

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 14.09.2017

JUDGMENT PRONOUNCED ON : 31.10.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

AS.No.357 of 2013
and MP.Nos.1 and 2 of 2013

1.The Director
Directorate of Information & Public Relations
Government of Tamil Nadu
Chennai-9.

2.The Commissioner,
Directorate of Rural Development & Panchayat Raj,
Government of Tamil Nadu,
Chennai-15.

3.The Secretary to Government,
Rural Development & Panchayat Raj,
Government of Tamil Nadu
Chennai-9.

Vs.

... Appellants

M/s.Graphic Connections,
Advertising (Madras) Pvt Ltd.,
represented by its Managing Director,
C.Durai Babu
No.5-F, 5th Floor, JP Tower,
7/2, Nungambakkam High Road, Chennai-34.

... Respondent

PRAYER : Appeal suit is filed to set aside the judgment and decree dated 15.02.2013 made in OS.No.12519 of 2010 on the file of the VI Additional City Civil Court, Chennai.

For appellants : Mr.S.Karthikeyan, Government Advocate
For respondent : Mr.K.Gajendran.

JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

The Appeal suit is filed to set aside the judgment and decree dated 15.02.2013 made in OS.No.12519 of 2010 on the file of the VI Additional City Civil Court, Chennai.

2. The appellants/defendants are the Government Department. The respondent/plaintiff is the advertising agency.

3. The appellants entrusted the advertising work to the respondent, after executing the advertisement in the said Tamil Daily "Dinamalar" on the specified day and the invoices were sent to respective Panchayatraj Department of various Districts vide invoice Nos.8624 to 8653 dated 14.10.2008 amounting to Rs.66,182/- each, in all Rs.19,85,460/-. Out of the total amount, the appellants paid a sum of Rs.4,38,509/- by way of cheque leaving the balance sum of Rs.15,46,951/-. Hence, the respondent/plaintiff filed the suit for recovery of money. The suit is decreed, against which, the appellants/defendants filed the present appeal to set aside the judgment and decree made in OS.No.12519 of 2010.

4. The averments made in the plaint by the respondent/plaintiff before the trial Court is that the first appellant directed the respondent to execute the advertisement as per specifications for 30 panchayatraj Departments on various Districts in State of Tamil Nadu to be published in a leading Tamil Daily "Dinamalar" Tamil Nadu Edition on the day of 10.10.2008 with reference to the letter of appellants No.4831 dated 07.10.2008. The respondent executed the advertisement in the Tamil Daily and the invoices were sent to the respective panchayatraj department of various districts vide invoice No.8624 to 8653 dated 14.10.2008 amounting to Rs.66,182/- for each advertisement totalling in all Rs.19,85,460/- and a copy of which also sent to the 1st appellant for reference. Out of the total sum of Rs.19,85,460/- the appellants paid a sum of Rs.4,38,509/- by way of cheque leaving the balance of Rs.15,46,951/-. The respondent approached the appellants on several occasions for payment of balance of Rs.15,46,951/- the appellants have not responded, hence the respondent sent a legal notice dated 04.01.2010 calling for the appellants to pay the balance amount. In reply, the Under Secretary to Government directed the 2nd appellant in and by his letter dated 18.01.2010 to consider the demand of the respondent and a copy of the same is marked to the counsel for the respondent. Subsequently, the 1st appellant sent a detailed reply dated 01.03.2010 to the legal notice dated 04.01.2010 to the counsel for the respondent denying the claim of the respondent on false grounds. Hence,

the present suit is filed by the respondent/plaintiff for recovery of money.

