

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06-09-2016

Pronouncement Date: 19-09-2016

Coram:

The Hon'ble Mr. Justice A.SELVAM

and

The Hon'ble Mr. Justice P.KALAIYARASAN

O.S.A.No.363 of 2008

Mr. V. Krishnamurthy
Sole Proprietor & Chief Executive
M/s. Meena Advertisers
142, Eldams Road
Teynampet, Chennai - 18 ... Appellant/Defendant

Vs.

M/s. Kasthuri & Sons Ltd.,
Kasthuri Building
No.859 & 860, Anna Salai
Chennai - 600 002
rep. by its Joint Managing
Director Mr. N. Murali ... Respondent/Plaintiff

Original Side Appeal preferred under Clause 15 of Letters Patent read with Order XXXVI Rule 1 of Original Side Rules against the order of this Court dated 22-08-2007 made in C.S.No.527 of 1998.

For Appellant : Mr. G. Rajagopalan, Senior Counsel
for M/s.G.R. Associates

For Respondent : Mr.M.S. Murali
for M/s. R and P Partners

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY A.SELVAM, J.)

Challenge in this Original Side Appeal is to the judgment and decree dated 22-08-2007 made in C.S.No.527 of 1998 by the learned Single Judge of this Court.

2. The respondent herein, as plaintiff, has instituted C.S.No.527 of 1998 on the file of this Court praying to pass a money decree to the tune of Rs.72,61,780.75p (Rupees Seventy two lakhs Sixty One thousand Seven hundred eighty and seventy five paise only) wherein the present appellant has been shown as sole defendant.

3. The material averments made in the plaint are that the plaintiff is a publisher of the well-known English Daily, "The Hindu" and other publications like Frontline, Business Line, Sportstar etc. During course of its business, the plaintiff has to obtain advertisements for its publication. The defendant has been granted advertisement rights in connection with advertisement of VII South Asian Federation Games, 1995 by the Government of Tamil Nadu in its Letter No.5187-A/Advt/96-1 dated 20-02-1996. In pursuance of the said order, the defendant has issued release orders to the plaintiff on various dates for publication of certain advertisements and accordingly, the plaintiff has published the same. As per the agreement between the plaintiff and defendant, the defendant has been given a credit period of sixty days from the date of publication to pay the publication charges. If the defendant fails to pay charges within sixty days, he is liable to pay interest at 24%. The defendant contrary to the agreement has neglected to pay publication charges to the plaintiff. The amount of Rs.46,31,237.75p(Rupees Forty Six lakhs thirty one thousand two hundred thirty seven and seventy five paise only) is due from the defendant. The plaintiff has repeatedly issued reminders to the defendant, but no fruitful action has come out and ultimately, issued a legal notice and even after receipt of the same, the defendant has failed to settle the amount. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the defendant, it is averred that at the outset the present suit is bad for non-joinder of necessary party, since the plaintiff has failed to implead the Government of Tamil Nadu. The Government of Tamil Nadu has failed to release the amount due to the defendant. Under the said circumstances, the defendant is not able to pay the due amount to the plaintiff. The plaintiff is fully aware of the same. The defendant has filed a Writ Petition, W.P.No.5251 of 1997 against the Government of Tamil Nadu. Against the order passed therein, Writ Appeal, W.A.No.669 of 1997 has been filed and the same is pending and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the learned Single Judge has framed necessary issues and after analysing both the oral and documentary evidence has decreed the suit to an extent of Rs.42,38,877.77p (Rupees Forty Two lakhs Thirty Eight thousand Eight hundred Seventy seven and seventy seven paise only).

The judgment and decree passed by the learned Single Judge are being challenged in the present Original Side Appeal by the defendant as appellant.

6. The learned Senior Counsel appearing for the appellant/defendant has contended to the effect that as per Ex-P2, Government of Tamil Nadu has passed its order and there is no privity of contract between the plaintiff and defendant in respect of making advertisements and the Government of Tamil Nadu is liable to pay the amount due to the plaintiff, since the plaintiff has failed to implead the Government of Tamil Nadu, the present suit is bad for non-joinder of necessary party and the learned Single Judge has failed to consider the same and therefore, the judgment and decree passed by the learned Single Judge are liable to be set aside.

7. In support of the contentions put forth on the side of the appellant/defendant, the decision rendered in A.S.No.446 of 2011 dated 23-08-2016(M/s. Inter Asia Impex Vs. M/s. Freightscan Global Logistics Pvt. Ltd., (CDJ 2016 MHC 4527)) by the Division Bench of this Court is relied upon wherein this Court has dealt with Section 230 of the Indian Contract Act, 1872. Section 230 of the Indian Contract Act, 1872 reads as follows:

"230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal. - In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them."

A mere perusal of the said section would go to show that if any contract is made by an agent on behalf of his principal, the agent cannot be made liable.

