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

+ **CS(COMM) 317/2016**

HINDUSTAN PUBLICITY PVT. LTD. Plaintiff

Through: Mr. Anup Kumar Sinha, Adv.

Versus

NEW DELHI MUNICIPAL COUNCIL Defendant

Through: Mr. Kshitiz Karjee and Mr. Aditya
Vikram Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **07.03.2017**

IA No.14382/2016 (of plaintiff u/O VI R-17 CPC)

1. The plaintiff instituted this suit (i) for declaration that the encashment of the bank guarantee in the sum of Rs.45,11,600/- was illegal; (ii) for declaration that the demand of the defendant of Rs.98,67,535/- from the plaintiff is illegal; (iii) for permanent injunction restraining the defendant from allotting the advertisement poles / towers to any other person; (iv) for mandatory injunction directing the defendant to refund Rs.45,11,600/- realised by encashment of bank guarantee; and, (v) for recovery of Rs.2 crores as compensation.

2. Though in para 23 of the plaint, the valuation of the suit was stated to be Rs.2,45,11,600/- but court fees of Rs.15,000/- only was affixed on the plaint and subsequently on objection being taken by the Registry, additional court fees of Rs.40,000/- only was deposited, making the total court fees paid of Rs.55,000/- only.

3. Though the aforesaid court fees was deficient as per the reliefs claimed and the valuation thereof in the plaint but it appears to have escaped attention and the suit proceeded with issues being framed and the parties being put to trial. It is informed that the plaintiff has already concluded its evidence and now the suit is pending at the stage of defendant's evidence.
4. The plaintiff now wants to amend the plaint to bring the reliefs therein within the ambit of court fees paid of Rs.55,000/-.
5. The counsel for the defendant states that he is not even aware of this application.
6. This application was listed before the Registrar on 22nd November, 2016 and 22nd December, 2016, when the counsel for the defendant appeared but did not make any grievance of being not aware of the application. The grievance urged today cannot be accepted.
7. It appears to me that the valuation proposed to be done by the plaintiff is not appropriate and the court fees already paid would still be deficient.
8. The counsel for the plaintiff states that the plaintiff also gives up the relief of declaration of the demand of the defendant of Rs.98,67,535/- being illegal.
9. Upon giving up of the said relief, the valuation done and the court fees paid would be appropriate.
10. Though this suit should not have been pending and the plaint should have been rejected long back owing to the plaintiff in the last 15 years since when the suit is pending having not paid appropriate court fees but now that it has remained pending, it is deemed appropriate to allow the amendments

sought in terms of the application and in terms of the statement of giving up of the relief qua declaration with respect to the demand of the defendant of Rs. 98,67,535/- and to in accordance with the Office Order dated 24th November, 2015 of Hon'ble the Chief Justice of this Court in exercise of powers under Section 4 of the Delhi High Court (Amendment) Act, 2015, transfer the suit to the Subordinate Court.

11. The suit is transferred to the Court of District Judge, District-New Delhi, Patiala House Courts, New Delhi.

12. The parties to appear before the Additional District Judge / District Judge, District-New Delhi, Patiala House Courts, New Delhi on 8th May, 2017.

13. The plaintiff to, on that date, file the amended plaint in terms of today's order.

14. The date of 13th July, 2017 before the Joint Registrar is cancelled.

15. The application is disposed of.

RAJIV SAHAI ENDLAW, J.

MARCH 07, 2017

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