered into any such tacit understanding with the appellant/plaintiff or entered into agreement, without a written document; (iv) the appellant/plaintiff, in cross-examination, admitted that there was no written agreement; (v) that the appellant/plaintiff did not even remember the date of the oral tacit understanding; (vi) the appellant/plaintiff, in cross-examination, admitted that the said oral tacit understanding was with Sunil Dev who was only one of the trustees of the respondent/defendant/Trust; therefrom also it is clear that the alleged tacit understanding was with Sunil Dev and not with the respondent/defendant/Trust; (vii) the authority of Sunil Dev to enter into such an understanding with the appellant/plaintiff on behalf of respondent/defendant/Trust, had not been proved; and, (viii)

hence, even if there was any oral agreement as claimed by the appellant/plaintiff, that was between appellant/plaintiff and Sunil Dev and not with appellant/plaintiff and respondent/defendant/Trust.

12. The counsel for the appellant/plaintiff has drawn attention to the written statement of the respondent/defendant/Trust, where it is *inter alia* pleaded by the respondent/defendant/Trust as under:-

“It is respectfully submitted that the Defendant trust, after being voluntarily offered by the Plaintiff for her gratis involvement in its mega sports and like events, acceded to her request and by marking her the work of normal follow-ups, communications etc. on its behalf and as per its own guidelines with its sponsor, SAB Miller, involved her in its subject event.”

and has argued that the respondent/defendant/Trust having admitted the involvement of the appellant/plaintiff, a presumption has to be drawn that such involvement was for consideration. Reference in this regard is generally made to Section 65 of the Indian Evidence Act, 1872 and reliance is placed on ***T.S. Murugesam Pillai Vs. Manickavasaka Desika Gnana Sambandha Pandara Sannadhi*** AIR 1917 PC 6 quoted with approval in ***Kundan Lal Rallaram Vs. Custodian, Evacuee Property, Bombay*** AIR 1961 SC 1316, deprecating the practice which had grown up in Indian procedure, of those in possession of important documents or information, relying on the abstract doctrine of onus of proof, failing to furnish to the Courts the best material for its decision.

13. As far as reliance on Section 65 of the Indian Evidence Act is concerned, I have enquired from the counsel for the appellant/plaintiff whether not the same requires first proof of an agreement and, where is the

proof in the evidence of the appellant/plaintiff of any such agreement. It has further been enquired as to under which provision of law the appellant/plaintiff is wanting the Court to assume that the involvement of the appellant/plaintiff was under a contract of sharing of profits or under a contract of share of profits in the ratio of 50:50.

14. Though the counsel for the appellant/plaintiff has not given any reply to the aforesaid but refers to Section 70 of the Indian Contract Act, 1872 which provides that where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such another person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

15. The counsel however forgets that for the aforesaid also to apply, it was incumbent upon the appellant/plaintiff to prove that the sponsorship of SAB Miller was arranged for by the appellant/plaintiff. Both the Courts which are final Courts of fact, have held that there is no proof in that respect. Though the counsel for the appellant/plaintiff has also not shown any evidence where the said fact may have been proved but a reading of the evidence of the appellant/plaintiff herself does not show any such thing to have been proved. The appellant/plaintiff did not even examine any witness from SAB Millier to prove having arranged for sponsorship. Merit is also found in the reasoning given by the First Appellate Court, that the event being charitable in nature, there could be no earnings from the sponsorship. A sponsor to an event, also provides sponsorship for social causes and not

for the person instrumental in arranging sponsorship earning commission therefrom.

16. Reliance on the judgments aforesaid is also misconceived in the circumstances. The Courts have rightly held that the appellant/plaintiff was required to prove the earning of Rs.5,00,000/- from the event and which has not been done.

17. The counsel for the appellant/plaintiff has lastly, also referred to page 33 of the paper book, being para 8 of the judgment of the First Appellate Court and has argued that while the Suit Court did not go into the said aspect the First Appellate Court has held that the contract if any was with Sunil Dev and not with the respondent/defendant/Trust. It is contended that this Second Appeal is entitled to be entertained for the reason of this inconsistency only.

18. I am unable to agree. The additional reason given by the First Appellate Court is merely to show improbability of the claim of the appellant/plaintiff in the suit from which this appeal arises.

19. No substantial question of law arises.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 27, 2018

‘pp’..