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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No. 9 of 2018 (O/M)
Date of decision : 18.1.2018

Pernod Ricard India Pvt. Ltd. ..... Appellant

Versus

M/s Showhouse ..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rohit Sud, Advocate, for appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-.- -.-

KULDIP SINGH J. (ORAL)

Appellant-defendant-company is aggrieved by order dated 14.11.2017 (Annexure-P-12), passed by the learned Additional District Judge, Gurugram, vide which order dated 8.5.2017 (Annexure-P-10), passed by learned Civil Judge (Junior Division), Gurugram, was set aside, vide which plaint filed by plaintiff-respondent was rejected.

It comes out that plaintiff-respondent had filed a suit for recovery of Rs. 17,72,689/-, claiming that it was rendering services to appellant-defendant-company. It is claimed that in the year 2011, there was change in the management of appellant-defendant-company. Even thereafter, plaintiff-respondent was rendering services to appellant-defendant-company. It is further claimed that certain invoices were not honoured by appellant-defendant-company and that some interest upto year 2015 has not been paid. The civil suit was filed on 8.9.2015.

The learned Civil Judge (Junior Division), Gurugram, vide order dated 8.5.2017 (Annexure-P-10), recorded the findings that as per invoice,

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the payment is claimed regarding invoice dated 30.8.2011. At the same time, it held that an E-mail dated 22.4.2015 does not amount to acknowledgment of debt and will not extend the limitation. Further, it was held that full and final payment was accepted by plaintiff-respondent and that through E-mail dated 22.4.2015, only certain amount was acknowledged as unpaid bills as per their calculation sheet. It was further held that acknowledgment was not made during the period of limitation.

After hearing the learned counsel for appellant-defendant-company, I am of the view that order dated 8.5.2017 (Annexure-P-10), passed by the learned Civil Judge (Junior Division), Gurugram, goes beyond the scope of Order 7 Rule 11 of Civil Procedure Code, 1908. Assuming that some of amount is claimed to be time barred, however, plaintiff-respondent also claims interest upto year 2015 which from its face is not time barred. Further, he claims E-mail dated 22.4.2015 as acknowledgment. In pursuance to that E-mail, some payments were also made. Therefore, findings regarding full and final payment being accepted by plaintiff-respondent, could not be recorded in an application filed under Order 7 Rule 11 CPC, 1908. The perusal of pleadings of parties shows that it requires the leading of evidence. Thereafter, the Court can decide as to whether the entire claim is time barred and what is the effect of E-mail dated 22.4.2015 and how much amount plaintiff-respondent is entitled to, in view of findings ? As such, order dated 8.5.2017 (Annexure-P-10), passed by the learned Civil Judge (Junior Division), Gurugram, was rightly set aside by learned Additional District Judge, Gurugram, vide order dated 14.11.2017 (Annexure-P-12) and trial Court was rightly directed to decide the case afresh by conducting full fledge trial in accordance with

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law. There is no illegality or infirmity in the order, passed by the lower appellate Court. Therefore, instant appeal is dismissed.

(KULDIP SINGH)
JUDGE

18.1.2018
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No