5. The appellants 1 and 2/defendants 1 & 2 filed the written statement before the trial Court, the 3rd defendant adopted the same. The averments made in the written statement is that release order No.4831/Tender/2008 dated 07.10.2008 a copy of draft advertisement along with CD pertaining to AGAMT scheme was given to the advertising agency so as to publish it as a one page advertisement in "Dinamalar" on 10.10.2008. The advertisement should be in one page and the advertisement should be in "3para x 15cm" at a cost of Rs.1,440/- per sq.cm. According to the above said specifications, the charges for the advertisement will be only Rs.4,38,509/-. The advertising agency has altered the format of the advertisement neither with the knowledge of the Director or Information and Public Relations nor with the consent of the Commissioner of Rural Development and Panchayatraj whom is an authorised person to give consent for alteration if any. The agency has expanded it to cover nearly two pages in order to earn more commission by changing the approved format of advertisement. The same was done by the advertising agency deliberately. The department of Rural and Panchayatraj has paid the charges based on the approved format issued by the Commissioner or Rural Development and Panchayat Raj. Accordingly, a sum of Rs.4,26,509/- was paid to the advertising agency by the Rural Development and Panchayatraj Department out of the total claim of Rs.19,85,460/-. A copy of both hard and soft copy was prepared by the second appellant/second defendant and handed over to the first appellant/first defendant and the first appellant has given the same to the advertising agency prior to the date of publication of the advertisement. In spite of prior intimation to the advertising agency through hard and soft copy, the agency changed the format and released the advertisement without the consent/knowledge of the authorised person. Hence, the appellants/defendants are not liable to pay the excess claim of Rs.15,46,951/- as claimed by the respondent/plaintiff and prays for dismissal of the suit.

6. Based on the pleadings and the list of documents produced by both the parties, the trial Court framed the following issues :-

1. Is it true that the defendants are liable to pay the suit claim?
2. Whether plaintiff is entitled for decree as prayed for?
3. To what other reliefs?

7. In order to prove the case before the trial Court, on the side of the plaintiff they examined one witness and marked

Exs.A1 to A11. On the side of the defendants they examined one N.Ashokan, Superintendent, Directorate of Rural Development and Panchayat Raj, Government of Tamil Nadu/DW1 and through him marked Exs.B1 to Ex.B7.

8. Considering the pleadings, oral and documentary evidences submitted by both the parties, the trial Court comes to the conclusion and decreed the suit in favour of the plaintiff. Aggrieved against the judgment and decree passed by the trial Court, the appellants/defendants preferred the present appeal before this Court.

9. The learned Government Advocate appearing for the appellants would submit that the respondent has not executed the work as per the specifications of the appellants and therefore, they are liable to pay only a sum of Rs.4,38,509/- accordingly they paid it. The respondent being the advertising agency usually get the order from the Government Department and publishing the same in the daily newspapers by engaging itself in getting orders from the Government Departments. The learned counsel would further submit that the second appellant/Directorate of Rural Development and Panchayat Raj effecting the advertisement for the first appellant/Directorate of Information and Public Relations for the purpose of inviting tenders for supply of furnitures to the village libraries functioning in the rural areas, as per specifications given by the Government department to the respondent for advertising, the same was not at all followed by the respondent and effected the advertisement with major deviations by publishing it in so may pages, which is against the specifications given by the appellants. The copy of the draft advertisement along with CD was given to the advertising agency well in advance prior to the date of publication of advertisement. The appellants instructed the advertisement agency to publish one page advertisement for the entire 30districts in Dinamalar Tamil Daily. Whereas, the advertisement agency expanded the advertisement to 3column x 15c.m. covering nearly two pages. The respondent did not act as per the specifications and effected the advertisement on its own by deliberately deviating the norms, thereby expanding it to their convenient in order to extract more commission by illegal manner. The respondent merely says so that it acted on the oral instructions of the Superintendent, Mr.Ramanathan working in the office of the Commissioner of Rural Development and Panchayatraj. The advertising agency changed the specifications without the consent from the authorised person, hence the appellants are not liable to pay the excess claim of Rs.15,46,951/-.

10. The case of the respondent/advertisement agency is that they executed the advertisement in Dinamalar daily newspaper on

the specified date and the invoices were sent to the respective panchayatraj department of various department vide invoice No.8624 to 8653 dated 14.10.2008 amounting to Rs.66,182/- for each advertisement totalling to Rs.19,85,460/- and a copy of which is also sent to the first appellant for reference. The appellants paid a sum of Rs.4,38,509/- by way of cheque and the balance of Rs.15,46,951/- remains unpaid. According to the respondent/advertisement agency there is no deviation in the publication. The publication was effected only as per specification given by the Government Department and subsequently ratified by the Department. A format of design for District advertisement was sent by email to Mr.Ramanathan of Rural Development and Panchayatraj department and they have made separate advertisement for each district (i.e, 29 districts) after getting approval from the said Ramanathan over phone and question of taking more space for advertisement and misuse of Government funds does not arise at all. Therefore, the defence taken by the appellants is not sustainable and the appellants are liable to pay the balance amount of Rs.15,46,951/-.

