

\$~5

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

% *Date of Decision : September 16, 2016*

+ **RFA(OS) 48/2016**

ADVERT COMMUNICATIONS PVT LTD Appellant
Represented by: Mr.Girdhar Govind, Advocate with
Ms.Neetu Singh, Advocate

versus

JSL MEDIA LTD Respondent
Represented by: Mr.Abhimanyu Bhandari, Advocate
with Ms.Navneet S.Sehgal, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. While issuing notice in the appeal it was recorded in the order dated August 16, 2016 that the appellant's plea of suit being barred by limitation raised in paragraph 16 of the application seeking leave to defend has not been considered by the learned Single Judge while declining appellant leave to defend the suit filed by the respondent.

2. The respondent filed a suit invoking Order XXXVII of the Code of Civil Procedure, 1908. It was the case of the respondent that it had various Bus Queue Shelters (BQS). The appellant approached the defendant to permit it to display advertisements of its clients. Various e-mails were exchanged and it was agreed that sites would be made available at agreed rates on purchase orders placed by the appellant. The appellant deposited by

way of security ₹1 crore. Thereafter on various dates purchase orders were issued and sites were made available to the appellant. Bills were raised from time to time. A sum of ₹1,37,43,911/- became due and payable. Respondent raised a demand on December 19, 2013 upon the appellant. No payment being received another communication dated December 27, 2000 was sent informing the appellant that security deposit in sum of ₹1 crore was adjusted and thus ₹37,43,911/- be paid.

3. The suit seeks decree in sum of ₹37,43,911/- together with interest.

4. The rate at which interest is prayed for is not mentioned in the plaint and neither in the prayer clause.

5. Be that as it may, the appellant filed an application seeking leave to defend pleading that there was no privity of contract between the parties. Bills raised were denied. Purchase orders being placed were denied. It was pleaded that the suit was barred by limitation.

6. Relevant would it be to note that in the application seeking leave to defend the appellant did not deal with the averment in the plaint that when the terms of the agreement were finalized through e-mails the appellant deposited with the respondent a sum of ₹1 crore.

7. Highlighting that in its letter dated December 30, 2013, responding to the respondent's letters dated December 19, 2013 and December 27, 2013, the appellant did not deny the agreement as alleged in the plaint nor did it deny placing purchase orders, denial being simply that having checked up the books of account of the appellant no amount was payable, the learned Single Judge has held that the defence was a ruse. Declining leave to defend, the suit has been decreed with interest @12% per annum from the date when the suit was filed till recovery is made.

8. Letter dated December 30, 2013 written by the appellant to the

respondent in response to the respondent's letters dated December 19, 2013 and December 27, 2013; the former informing that ₹1,37,43,911/- is due and the latter informing that after adjusting ₹1 crore, ₹37,43,911/- is payable, the appellant responded as under:-

*"To,
M/s. JSL Media Limited
Jindal Centre, 12, Bhikaji CAMA Place,
New Delhi-110066*

Sub: Outstanding of ₹37,43,911/-

*Dear Sir,
Please refer to your office letter dated 19.12.13 and 27.12.13. In this regard please be informed that I have checked your ledger account in our books (Advert Communications Pvt. Ltd.), there is no outstanding amount payable to your Co. (JSL Media Ltd.) as on date*

*Regards,
Sincerely Yours,*

For Advert Communications Pvt. Ltd.

*Sd/-
(Authorized Signatory)*

9. Confronted with the letter and called upon to justify its existence in light of the application seeking leave to defend when there is a total denial of any dealing between the parties, learned counsel for the appellant has no answer. Confronted with the question as to what would be the effect of the appellant not controverting respondent's assertion in its letter dated December 27, 2013 that security deposit in sum of ₹1 crore was adjusted; learned counsel for the appellant has no reply.

10. We therefore concur with the view taken by the learned Single Judge that the defence raised is a moonshine and the appellant is liable to pay the

suit amount.

11. The demand is upon a written contract; the purchase orders.

12. That leaves the issue of limitation be dealt with. The learned Single Judge has not dealt with the same.

13. Learned counsel for the respondent states that though pleaded in paragraph 16 of the application seeking leave to defend that the suit was barred by limitation, the appellant did not argue said aspect before the learned Single Judge.

14. It is trite that where the grievance is that a point raised has not been dealt with by a Court, before approaching the Appellate Court attention of the Court which had passed the order should be drawn to said aspect. The reason being that many a times pleas are taken in writing but given up during arguments.

15. But we did not defeat the claim of the appellant on this technical score.

16. In the plaint it has been averred that a running account was being maintained. In the reply to the application seeking leave to defend it has been averred that a running account was being maintained. In that view of the matter decision dated December 21, 2011 in RFA(OS) 13/2002 Bharat Skins Corporation vs. Taneja Skins Company Pvt. Ltd. passed by a Division Bench of this Court would come to the rescue of the respondent.

17. As per said decision Article 113 would apply to a suit where prayer is for recovery of money due on a running and a current account. The limitation would commence when the right to sue would accrue i.e. when claim was denied.

18. We therefore hold that the suit was within limitation.

19. Realizing that respondent's money is stuck, learned counsel for the

respondent makes an offer and wants the same to be recorded in our decision. The offer is that if within 60 days from today the appellant pays to the respondent the sum of ₹37,43,911/- together with interest @6% per annum from the date of the suit till date of payment the respondent would accept the same in satisfaction of the decree i.e. would waive right to receive further 6% interest. We note that as per the decree interest awarded to the respondent is @12% per annum from the date when the suit was filed till realization. Dismissing the appeal we take on record the statement made by the respondent, advising the appellant to take the benefit of the offer given. If sum of ₹37,43,911/- is paid within six months from today it would be tendered with interest @6% per annum from the date of the suit till recovery. This would be as per the concession given by learned counsel for the respondent. The decree otherwise being affirmed, consequences shall flow if benefit of the offer is not availed of by the appellant.

20. Parties shall bear their own costs in the appeal.

CM No.20560/2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 16, 2016
dkb