

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

+ **RFA No.577/2006**

% **15th October, 2018**

M/S CONTINENTAL ADVERTISING PVT. LTD.

..... Appellant

Through: Mr. Gaurav Mahajan,
Advocate (9811688721)

versus

M/S KARAN & CO.

..... 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 31.05.2006 by which the trial court has dismissed the suit for recovery of Rs.6,00,000/- filed by the appellant/plaintiff. The suit has been dismissed on the ground that the same is barred by limitation.

2. The facts of the case are that the appellant/plaintiff pleaded that it issued advertisements in the newspaper for the weekly draws of lotteries for the State of Meghalaya. It was pleaded, that as per the statement of account maintained by the appellant/plaintiff, a sum of Rs.4,28,256.56/- was due. Since despite writing letters repeatedly, payment due to the appellant/plaintiff was not released, therefore, the subject suit was filed for recovery of the principal amount of Rs. 4,28,256.56/- alongwith interest amount of Rs. 1,71,743.44/-. There were a total of four defendants in the suit when it was constituted. However, defendant no. 2 and 3 were deleted as parties vide Order dated 01.05.1991 and further, the suit *qua* defendant no. 4 was dismissed vide Order dated 26.11.1999. Hence, the only contesting defendant was defendant no. 1 who was allegedly the agent of the State of Meghalaya.

3. The suit was contested by the respondent/defendant no. 1 and it was pleaded that the amount as claimed by the appellant/plaintiff was not due and that the appellant/plaintiff was already over-paid for the work. It was further pleaded that the appellant/plaintiff raised inflated bills, although, the newspapers had

claimed a different lesser amount for the advertisements issued. It is for this reason that the accreditation of the appellant/plaintiff was removed by Indian and Eastern Newspaper Society. It was also pleaded that the appellant/plaintiff had released advertisement with mistakes, and therefore, the appellant/plaintiff had agreed to give discounts which were eventually not given. The respondent/defendant no. 1 further pleaded that in terms of the MOU dated 09.03.1985, the appellant/plaintiff agreed to reduce the charges on account of mistakes in the publication, but the appellant/plaintiff failed to do so. The suit was pleaded to be barred by limitation and hence it was prayed to be dismissed.

4. The following issues were framed by the trial court:-

“1. Whether the plaintiff is a company incorporated under the Companies Act, and the plaint has been signed and verified and suit instituted by a duly authorised person on behalf of the plaintiff? OPP

2. Whether the suit is within time?

3. Whether there were mistakes in the lottery tickets printed by the plaintiff? If so to what effect?

4. If Issue No.3 is proved in the affirmative, whether the defendant is entitled to deduct any amount because of these mistakes? If so, to what amount?

5. What was agreed rate for printing of tickets?

6. To what amount, if any, is the plaintiff entitled?

7. Whether the plaintiff is entitled to interest? If so, at what rate and for what period?

8. Relief.”

5. The trial court has dismissed the suit by deciding issue no. 2 against the appellant/plaintiff, and it has not decided any other issue in view of the provision of Order XX Rule 5 CPC which provides that decision on each issue need not be given when finding on one or more issues is sufficient for deciding the suit.

6. Admittedly, the bills with respect to which appellant/plaintiff filed the suit are from 31.10.1984 to 30.04.1985. These are the bills as per the copy of the statement of account given by the appellant/plaintiff to the respondent/defendant no. 1, and the same has been proved as Ex.DW1/2. The subject suit has been filed on 28.05.1988 and therefore if the bills are raised prior to 28.05.1988, claims of those bills would be barred by limitation. Since all the bills issued with respect to which appellant/plaintiff claimed are prior to 30.04.1985, i.e. prior to 28.05.1985, therefore, the subject suit was clearly barred by limitation.

7. Learned counsel for the appellant/plaintiff argued that there were two other bills dated 31.10.1985 and 30.11.1985, however, the trial court rightly notes that these bills will not bring the suit within limitation for the earlier bills as well, because even these two bills have not been proved to have been received by the respondent/defendant no. 1. In fact, even if these bills are taken to have been received by the respondent/defendant no. 1, it is seen that these bills are only a part and parcel of the earlier bills dated 10.01.1985 and 28.02.1985 as these two bills dated 31.10.1985 and 30.11.1985 only add to and are supplementary to the earlier bills dated 10.01.1985 and 28.02.1985. In any case, these two bills are a case of *much ado about nothing* because out of the total amount claimed in the suit of Rs.6,00,000/-, the amount payable for these two bills barely comes to Rs.3,929/-, and the same are also not proved to have been submitted to the respondent/defendant no. 1.

8. The only other way in which the suit could have been within limitation was if the suit was based on an open, mutual and current account. An open, mutual and current account under Article 1 of the Limitation Act, 1963 would only exist if there are shifting

balances vide *Hindustan Forest Company v.. Lal Chand & Others, AIR 1959 SC 1349* and *Kesharichand Jaisukhal v. Shillong Banking Corporation, AIR 1965 SC 1711*. In the present case, it is seen that in fact the appellant/plaintiff has not filed a copy of its statement of account because what is filed are only individual entries and the same are called as statement of account. Even if we take the entries filed as being a statement of account, such entries do not show shifting balances and once there are no shifting balances, the statement of account relied upon by the appellant/plaintiff is thus not an open, mutual and current account. In fact, the witness of the respondent/defendant no. 1, Sh. Karan K. Luthra, has specifically deposed with respect to the account not being an open, mutual and current account in terms of para 4 of his affidavit by way of evidence dated 13.10.2004.

9. Finally it was argued that the suit is within limitation as respondent/defendant no. 1 is said to have paid a cash amount of Rs. 50,000/- on 29.05.1985, however, this argument is rejected because this cash entry in Ex. DW 1/2 is without any date with the fact that this

cash entry is not in an account maintained by the respondent/defendant no. 1, but the entry is an entry in an account of the appellant/plaintiff and the copy of which was given to the respondent/defendant no. 1 and witness DW 1 has categorically and specifically denied any cash payment to the appellant/plaintiff as it is deposed by DW 1 that all payments to appellant/plaintiff have only been made by cheques. A cash payment simpliciter will not qualify for extension of limitations under Sections 18 and 19 of the Limitation Act, as it is not proved.

10. In view of the aforesaid discussion, I do not find that the trial court has in many manner erred in dismissing the suit as time barred. This appeal is therefore dismissed, leaving the parties to bear their own costs.

OCTOBER 15,2018/ib

VALMIKI J. MEHTA, J