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

\+ CS(OS) 379/2011 & IA No. 12975/2016

DELHI TRANSPORT CORPORATION ..... Plaintiff

Through: Ms Avnish Ahlawat with Ms Latika Chaudhary, Advocates.

versus

M/S ROSE ADVERTISING PVT LTD ..... Defendant

Through: Mr P.S. Bindra, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **15.11.2016**

VIBHU BAKHRU, J

IA No. 16539/2012

1. The defendant has filed the present application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (hereafter 'the CPC'), *inter alia,* praying that the plaint be rejected.

2. The principal ground for seeking rejection is that the above captioned suit - which is for recovery of money - is barred by limitation.

3. Mr P.S. Bindra, learned counsel appearing for applicant/defendant has drawn the attention of this Court to paragraph 10 of the plaint which reads as under:-

> "10. That the cause of action first arose in the year 2001 when there was a publication in the newspaper and thereafter again in 2001 when the award was sent to the defendant and thereafter again in 2001 when the agreement was signed between the parties, thereafter

> also arose on 17.10.2001, 20.10.2001, 09.11.2001, and 08.04.2003 when the other four agreement was signed between the plaintiff and defendant and there after also arose in the year 2004 when the defendant stopped making the payment to the plaintiff. Further arose on 12.04.05, 06.06.05, 17.06.05 till today as the several communications were held between the Plaintiff and Defendant for outstanding amount. And thereafter on 27.05.09, 23.11.09 and 02.12.09 when the plaintiff wrote several letter to the defendant for the recovery of the amount, and thereafter arose on 06-07-2010 when the plaintiff send the letter with special Audit Report for the above mention outstanding amount. That the cause of action is still in continuing one."

4. Mr Bindra, states that the alleged liabilities claimed by the plaintiff are stated to have accrued in the year 2001-05; the present suit has been filed in 2011 and is, thus, beyond the period of limitation, which under Article 113 of the Limitation Act, 1963 is three years.

5. Ms Ahlawat, learned counsel appearing for the plaintiff countered the submissions made by Mr Bindra. She does not dispute that the liability accrued during the period 2001-05, but states that bills were raised subsequently and the last bill was raised on 12.06.2008. She states that since the defendant did not deny the said liability but on the contrary asked for clarification of the amount dues, the suit was within the period of limitation.

6. She referred to a letter dated 23.11.2009 sent by the plaintiff and the defendant's response dated 27.11.2009 in support of her contentions. By the letter dated 27.11.2009, the defendant had requested the plaintiff to provide the details of the amounts claimed as well as photocopies of the bills in question. She submits that the said bills were thereafter provided on

02.12.2009 and the suit filed was within the period of three years from these dates.

7. I have heard the learned counsel for the parties.

8. The plaintiff had published a Notice Inviting Tender (NIT) in the Newspapers on 26.08.2001, 16.09.2001, 16.10.2001 and 16.09.2002 for display of advertisements on DTC Bus Queue Shelters and Time keeping booths. The defendant submitted its bids pursuant to the said NIT, which were accepted and the plaintiff by its letters dated 12.09.2001, 12.10.2001, 02.11.2001 and 25.10.2001 awarded contracts to the defendant. Subsequently, five separate agreements - dated 17.10.2001, 20.10.2001, 09.11.2001 and 08.04.2003 - were executed between the parties in respect of five different zones.

9. The plaintiff alleges that it had sent several letters to the defendant for payment of the outstanding amount but the defendant replied in an evasive manner.

10. It is claimed that as on 31.10.2004, a sum of ₹43,57,473/- was due and payable and, accordingly, the plaintiff has claimed a sum of ₹1,06,05,234/- which includes interest at the rate of 24% per annum from 01.11.2004 till 31.10.2010. It is apparent from the averments that according to the plaintiff, defendant was liable to pay an aggregate sum of ₹43,57,473/- as on 31.10.2004 but had not acknowledged the said dues; this is clear from the plaintiff's averment that the defendant's replies to the demands made by it were evasive. The plaintiff has further produced several bills which were sent to the defendant upto 12.06.2008. It is seen

that most of the bills sent after 2006 pertained to interest calculated at 24% per annum. There is no communication of the defendant acknowledging the alleged debt. On the contrary, by letter dated 28.06.2006, the defendant had clearly requested CMD, DTC to appoint an arbitrator to finalise the issues. Thereafter, by a letter dated 10.08.2006, the defendant had called upon the plaintiff not to raise unwanted bills to avoid litigation. Admittedly, the plaintiff had not taken any steps to appoint an arbitrator. However, it is clear from the above that the disputes had arisen between the parties and, in the circumstances, it cannot be stated that the defendant had acknowledged the amount payable to the plaintiff.

11. Ms Ahlawat's contention that the defendant's letter dated 27.11.2009 extends the period of limitation, is clearly unmerited. A plain reading of the said letter indicates that the defendant had informed the plaintiff that it was unable to accept the statement of outstanding sent by the plaintiff. The fact that the defendant had called upon the plaintiff to sent photocopies of the bills and a correct statement does not in any manner indicate that the defendant had acknowledged its liability.

12. Thus, the suit is clearly barred by the limitation.

13. The plaintiff has also filed an application under Order 6 Rule 17of the CPC (No. 12975/2016) seeking amendment of the plaint by introducing paragraphs 10B and 10C in the plaint (in addition to paragraph 10 which relates to the cause of action). The proposed paragraphs are set out below:-

> "10B. That the cause of action also arose when defendant sent letter dated 10.8.2006 for appointment of arbitrator instead of

> making payment of the outstanding license fee. The cause of action continued on 16.11.2009 and 27.11.2009 when defendant asked for detailed statement of outstanding from plaintiff. The cause of action also continued on 23.11.2009 and 2.12.2009 when plaintiff provided defendant with the statement of outstanding dues with copy of bills along with details of payment made by defendant, but defendant still did not make the payment.
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> 10(C). That the present suit is within limitation and has been filed within time from the date the last bills were raised but not paid."

14. A plain reading of the aforesaid paragraphs clearly indicate that the same seek to include averments similar to the contentions advanced by Ms Ahlawat. The said contentions been considered thus, the outcome of the defendant's application would be no different even if the plaintiff is permitted to amend the plaint.

15. Accordingly, the defendant's application (IA16539/2012) is allowed. The above captioned suit is dismissed. Pending application stands disposed of. The Parties are left to bear their own costs.

VIBHU BAKHRU, J

NOVEMBER 15, 2016
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