

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

+ **RFA No. 626/2006 & RFA No. 177/2007**

% **31st October, 2018**

RFA 626/2006

ABBAS HAKIM

..... Appellant

Through: Mr.Sanjay Kumar Shandilya, Adv.
(Mobile No.9810379305).

versus

VIPIN GUPTA & ANR.

..... Respondents

Through: Mr. Bhushan Kapur, Adv.
(Mobile No.9899898765).

RFA 177/2007

CHAITRA ADVERTISING P. LTD.

..... Appellant

Through: None.

versus

VIPIN GUPTA & ANR.

..... Respondents

Through: Mr. Bhushan Kapur, Adv.
(Mobile No.9899898765).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. These two appeals are filed by the two defendants in the suit impugning the Judgment of the Trial Court dated 03.07.2006 by which the trial court has decreed the suit filed by respondent no.1/plaintiff/Sh. Vipin

Gupta and passed a money decree for the suit amount of Rs.10,35,000/- with interest against the two defendants who were held jointly and severally liable. The defendant no.1 in the suit, is the appellant/Chaitra Advertising P. Ltd. in RFA No. 177/2007, and the defendant no.2/Mr. Abbas Hakim is the appellant in RFA No. 626/2006. Since the impugned judgment which is challenged in both the appeals is the same judgment, both these appeals filed by the two defendants in the suit are disposed of by this common judgment.

2. The facts of the case are that respondent no.1/plaintiff filed the subject suit for recovery of principal amount of Rs.9,00,000/- with interest of Rs.1,35,000/-, totalling to Rs.10,35,000/-, by pleading that the respondent no.1/plaintiff had purchased rights in the serial 'Sunehre Warq' produced by the defendant no. 2/Sh. Abbas Hakim in terms of an Agreement dated 10.02.1990. In the Agreement dated 10.02.1990, the respondent no.1/plaintiff paid a sum of Rs.12,50,000/- to defendant no.2/Sh. Abbas Hakim. Since the telecast of the serial 'Sunehre Warq' could not take place as the respondent no.1/plaintiff could not get sponsorship, consequently, the defendant no.2 sent a Notice dated 21.06.1990 terminating the Agreement with the respondent no.1/plaintiff. Thereafter, the defendant no.2 entered into an agreement with defendant no.1 for telecast of the serial with Doordarshan. All the three parties being, the respondent no.1/plaintiff, and the two defendants being the

appellant/defendant no.1 in RFA No. 177/2007 and appellant/defendant no.2 in RFA No. 626/2006, entered into a Tripartite Agreement dated 16.05.1991/Ex.P-2. In terms of this Tripartite Agreement the respondent no.1/plaintiff received a sum of Rs. 3,50,000/- from the appellant/defendant no.2 in RFA No. 626/2006 and the balance amount of Rs.9,00,000/- was payable by the appellant/defendant no.1 in RFA No. 177/2007 in three installments of Rs.3,00,000/- each, payable on telecast by Doordarshan of the 4th, 6th and 8th episode of serial 'Sunehre Warq' by 21.07.1991, 04.08.1991 and 17.08.1991 respectively. Respondent no.1/Plaintiff claimed that though the serial 'Sunehre Warq' was telecast, the amount of Rs.9,00,000/- was neither paid by the defendant no.1 nor the defendant no.2, and hence for the recovery of Rs. 9,00,000/- plus interest totalling to Rs. 10,35,000 the subject suit came to be filed.

3. The defendants filed their separate written statements and contested the suit. They denied their liability. They pleaded that the respondent no. 1/plaintiff had colluded with one Sh. Dheeraj Kumar to file a suit at Mumbai for restraining the telecast of serial 'Sunehre Warq' and which had caused loss to defendants, although at the same time it was conceded in the written statement that in Sh. Dheeraj Kumar's suit for injunction, Sh. Dheeraj Kumar could not get any injunction either by the City Civil Court or

from the Appellate Court.