8. To controvert the contentions put forth on the side of the appellant/defendant, the learned counsel appearing for the respondent/plaintiff has befittingly contended that the plaintiff has made advertisements only on the basis of release orders given by the defendant and therefore, the defendant is personally liable to pay the amount mentioned in the judgment and decree passed by the learned Single Judge. Under the said circumstances, the argument put forth on the side of the appellant/defendant is liable to be rejected.

9. In support of the contention put forth on the side of the appellant/defendant, Section 233 of the Indian Contract Act, 1872 is relied upon and the same reads as follows:

"233. Right of person dealing with agent personally liable - In cases where the agent is personally liable, a person dealing with him may hold either him or his principal or both of them liable."

A plain reading of the said section would clearly indicate that if contract is made where an agent is personally liable, the agent or principal or both liable to pay the amount, in question.

10. In the instant case, the entire plaint proceeds on the basis of Exs-P3 and P4 series. Exs-P3 and P4 series are nothing but release orders and the same have been issued by the defendant to the plaintiff. Only on that basis, the advertisements, in question, have been published by the plaintiff. Ex-P5 series are nothing but reminder issued by the plaintiff to the defendant. Ex-P6 series are the letters from the defendant where the defendant has acknowledged the amount due from the plaintiff.

11. From the Exhibits referred to supra, it is easily discernible that a contract has been created in between the plaintiff and defendant with regard to publication of advertisements. Since the defendant itself has issued release orders to the plaintiff, the defendant is legally liable to pay the amount mentioned in the judgment and decree.

12. The main contention put forth on the side of the appellant/defendant is that since the State Government has not been impleaded as one of the defendants in the present suit, the same is bad for non-joinder of necessary parties.

13. Considering Exs-P3 and P4 series, this Court is of the definite view that impleadment of the State Government is totally unwarranted and further Section 230 of the Indian Contract Act, 1872 is not at all applicable to the facts and circumstances of this case.

14. In the light of the discussion made earlier, it is clear that the argument put forth on the side of the appellant/defendant is sans merit, whereas the argument put forth on the side of the respondent/ plaintiff is really having acceptable force. The learned Single Judge after considering the overall evidence available on record has rightly decreed the suit to the extent mentioned supra and this Court has not found any infirmity or illegality in the judgment and decree passed by the learned Single Judge and altogether, the present Original Side Appeal deserves to be dismissed.

In fine, this Original Side Appeal is dismissed with costs. The judgment and decree dated 22-08-2007 passed in C.S.No.527 of 1998 by the learned Single Judge are confirmed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The Sub Assistant Registrar
Original side, HighCourt, madras.

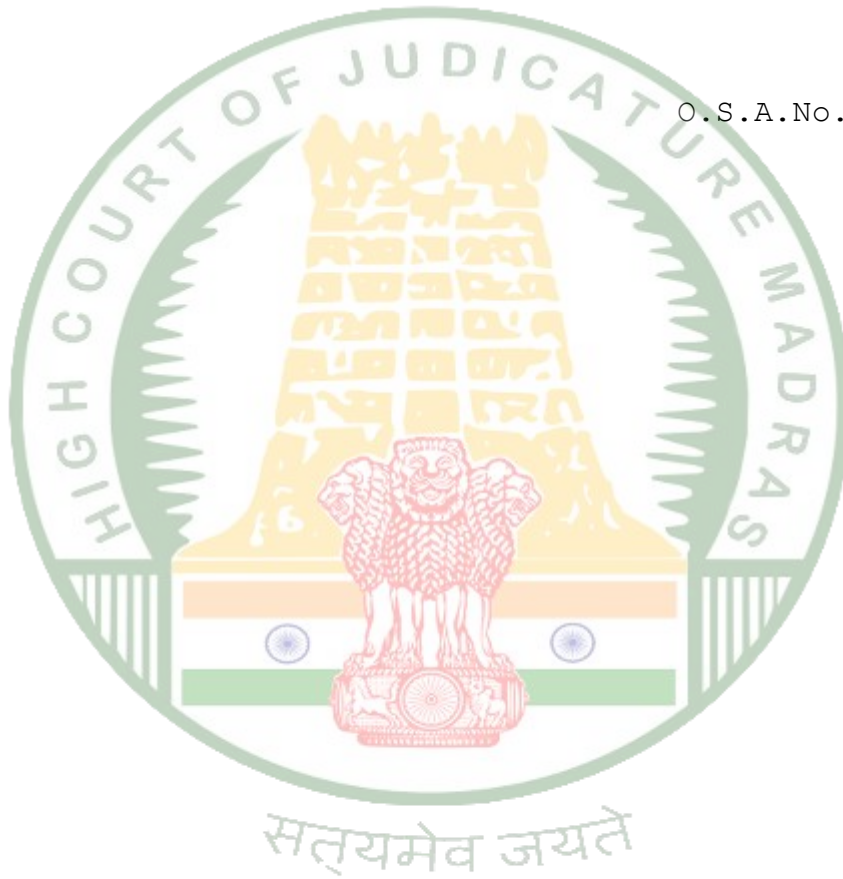
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