

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

+ **RFA No.392/2005**

% **27th September, 2018**

M/S NEWFIELDS ADVERTISING (P) LTD.

..... Appellant

Through: Mr. C.S.Bhandari, Advocate
(8860346364)

versus

BANKING SERVICES RECRUITMENT BOARD

..... Respondent

Through:

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 plaintiff in the suit impugning the Judgment of the Trial Court dated 31.01.2005 by which the trial court has dismissed the suit filed by the appellant/plaintiff for recovery of Rs.5,46,193/-, out of which the principal amount claimed is Rs.4,55,193/- and the interest claimed is Rs.91,000/-. The suit

amount however has been restricted to a sum of Rs.5,00,000/- instead of the amount out of the Rs.5,46,193/-, in order to bring the suit within the pecuniary jurisdiction of the District Judge.

2. The appellant/plaintiff claimed that the respondent no.1/defendant no.1, namely Banking Service Recruitment Board issued to the appellant/plaintiff a Release Order dated 31.07.2000, asking the appellant/plaintiff to publish the Advertisement No. 6/2000 in the Indian Express (English) in all Editions and in Jansatta (Hindi) Edition of Indian Express. Appellant/Plaintiff was requested to publish the advertisements at the earliest. The appellant/plaintiff claims that after publishing the advertisements in the early part of August 2000, it raised a Bill dated 25.08.2000 upon the respondent no.1/defendant no.1 for a sum of Rs.11,33,430/-. The bill was raised at the amount of Rs.2500/- per column cm of the advertisements issued. Respondent no.1/Defendant no.1 is said to have made only a payment of Rs.6,78,245/- against the bill of Rs.11,33,438/-, and therefore, the subject suit was filed for claiming of the balance amount.

3. The suit was contested by the respondent no.3/defendant no.3/Punjab National Bank. The respondent no. 1/defendant no.1

which is the Banking Service Recruitment Board, and respondent no.2/defendant no.2/Union of India were proceeded *ex parte* on 01.04.2003 and 13.11.2002 respectively, by the trial court. The respondent no.3/defendant no.3/Punjab National Bank, for whose benefit the respondent no.1/defendant no.1 got published the advertisements for recruitment in the Banking Service Exam, denied the claim of the appellant/plaintiff by pleading two main aspects. Firstly, it was pleaded that advertisements were to be published on 01.08.2000 but the advertisements were published later on, on the different days in the first week of August 2000. Secondly, it was contended that advertisements were published not in the main newspaper Indian Express but the advertisements were published in the Newline Section, and therefore, the rate of Rs.2500/- per column cm was not to be paid, and which rate would have been payable only if advertisements were issued in the main section of the newspaper.

4. The only issue to be decided by this Court is that as to what is the rate of payment which has to be made to the appellant/plaintiff for the advertisements that were published by the appellant/plaintiff for respondent no.1/defendant no.1 for the benefit

of the respondent no.3/defendant no.3/Punjab National Bank. Putting it in other words, the issue is whether the appellant/plaintiff who has raised the bill dated 25.08.2000/Ex.PW1/5 for a sum of Rs.11,33,430/- at rate of Rs.2,500/- per column cm, is entitled to be paid or appellant/plaintiff is only entitled to a lesser rate of Rs.2000/- per column cm on account of the advertisements being published not in the main section of the newspaper, but in the Newline Section.

5. Learned counsel for the appellant/plaintiff has argued that it is not in dispute that the charges claimed by the Indian Express for publication of advertisement were at Rs.2,500/- per column cm and that this has been deposed to by the witness PW-2 Sh. S.N. Jha who was the employee of the Indian Express Newspaper. It is argued on behalf of the appellant/plaintiff that PW-2 has duly deposed with respect to rate charged at Rs.2,500/- per column cm from the appellant/plaintiff and that this witness orally stated that such payment was made by the appellant/plaintiff to Indian Express.

6. In my opinion, though the trial court has not given the correct reasoning for dismissing the suit, however, in exercise of powers of this Court under Order XLI Rule 24 CPC, this Court is

hereafter giving the appropriate reasoning, and which shows that the suit of the appellant/plaintiff was bound to be dismissed.