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

- “i) Whether the plaint has been signed, verified and instituted by a duly competent and authorized person? OPP.
- ii) Whether this court has the territorial jurisdiction to entertain and try the present suit?
- iii) Whether the suit is bad for non-joinder and mis-joinder of parties? OPD
- iv) Whether the present suit is liable to be stayed in view of the earlier suit No.3093/91 filed in the Civil Court, Bombay?
- v) Whether the defendants are in breach of agreement dated 16.5.1991?
- vi) Whether the plaintiff is entitled to the amount claimed in the suit and if so, to what amount and from which defendants? OPP
- vii) Whether the plaintiff is entitled to interest? If so, at what rate?
- viii) Relief.”

5. I may note that no counsel appears for the appellant in RFA No. 177/2007 and the appeal which has been argued, is only by the appellant/defendant no. 2 in RFA No. 626/2006 through his counsel.

6. In my opinion, the trial court has rightly decreed the suit by placing reliance on Tripartite Agreement dated 16.05.1991 as per which there existed the liability towards the respondent no. 1/plaintiff of a sum of Rs.9,00,000/-, and this amount of Rs. 9,00,000/- was authorized by the defendant no. 2 to be

paid/cleared by the defendant no.1 to the respondent no. 1/plaintiff. The trial court has, therefore, rightly held that in view of the language of the Tripartite Agreement dated 16.05.1991, both the defendants in the suit were jointly and severally liable. The relevant paras of the Tripartite Agreement showing joint and several liability, and that defendant no. 2 was only authorized by the defendant no. 1 to make the payment, i.e. it is not as if the liability of defendant no. 2 was extinguished by the Tripartite Agreement dated 16.05.1991, and these relevant paras read as under:-

XXX

XXX

XXX

- “1. The First Party agrees to receive the sum of Rs.12.50 lacs (Rupees Twelve Lacs Fifty Thousand Only) in full settlement of all dues owed by the Second Party and also agrees to waive all rights to the serial ‘SUNHERE WARQ’ on receipt of the above sum as per the following schedule:
- (I) The Second Party having paid a sum of Rs.1.50 Lacs (Rupees One lac Fifty Thousand Only) through Bank Draft No.031668 on Hong Kong & Shanghai Banking Corp dated 29th May, 1991 and has further delivered a cheque for Rs.2.00 Lacs (Rupees Two Lacs Only) bearing cheque No.010750 dated 22.6.1991 on Hong Kong & Shanghai Corp. to the First Party.
2. The Second Party hereby authorises the Third Party to make payment of Rs.9.00 lacs (Rupees Nine Lacs Only) as follows directly to the First Party on its behalf out of the moneys due to the Second Party from the Third Party in accordance with the agreement dated 24th January, 1991 to which both parties were parties to and any such payments made directly by the Third Party to the First Party shall be deemed to be effectual discharge of liabilities of the Third Party to the Second Party:-
- a) Rs.3.00 Lacs (Rupees Three Lacs Only) after telecast of the fourth episode by 21.7.1991.
- b) Rs.3.00 Lacs (Rupees Three Lacs Only) after telecast of the Sixth

- episode by 4.8.1991.
- c) Rs.3.00 Lacs (Rupees Three Lacs Only) after telecast of the Eighth episode by 17.8.1991.
3. The First Party hereby undertakes to indemnify the Second and Third Parties against claims of any other party claiming any amount under/on behalf of the First Party.”
- XXX XXX XXX

7. In view of the Tripartite Agreeemnt dated 16.05.1991, both the defendants were jointly and severally liable to pay a sum of Rs.9,00,000/- to the respondent no.1/plaintiff, and the trial court therefore has rightly decreed the suit for the amount of Rs.10,35,000/- as the amount due on the date of the suit as against the defendants.

8. Learned counsel for the appellant/defendant no. 2 in RFA No. 626/2006, argues that in case the liability of the appellant/defendant no. 2 is restricted to the amount of Rs.10,35,000/- which has been deposited by the appellant/defendant no.2 in this RFA No. 626/2006, then he would have no grievance against the impugned judgment. It is also argued that the defendant no.1, who is the appellant in RFA No. 177/2007, had also deposited a similar amount of Rs.10,35,000/- in RFA No. 177/2007 and which amount has already been withdrawn by respondent no.1/plaintiff inasmuch as RFA No. 177/2007 was dismissed in default and before restoration, the amount deposited by the appellant in RFA No.177/2007 was withdrawn by the

respondent no.1/plaintiff and which position has remained so.

