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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 362/2015 & C.M. No.7671/2015

M/S ASHIMA INFRASTRUCTURES PVT LTD

..... Petitioner

Through Mr. Rakesh Tiku, Sr. Adv. with Mr.
B.L. Wali and Mr. Sandeep Kumar,
Advs.

versus

EAST DELHI MUNICIPAL CORPORATION

..... Respondent

Through Ms. Mini Pushkarna, Standing Counsel
with Ms. Anushruti and Ms. Yoothica
Pallavi, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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10.02.2016

The petitioner is aggrieved by the impugned order dated 21.02.2015 passed by the Additional District Judge who had set aside the order passed by the Civil Judge dated 22.05.2014. Vide the first order dated 22.05.2014 on the application filed by the plaintiff (M/s Ashima Infrastructures Pvt. Ltd), the injunction sought for by him had been granted in his favour. The impugned judgment had reversed this order. The plaintiff/petitioner before this Court is aggrieved by that finding.

Record shows that the plaintiff had filed a suit for perpetual and mandatory injunction seeking a restraint against the defendant from interfering in the display of the advertisements at the site which had been allotted to him and to continue with the display of these

advertisements. He had also asked for the NOC from the defendant in the suit. Along with this suit, he had filed an application under Order XXXIX Rules 1 & 2 of the CPC seeking an ad-interim restraint order. The first Court i.e. the Court of Civil Judge had passed order in favour of the plaintiff. The impugned order as noted supra had reversed it.

In the course of arguments, learned counsel for the respondent submits that there was no concluded contract between the parties and the offer which was given to the plaintiff still remains an offer alone. Submission being that this contract has not been signed by the Department and thus the order passed by the Appellate Court suffers from no infirmity.

This position is disputed. Learned senior counsel for the petitioner has drawn attention of this Court to an agreement dated June, 2013 entered into between the parties. His submission is that this agreement was duly acted upon and pursuant to this agreement, monthly license fee of Rs.1,27,000/- was being regularly paid by the petitioner/plaintiff to the respondent and this amount was accepted without any demur and as such it does not now lie in the mouth of the respondent to argue to the contrary. The receipts showing payment of Rs.1,27,000/- regularly up to August, 2015 have been placed on record. This submission is in fact not disputed by the learned counsel for the respondent. Her submission is that monthly license fee of Rs.1,27,000/- was being accepted by the Department only for the reason that the plaintiff had continued to put the hoardings at the site which was against the terms of the un-concluded contract between the parties.

Learned senior counsel for the petitioner has also drawn attention

of this Court to a letter dated 04.02.2016 wherein the enclosed pay order of Rs.2,65,471/- towards the entire monthly license fee which amount had been accepted by the respondent.

Noting the above factual matrix and the admitted position being that since the license fee of Rs.1,27,000/- is regularly being paid by the plaintiff to the respondent and which has been accepted right up to date without a demur, the right of the plaintiff to continue to display the hoardings cannot at this stage be interfered with.

The submission of the learned counsel for the respondent that there is no concluded contract between the parties is the subject matter of trial. This Court has been informed that the next date fixed before the Trial Judge is 04.03.2016 when the matter is listed for framing of issues. The Trial Court shall endeavour to dispose of the suit expeditiously preferably within a period of one year.

Petition disposed of.

INDERMEET KAUR, J

FEBRUARY 10, 2016

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