

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

+ **RFA No. 456/2005**

% **10th October, 2017**

M/S CONTRACT ADVERTISING INDIA LTD. Appellant

Through: Mr. Ashok Chhabra, Adv.

versus

M/S AJANTA OFFSET & PACKAGINGS LTD. & ANR.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.2 in the suit impugning the judgment of the trial court dated 10.3.2005 whereby the trial court has decreed the suit of the respondent no.1/plaintiff for a sum of Rs.3,57,021/- along with interest at 21% per annum. The suit was decreed against the two defendants with the appellant being the defendant no.2 and the respondent no.2 being the defendant no.1. Both the defendants in the suit i.e appellant/defendant

no.2 and the respondent no.2/defendant no.1 have been held jointly and severally liable to pay the decretal amount.

2. The facts of the case are that the respondent no.1/plaintiff filed the subject suit claiming an amount on account of printing 'HFCL Brochures' by it. Respondent no.1/plaintiff pleaded that the printing was done for the respondent no.2/defendant no.1 and invoices were raised by the respondent no.1/plaintiff upon the respondent no.2/defendant no.1 for a total amount of Rs.2,37,745/-. Since this amount was not paid, the subject suit came to be filed. The subject suit was filed on 23.4.1999 with the respondent no.2 herein being the sole defendant. Appellant/defendant no.2 was added as a party in terms of the order dated 12.3.2001 of the trial court whereby application under Order I Rule 10 CPC filed by the respondent no.1/plaintiff was allowed. Pursuant to adding of the appellant/defendant no.2 as a party-defendant in the suit, the suit plaint was amended and amended plaint was filed on 9.10.2002 adding paras 9(A) and 9(B). As per these paras 9(A) and 9(B) respondent no.1/plaintiff pleaded that appellant/defendant no.2 always was and acted as an agent of respondent no.2/defendant no.1 and that the job of

printing done by the respondent no.1/plaintiff was given by the appellant/defendant no.2 acting as the agent of respondent no.2/defendant no.1. Therefore, the appellant/defendant no.2 was pleaded to be liable on account of it being the agent of respondent no.2/defendant no.1.

3. As per the written statement filed by both the defendants i.e appellant/defendant no.2 and the respondent no.2/defendant no.1, it was pleaded that respondent no.1/plaintiff had no privity of contract with any of them. Whereas the appellant/defendant no.2 pleaded that the contract of printing was between the respondent no.1/plaintiff and the respondent no.2/defendant no.1, the respondent no.2/defendant no.1 in its written statement pleaded that the contract was between respondent no.1/plaintiff with the appellant/defendant no.2 and not with the respondent no.2/defendant no.1.

4. After pleadings were complete the trial court framed the following issues:-

- “1. Whether there is privity of contract between the plaintiff and Defendant No.1? O.P.P.
2. Whether there is privity of contract between the plaintiff and Defendant No.2? O.P.P.
3. Whether the Plaintiff is entitled to recover the suit amount, if so, from whom?

4. Whether the Plaintiff is entitled to interest, if any, if so, at what rate?
5. Whether this Court has territorial jurisdiction to try this suit as Defendant No.1 is running his business in Gujarat? O.P.P.
6. Reply.”

5. Before this Court learned counsel for the appellant/defendant no.2 argued that there cannot be a privity of contract of respondent no.1/plaintiff with both the appellant/defendant no.2 and respondent no.2/defendant no.1 inasmuch as privity of contract can only be with one person i.e the contract is entered into only with the person upon whom is placed the order of printing by the respondent no.2/defendant no.1. It is argued that once the respondent no.1/plaintiff itself pleaded in the amended plaint that the appellant/defendant no.2 was only acting as the agent of the respondent no.2/defendant no.1, in such a situation the agent appellant/defendant no.2 cannot have privity of contract and it is always the principal who is liable once the principal is a disclosed principal in view of Section 230 of the Indian Contract Act, 1872.

Section 230 of the Indian Contract Act reads as under:-

“Section 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.

Presumption of contract to contrary.—Such a contract shall be presumed to exist in the following cases:—

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) where the agent does not disclose the name of his principal;
- (3) where the principal, though disclosed, cannot be sued.”

6. Learned counsel for the appellant/defendant no.2 also argued that the suit as against the appellant/defendant no.2 was barred by limitation and that though there is no issue of limitation which was framed by the trial court, but this issue of limitation is a purely legal issue arising out of admitted facts and therefore this Court in view of Section 3 of the Limitation Act, 1963 should allow the appellant/defendant no.2 to raise the issue that the suit was barred by limitation as against the appellant/defendant no.2 inasmuch as the invoices/bills raised by the respondent no.1/plaintiff are dated 26.9.1996 and the appellant/defendant no.2 was only added as a party on 12.3.2001 and thus the suit is instituted as against the appellant/defendant no.2 only on 12.3.2001 and which date is beyond three years of 26.9.1996, and hence the suit as against the appellant/defendant no.2 is barred by limitation.

7. I agree with both the arguments urged on behalf of the appellant/defendant no.2. Firstly, Section 230 of the Indian Contract

Act clearly shows that wherever there is a disclosed principal the liability is of the disclosed principal and not the agent because the agent takes no right or incurs no liability for himself and which right and liability under the contract is only of the principal. As per paras 9(A) and 9(B) of the amended plaint, as also the deposition to the same effect of PW-1 Sh. Shankar Karji dated 4.8.2003, the appellant/defendant no.2 was pleaded and proved to be acting as the agent of respondent no.2/defendant no.1, and consequently the appellant/defendant no.2 cannot be held liable in view of Section 230 of the Indian Contract Act. Accordingly, the judgment of the court below with respect to the finding on issue no.2 holding that there was a privity of contract between the respondent no.1/plaintiff and the appellant/defendant no.2 is erroneous and set aside.

8. In fact, the suit is also barred by limitation as against the appellant/defendant no.2 inasmuch as for the work done the invoices are admittedly dated 26.9.1996. As against the appellant/defendant no.2 suit has to be taken to have been filed on 12.3.2001 when the appellant/defendant no.2 had been added as a defendant in the suit. There is nothing in the order dated 12.3.2001 for giving benefit of

Section 21 of the Limitation Act and which Section provides that a court can while adding a person as a party make an order that the suit is taken to be filed against an added defendant from the original date of filing of the suit. By the order dated 12.3.2001 the appellant/defendant no.2 has been added as a party without any observation by the court below of the appellant/defendant no.2 being added as a party from the prior date of filing of the suit. Therefore, the suit as against the appellant/defendant no.2 is to be taken to have been filed on 12.3.2001, which is beyond the three years of raising of the invoices on 26.9.1996, i.e the suit being filed beyond the period of three years is to be held, and is accordingly held to be barred by limitation.

9. I may clarify that by the impugned judgment and decree the suit was jointly and severally both against the appellant/defendant no.2 and the respondent no.2/defendant no.1 and by this judgment the impugned judgment and decree is set aside only as against the appellant/defendant no.2 but the decree will continue so far as the respondent no.2/defendant no.1 is concerned.

10. The appeal is accordingly allowed and disposed of leaving the parties to bear their own costs.

11. Any amount which is deposited by the appellant/defendant no.2 in this Court, be released back to the appellant by the Registry of this Court along with accrued interest thereon, if any, within a period of four weeks from today.

OCTOBER 10, 2017/ib

VALMIKI J. MEHTA, J