11. On perusal of proof affidavit filed by PW1/G.Duraibabu s/o.Govindasamy, Managing Director of the plaintiff advertising agency - M/s.Graphic Connections advertising, for chief examination, has reiterated the averment made in the plaint. During the course of cross examination he would depose that from 2008 onwards they are working for the Government advertising agency and they also published Government advertisement. He would further depose that as per specifications they had given advertisement and also produced Ex.A1 series dated 07.10.2008 copy of the order issued by the Director of Information and Public Relations, Government of Tamil Nadu and invoice dated 14.10.2008 which is marked as Ex.A2 series, Ex.A3 is statement of accounts and Ex.A10 dated 26.09.2008 copy of the advertisement in Hindu newspaper. He would further depose that the respondent/advertising agency has made the advertisement as per the specifications, after getting approval from Superintendent one Mr.Ramanathan, Rural Development and Panchayatraj department and sent the format of design through email and published the advertisement in the newspaper. At that time, the appellants have not made any objections till submitting the bills, the appellants have objected only after submitting the bills and made payment for Rs.4,36,509/- and refused to pay the balance of Rs.15,46,951/-.

12. On bare perusal of the Ex.A1series it is seen that it is signed by the Director of Information Department which shows the size of the advertisement should be in "3 column (3 பத்தி) x 15cm" for each District (30 districts). Ex.A2 series dated 14.10.2008 shows that the cost comes to Rs.1444 x 3 x 15 = 64,980 + 1,202

(tax) = Rs.66,182/-. Ex.A3 statement of accounts shows that total bill amount is Rs.19,85,460/- and cheque issued for Rs.4,38,509/- and the remaining balance due is Rs.15,46,951/-. Ex.A4 is the legal notice dated 04.01.2010 sent by the advertising agency to the appellants herein for the balance payment along with interest. Ex.B4 is the letter sent by the advertising agency to the first appellant which clearly shows that the format of design for a district advertisement was sent by email to Mr.Ramanathan, Superintendent Rural Development and Panchayatraj Department for approval. After getting clear approval with some corrections and on that basis they have made separate advertisement design for each district and published the same after getting approval. The appellants/defendants have not let in any evidence and subsequently reopened the case after completion of the arguments, examined one Asokan, Superintendent, Directorate of Rural Development and Panchayatraj, Government of Tamil Nadu in his proof affidavit he has reiterated the averments made in the written statement and during the course of cross examination admitted that at the relevant point of time he rendered his service in other section and he has no direct knowledge about the erstwhile activities and giving his evidence based on the available records. In his cross examination he has spoken about the Ex.A1 and Ex.A2, which is extracted hereunder:-

“7.10.2008ல் வாதிக் கு கொடுக் கப் பட் ட விளம் பரத் திற் கான அறிவிப் பை செய்தி மக் கள் தொடர்பு, துறை அனுப் பியுள் ளதுதான் வா.சா.ஆ.1 அதில் விளம் பர அளவு, 3 பத் தி ஒ 15செ.மீ என் றுதான் கண் டுள் ளது. பி.சா.ஆ.2ல் அனைத் து மாவட் டங் களும் ஒரே பகுதியாக 6 பக் கங் களில் குறிக் கப் பட் டுள் ளது. வா.சா.ஆ.1 வாதிக் கு கொடுக் கப் பட் ட ஆணையி் ட தனித் தனி மாவட் டங் களாக குறிக் கப் பட் டுள் ளது என்றால் சரிதான். அதனடிப் படையில் தான் விளம் பரம் கொடுக் கப் பட் டவேண் டிய முறையில் கொடுக் கப் பட் டாமல் தனித் தனியே மாவட் ட வாரியாக கொடுக் கப் பட் டுள் ளதால் அதற் கான கூடுதல் தொகையை நாங் கள் அளிக் க இயலாது.”