9. In essence, it is seen that a total sum of Rs.10,35,000/- + Rs.10,35,000, has been deposited by each of the two defendants in two RFAs i.e. RFA No. 626/2006 and RFA No. 177/2007, and the amount of Rs. 10,35,000/- deposited by the appellant in RFA No. 177/2007 has already been withdrawn and received by respondent no.1/plaintiff in part satisfaction of the impugned judgment and decree. The amount deposited in RFA No. 626/2006, has however, remained deposited in this Court, and today it is agreed by the appellant/Sh. Abbas Hakim that whatsoever amount has been deposited in RFA No. 626/2006 along with accrued interest can be released to respondent no.1/plaintiff, in case it is also held that there is no further liability of the appellant/Sh. Abbas Hakim towards the respondent no.1/plaintiff, and further the appellant/Sh. Abbas Hakim is granted liberty in accordance with law to recover the amount of Rs.9,00,000/- along with interest from the appellant in RFA No. 177/2007 because serials of 'Sunehre Warq' were in fact telecast on Doordarshan upto ten episodes and the defendant no.1 has received sponsorship amount of telecast of the serial which was payable to the defendant no.2/Sh. Abbas Hakim, the appellant in RFA No. 626/2006, but that amount of Rs. 9,00,000/- has not been received by him.

10. Accordingly, both these appeal are dismissed and disposed of with the

direction that the respondent no.1/plaintiff agrees that the amount deposited by each of the appellant in the two RFAs of Rs.10,35,000/- will be received by the respondent no.1/plaintiff, being the total amount of Rs.10,35,000/- + Rs.10,35,000/-, in full and final satisfaction of all claims of respondent no.1/plaintiff under the impugned judgment and decree, with the further direction that the respondent no.1/plaintiff will also get benefit of interest accrued on the amount of Rs.10,35,000/- deposited by each of the appellants in the two RFAs.

11. Respondent No.1/Plaintiff accordingly, should be paid by the Registry of this Court whatsoever amount is deposited by the appellant/defendant no. 2 in RFA No. 626/2006 along with accrued interest in full and final satisfaction of claims of respondent no.1/plaintiff as against the appellant in RFA No. 626/2006. The respondent no.1/plaintiff has already received the amount of Rs.10,35,000/- along with accrued interest in the RFA No. 177/2007 and which will be treated as full and final satisfaction of all the claims of respondent no. 1/plaintiff against the appellant/defendant no. 1 in RFA No. 177/2007, without of course, the same in any manner being reflection on the right of the defendant no.2/Sh. Abbas Hakim existing against the defendant no.1/Chaitra Advertising P. Ltd., and with respect to which liberty is granted to Sh. Abbas Hakim in accordance with law to file a suit for recovery against Chaitra Advertising P. Ltd. It is also observed that since the entitlement of

defendant no.2/Sh. Abbas Hakim as against the defendant no.1/Chaitra Advertising P. Ltd. was not clear in view of different interpretations pleaded by the parties of the Tripartite Agreement dated 16.05.1991, and by today's judgment the liability of defendant no.2/Sh. Abbas Hakim has been held to be joint and several with Chaitra Advertising P. Ltd. so far as respondent no.1/plaintiff is concerned, hence for any suit which will be filed by Sh. Abbas Hakim against Chaitra Advertising P. Ltd., the cause of action will be taken to have accrued today on the passing of the present judgment.

12. It is clarified that no details are given with respect to interest to be paid to respondent no.1/plaintiff under the impugned judgment and decree because as between the respondent no.1/plaintiff and Sh. Abbas Hakim, the appellant in RFA No. 626/2006, it is agreed that the amount of Rs.10,35,000/- along with accrued interest to be received by the respondent no.1/plaintiff in RFA No. 626/2006 will be in full and final satisfaction of all claims of respondent no.1/plaintiff as against Sh. Abbas Hakim, the appellant in RFA No. 626/2006, both towards principal and interest.

13. The appeals are accordingly disposed of.

OCTOBER 31, 2018
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VALMIKI J. MEHTA, J