

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 18 OF 2015

MR. BEATO D'MELLO

... Appellant

Versus

MR. THOMAS RODRIGUES AND 2 ORS.,

... Respondents

Shri Premanand A. Kholkar, Advocate for the Appellant.

Shri Ashwin D. Bhobe, Advocate for the Respondent No. 2.

CORAM:- C. V. BHADANG, J.

DATE : 17th JULY, 2015

ORAL ORDER:

Heard Shri Kholkar, the learned Counsel for the appellant and Shri Bhobe, the learned Counsel for the respondent no. 2.

2. By this second appeal, the appellant-plaintiff is challenging the judgment and decree dated 13.11.2014, passed by the learned Adhoc District Judge, North Goa, Panaji, in Regular

Civil Appeal No. 152/2011. The learned first Appellate Court has thereby dismissed the appeal, confirming the dismissal of the suit being, Regular Civil Suit No. 98/08/C, filed by the appellant for recovery of an amount of Rs.32,000/-.

3. The brief facts are that the appellant is a cable TV operator and had provided services of cable TV network to the respondent no. 3, which is a proprietary concern, of which, the second respondent is the proprietor. According to the appellant, the monthly charges for providing cable TV network were Rs.32,000/-. The suit was filed for recovery of sum of Rs.32,000/-, being the charges for the month of January, 2008. It is not in dispute that the cable TV operator is obliged to obtain the requisite license, which is granted by the competent authority, under the Cable Television Networks (Regulation) Act, 1995 (the Act of 1995, for short). Before the trial Court, the appellant had produced a license dated 13.03.2006, which was for a period of 24 months from 19.01.2005 to 18.01.2007. The learned trial Court came to the conclusion that the appellant was not holding the requisite license for the month of January, 2008 and as such, the

business itself would be against the provisions of the said Act of 1995 and the appellant would not be entitled to claim charges. In view of this, the suit came to be dismissed.

In appeal, the appellant sought to produce a license dated 13.03.2006 for the period from 19.01.2007 to 18.01.2008, by filing an application under Order 41 Rule 27 of the Code of Civil Procedure. That application has been considered by the learned Appellate Court, at the final disposal of the appeal. The perusal of the judgment of the first Appellate Court would show that the said application under Order 41 Rule 27 of the Code of Civil Procedure, was also dismissed, as a result of which, the license dated 13.07.2007, for the period from 19.01.2007 to 18.01.2008, was not allowed to be produced on record. The first Appellate Court has placed reliance on a judgment dated 31.05.2011, of the Delhi High Court, in the case of **Mohan Lal Bakolia Vs. Bishan Pawar**, Case No. R.S.A. No. 144/2008 and C.M. No. 8861/2008, in order to hold that in the absence of requisite license, the appellant would not be entitled to claim charges and as such, the findings of the trial Court were confirmed.

4. It is submitted by Shri Kholkar, the learned Counsel for the appellant that the Courts below failed to properly consider the effect of Section 16 of the Act of 1995. It is submitted that mere absence of the license, would not render the contract between the appellant and respondent nos. 2 and 3, void or against public policy. It is submitted that reliance on the decision of the Delhi High Court, in the case of **Mohan Lal Bakolia** (supra) is also misplaced, as the facts in that case are distinguishable. It is submitted that the first Appellate Court ought to have allowed production of document, namely, the license dated 13.07.2007. It is submitted that the second appeal involves substantial question of law, based on interpretation of Section 16 of the Act of 1995 and for the matter of that, Section 23 of the Indian Contract Act.

5. On the contrary, it is submitted by Shri Bhobe, the learned Counsel for the respondent no. 2, that it is obligatory for the cable operator to obtain a license for conducting the business. It is submitted that the witness for the appellant was specifically cross examined on the aspect, whether he was holding any license

for the period 19.01.2007 to 18.01.2008 and it was said that the appellant was not having any document. Thus, the first Appellate Court had rightly not allowed the appellant to produce the license dated 13.07.2007. It is submitted that there was also a dispute about the monthly charges payable. The learned Counsel has referred to paragraph 20 of the judgment of the first Appellate Court, in order to submit that, an amount of Rs.15,100/- was payable to the appellant and that was also tendered, as a cheque was kept ready. All these facts were mentioned in the notice reply by the respondents and this aspect was suppressed in the plaint. It is submitted that the provisions of Section 16 of the Act of 1995, which makes the conduction of such business, in the absence of the license, a punishable offence, would certainly render the contract void and as such, the Courts below have rightly dismissed the suit.

6. I have considered the rival circumstances and the submissions made. The material fact about the appellant conducting the business of a cable TV operator and respondent nos. 2 and 3, availing the said services is not in dispute. It also

appears that before the trial Court, the only license produced on behalf of the appellant was for the period from 19.01.2005 to 18.01.2007. It would be necessary, at this stage, to refer to the provision of Sections 3 and 16 of the Act of 1995, which reads as under:

"3.Cable television network not to be operated except after registration — No person shall operate a cable television network unless he is registered as a cable operator under this Act.

16. Punishment for contravention of provisions of this Act — [1] Whoever contravenes any of the provisions of this Act shall be punishable,—

(a) for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both;

(b) for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees."

7. A conjoint reading of Sections 3 and 16 of the Act of 1995 would show that no person can operate a cable TV network, unless he is registered as a cable operator under the Act. Thus, the Act which is enacted to regulate the operation of cable TV network not only, prohibits conduction of the business as a cable TV operator without license, but, under Section 16 of the Act of 1995, conduction of such a business, without license, is made a punishable offence. Even so far as the license dated 13.07.2007 is concerned, it does not pertain to the whole of the month of January, 2008, as it is only upto 18.01.2008 and the claim of the appellant was for the entire month of January, 2008. It would be obvious that when a particular act is regulated by a statute and the law prescribes license by the competent authority and makes breach of the said provisions an offence, the business conducted in the absence of the license, is clearly against public policy.

8. Section 23 of the Contract Act is the consideration or object of an agreement is lawful, if it is forbidden by law. In the case of **Mohan Lal Bakolia** (supra), the plaintiff has come with a case that the defendant, who was a tenant had offered to vacate

the premises and in lieu thereof, had accepted the sum of Rs.50,000/-. The Delhi High Court after considering the provisions of Section 24 of the Contract Act had held that agreement would be illegal. In the circumstances, no fault can be found with the concurrent findings recorded by the Courts below dismissing the suit.

9. In the result, the appeal is without any merit and is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

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