7. The reasoning of this Court for the suit to be dismissed is the same reasoning which is given by the respondent no.1/defendant no.1 in its Letter dated 14.09.2000 to the appellant/plaintiff, and which reasoning is that the payment which has to be made to the appellant/plaintiff cannot be at Rs.2,500/- per column cm inasmuch as that is the rate for publication in the main newspaper and not in the Newslane Section. This Letter dated 14.09.2000/Ex.PW1/12 of the respondent no.1/defendant no. 1 reads as under:-

“Banking Service Recruitment Board (Delhi) Ref: 797/2000

M/s NewFields Advertising Pvt. Ltd.
3/4A, Asaf Ali Road,
New Delhi

14th September, 2000

Dear Sir,

Reg: Your Invoice No.091814/AUG/dated 25.8.2000

With reference to above, we would like to invite your attention to our order dated 31.7.2000

We would like to bring to your notice, the following anomalies observed by us:

1. In our said order it was requested to release our advertisement no.6/2000 for publication in all editions of Indian Express (English) and Jansatta (Hindi). It was also mentioned in our

order that release of advertisement in Jansatta (Hindi) will be free of cost. The order was given to you with the understanding that our advertisement will be released in the main body of Indian Express Delhi edition of 1st August, 2000 and for all other editions including Jansatta, it will be released on 2nd August, 2000. But our advertisement was released in various editions as mentioned here under:

Indian Express

Delhi	01.8.2000
Chandigarh	09.8.2000
Mumbai	04.8.2000
Ahmedabad	10.8.2000
Pune	12.8.2000
Baroda	10.8.2000
Nagpur	09.8.2000
Chennai	06.8.2000

Jansatta (Hindi)

Delhi	03.08.2000
Calcutta	05.08.2000

Late release of advertisement in various editions of the paper has resulted in less time to prospective candidates for whom this advertisement was released.

2. We have observed that contravening our instructions, advertisement was released in the Newline and not in the main paper
3. During discussion it was admitted that charges for release of advertisement in the Newline portion of Indian Express are much less then that of main paper and you will give special discount for the same.
4. In calculation given in your letter dated 11.9.2000, you have shown charges for publication of advertisement in Jansatta as Rs.390 whereas as per our order and the understanding on which order was placed in your favour it is free of cost.

Moreover in these calculations, you have shown charges of advertisement in four different publications and in bill you have shown three publications whereas our instructions were for single publication (all editions) only.

5. As per the rate list submitted by you along with your letter dated 11.9.2000, rates of publications of advertisement (advertisement) in all editions of Indian Express plus Financial Express is Rs.2000/- whereas you have submitted bill at the rate of Rs.2500/-. Please note that you are publishing our advertisement in Jansatta in place of Financial Express free of cost.

You are requested to clarify on the above mentioned points and submit us the correct bill to enable us to do the needful

Yours faithfully

Secretary”

(underlining added)

8. It is seen that it is an important aspect to determine as to whether the appellant/plaintiff has at all actually paid to the Indian Express Group, charges at Rs.2,500/- per column cm, or appellant/plaintiff has only paid a lesser amount. In this regard, admittedly the appellant/plaintiff has not filed any proof of what was the payment made by the appellant/plaintiff to Indian Express Group, even though the Indian Express Group has raised a bill of Rs.2,500/- per column cm. PW-2 in his cross-examination was specifically put this question as to the fact that details of payments made by the

appellant/plaintiff to the Indian Express Group have not been deliberately filed because payments have not been received by the Indian Express Group as per the bills raised upon the appellant/plaintiff. This witness in the very next line in his cross-examination dated 22.04.2003 has admitted that advertisements which were published were only in the Newline Section, which carries the Appointment Section. Therefore, it is clear that the advertisements which was got published by the appellant/plaintiff for the respondent no.1/defendant no.1 was not in the main section of the newspaper and advertisements were only published in the Newline Section. Further, no documentary evidence has been led by the appellant/plaintiff to show that what payment has been made by the appellant/plaintiff to the Indian Express Group i.e. payment proof at Rs.2,500/- per column cm has not been filed, and therefore it has to be held that the payment would have been made by the appellant/plaintiff at a lesser amount after claiming discount and this is clearly stated by the respondent no.1/defendant no.1 in para 3 of its Letter dated 14.09.2000/Ex.PW1/12, and which has already been reproduced above.

9. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

SEPTEMBER 27, 2018/ib

VALMIKI J. MEHTA, J