13. In the written statement, the appellants/defendants have stated that the advertising agency is directed to give advertisement in one page, whereas the respondent/plaintiff without the knowledge of the department expanded it to cover nearly two pages in order to earn more commission by changing the approved format of advertisement, by deliberately deviating the norms of the Government.

14. Whereas, in the evidence of DW1 he has spoken about the Ex.A1 series in which the size of the advertisement, rate, edition and date of the publication have been mentioned. Since,

they had given separate advertisement for each district, the respondent/plaintiff had not executed the advertisement as per the specification given by the respondent/plaintiff and without consent of the department executed the advertisement for each district. The defendants/appellants admitted the Ex.A1 even in the written statement and in the Ex.A1 series it is specifically shown the name of each district separately. It is seen from the records that both the parties failed to either produce or mark the copy of the paper publication before the trial Court. In order to assist the Court, the copy of the advertisement dated 10.10.2008 in Dinamalar, Trichy edition is produced before this Court for perusal, the same is not marked as document before the trial Court.

15. On perusal of the Ex.B2/hard copy of the advertisement it contains six pages (3 pages in Tamil and 3 pages in English), the appellants asked the advertising agency to publish the same in one pages, whereas it is found that the same was advertised in two pages. On comparing the Ex.B2 with the copy of the advertisement made in the newspaper produced before this Court reveals that the contents in the advertisement are one and the same, with regard to this aspect there is no dispute between the parties. The dispute is with regard to size and consumption of more space, in the Ex.B2, the typed portion is very narrow without any space between each lines and in the advertisement published in the news paper the portion consumed more spaces are as follows :- the heading in the top, the serial Nos.1, 2 and 4 and the signed portion at the bottom consumed additional lines and space between each column consumed the additional spaces in the advertisement, except these things the other contents in the advertisement has no deviation or omission or addition in the advertisement. For which, the respondent/advertising agency relied on the Ex.B4 letter sent by the advertising agency to the first appellant which clearly shows that the format of design for a district advertisement was sent by email to Mr.Ramanathan, Superintendent Rural Development and Panchayatraj Department for approval. After getting clear approval with some corrections and on that basis they have made separate advertisement design for each district and published the same after getting approval.

16. On perusal of the entire pleadings and evidences it clearly shows that there is no dispute with regard to the advertisement work engaged to the respondent by the appellants and also there is no dispute with regard to the advertisement given on the said date and the Districts. The only dispute according to the appellants is that the advertising agency has deviated the specifications and expanded the size of the advertisement for getting more commission from the Government. During the course of trial, the appellants failed to examine any witness on their side and not produced any documents before the

trial Court, only after completion of the trial, the appellants had taken steps to reopen the case and examined one Ashokan, Superintendent, Rural and Development and Panchayatraj Department as DW1 through him the appellants marked the Ex.B1 to Ex.B7 before the trial Court. It is pertinent to note that the DW1 in his evidence admitted that at the relevant point of time he was working in other section in the same department and he has no direct knowledge about the erstwhile activities and giving his evidence based on the available records. The appellants have not taken any effective steps to bring the said Mr.Ramanathan, Superintendent Rural Development and Panchayatraj department into the witness box, who was working in the department at the relevant point of time, failure on the part of the appellants to do so goes to the root of the case.

17. The specific case of the respondent/advertising agency is that they had not deviated any specifications, only after receipt of Ex.A1 series approval issued by the Directorate of Information and Public Relations they have made the advertisement. The amount mentioned in the bill can be verified from the Ex.A1 series signed by the first appellant/Directorate of Information & Public Relations, based on the amount quoted in the Ex.A1 series the claim was made by the advertising agency. On combined perusal of Ex.A1 to Ex.A3 the size of the advertisement should be "3 column(3 பத்தி) x 15cm" for each District (30 districts), the cost for each district comes to Rs.1444 x 3 x 15 = 64,980 + 1,202(tax) = Rs.66,182/- and for 30 districts Rs.66,182 x 30 = Rs.19,85,460/-, out of the total amount the appellants/department had paid a sum of Rs.4,38,509/- and the remaining balance to be paid is Rs.15,46,951/-.

18. On bare perusal of the Ex.A10/advertisement made in Hindu newspaper (English) dated 26.09.2008 and Ex.A11 series bills and the details of payment for an advertisement in the English newspaper in each district, bills for sum of Rs.38,21,359/- were presented and after deducting TDS charges of Rs.15,739/- a sum of Rs.38,05,620/- were paid through cheques, for which the appellants have not given any valid explanation. On earlier occasion, the same type of advertisement was effected in English newspaper and claimed the total amount. Under the said circumstances, the denial of amount to the respondent in this case is not legally sustainable. Considering the oral and documentary evidence produced in this case, we are of the considered view that the plaintiff/respondent has clearly established its case through oral and documentary evidence.

19. It is to be noted that the appellants/department would have seen the advertisement in the newspaper and received the copy of the newspaper, if at all they found any deviation or violation in the advertisement they should have necessarily

raised their objections immediately to the respondent/advertising agency either orally or through notice. The appellants have not raised any query regarding the deviation in the advertisement, but they refused to pay the amount mentioned in the bill only after submitting the Ex.A2 series/copies of the invoices for payment of the bill submitted by the respondent/plaintiff/advertising agency and paid a sum of Rs.4,38,509/- and defaulted payment for sum of Rs.15,46,951/-.

20. Ex.B2 is the specification given by the appellants/department to the advertising agency which is in three pages. The specific defence taken by the appellants is that the respondent/advertising agency has deviated the specifications and violated the norms of the Government. The same is factually incorrect. Even though, there are some deviations in the advertisement as stated above, which can be considered liberally for the reason that the cost of the advertisement in each district remains unaltered as fixed in Ex.A1 and there is no loss to the Government.

21. It is pertinent to recollect the comparison of Ex.B2 with the copy of the advertisement made in the newspaper that the contents in the advertisement are one and the same. The dispute is regarding size and consumption of more space, in the Ex.B2, the typed portion is very narrow without any space between each lines and in the advertisement the portion consumed more spaces in the heading at the top, the serial Nos.1, 2 and 4 and the signed portion at the bottom consumed additional lines and space between each column consumed additional spaces in the advertisement, except these things the other contents in the advertisement there is no deviation or omission or addition in the advertisement. As per Ex.A1 to A3 the size of the advertisement should be "3column x 15cm" for each District (30 districts), the cost for each district comes to Rs.1,444 x 3 x 15 = 64,980 + 1,202(tax) = Rs.66,182/- and for 30 districts Rs.66,182 x 30 = Rs.19,85,460/-, out of the total amount the appellants/department had paid a sum of Rs.4,38,509/- and the remaining balance to be paid is Rs.15,46,951/-. According to the respondent/plaintiff the amount mentioned in the bills submitted in Ex.A2 before the department and the amount quoted in the Ex.A1 signed by the Directorate of Information and public relations are one and the same.

22. A perusal of the pleadings, the oral and documentary evidences, decree and judgment of the trial Court, we are of the view that the trial Court after evaluating all the oral and documentary evidence comes to the conclusion that the respondent/advertising agency has established the claim in its favour and this Court finds no reason to interfere with the judgment and decree passed by the trial Court in OS.No.12519 of

2010.

23. In view of the discussions held above, this appeal suit is dismissed. The appellants are directed to pay the balance amount of Rs.15,46,951/- to the respondent/advertising agency within a period of eight weeks from the date of receipt of copy of this judgment. It is made clear that the respondent/advertising agency is entitle for balance amount of Rs.15,46,951/- alone and not entitled to claim any interest, as there are public money is involved and also some fault on the part of the respondent. In case, the appellants fail to pay the balance amount within the stipulated period of eight weeks, they are liable to pay with interest at the rate of 12%p.a. from the date of expiry of eight weeks till the date of payment.

24. In the result, the appeal suit stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

tsh

To

1. The VI Additional Judge, City Civil Court, Chennai.

+1 cc to The Government Pleader, Sr. No.77161

+1cc to Mr.K.Gajendran Advocate, S.R.No. 76878

Pre-Delivery Judgment in
AS.No.357 of 2013

SAI (CO)
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