

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

**RESERVED ON : 20th DECEMBER, 2017
DECIDED ON : 8th JANUARY, 2018**

+ FAO 475/2017 & CM 44050/17
ASHIMA INFRASTRUCTURES PVT LTD..... Appellant
Through : Mr.Rajesh Gupta, Advocate with
Mr.Harpreet Singh & Mr.Pranjal, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR
..... Respondents
Through : Ms.Mini Pushkarna, Standing Counsel with
Ms.Anushruti & Ms.Vasundhara Nayyar, Advocates.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Present appeal has been preferred by the appellant – Ashima Infrastructures Pvt. Ltd. to challenge the legality and correctness of an order dated 27.11.2017 of learned Addl. District Judge whereby its application under Order XXXIX Rule 1 & 2 CPC was dismissed. The appeal is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. It is not in dispute that NOCs/ permissions dated 30.10.2012 and 27.11.2012 were issued by the respondents NDMC to the appellant allotting advertisement display rights over sites

mentioned therein. It is also not at issue that Clause (iii) in the said NOCs/ permissions was common and it read :

“The permission for display of advertisement shall be valid for 5 years. The permission can be extended further on the sole discretion of the Commissioner, North Delhi Municipal Corporation. The license fee will start after 3 months from the date of NOC issued by NDMC or after the installation of the advertisement structures on the site.”

3. The limited controversy in the present proceedings is with respect to the date of commencement of the NOCs / permissions. It is urged by the appellant's counsel that the NOCs are completely silent as to when the period is to start. It is urged that since licence fee was to be charged after the expiry of three months from the date of issuance of NOC or the installation of the advertisement structures on the sites, the period was to commence from February, 2013 to come to an end in February, 2018 regarding first contract and for second contract, it was to commence from March, 2013 to come to an end in March, 2018. It is so as it required minimum three months time to the allottee to complete installation etc. to avail the benefit of the permissions and for that reason no licence fee was payable for that period. Apparently, the actual contract was expected to commence only after three months of the grant of NOCs.

4. Learned counsel for the NDMC urged that the impugned order does not suffer from any illegality or irregularity. The period for

five years is to commence from the date of grant of NOCs/ permissions and no other interpretation whatsoever can be tenable.

5. Terms and conditions of the grant of NOCs/ permissions are very specific, unambiguous and definite. Clause (iii) of the NOCs / permissions specifically provides that the allotment was for five years. No particular date has been mentioned in the document as to when the period is to commence. In the absence of any specific date as to when the allotment is to commence, obvious interpretation is that the period is to run from the date of grant of the NOCs/ permissions itself. No other logical interpretation can be given to enlarge the period of allotment. There is no mention in the document that the period of allotment shall be beyond five years in any eventuality. It does not mention if the period was to run from the date of payment of licence fee after the expiry of three months from the date of issuance of the NOCs/ permissions. The appellant cannot be permitted to interpret the Clause (iii) in whimsical manner of its own to extend the period of allotment beyond five years. It is relevant to note that the appellant was involved in various litigations regarding the NOCs / permissions. At no stage, the appellant sought any clarification as to when the period is to commence. Throughout in the earlier proceedings, it was the appellant's case that the said allotment was only for a period of five years. Any other interpretation given to the terms and conditions contained in Clause (iii) of the agreement would enlarge the period beyond five years and such an interpretation would be beyond the scope of the agreement.

6. Learned Trial Court has given sound reasons while interpreting the Clause (iii) at issue. Specific reasons have been incorporated in the impugned order as to what would be the consequences if the interpretation given by the appellant was accepted. This Court finds no valid reasons to take different view.

7. The impugned order based upon fair appreciation of facts and law deserves no intervention.

8. The NDMC sought clarification by moving IA 14709/2017 in CS(COMM) 1413/2016 and by an order dated 12.12.2017 this Court in para No.9 of the order observed :

“9. In this view of the matter, all that needs to be clarified is that the interim order in this suit will not come in the way of the defendant North Delhi Municipal Corporation (NrDMC) taking action treating the agreements to have come to an end on 29th October, 2017 and 26th November, 2017, inasmuch as the said dispute is not the subject matter of this suit. Any action by the defendant NrDMC in this regard will however be subject to the orders in FAO No.475/2017.”

9. Needless to say, the allotment period for five years is to commence from the dates of execution of the documents i.e. w.e.f. 30.10.2012 and 27.11.2012 respectively. The said period has come to an end on 29.10.2017 and 26.11.2017. Despite that, the appellant has continued to enjoy the site by displaying the advertisement beyond the period of five years. Apparently, NDMC will be at liberty to charge

damages from the appellant as per law for the extended period beyond the period of NOCs/ permissions.

10. In view of the above, the appeal lacks merit and is dismissed with costs ₹50,000/-. Pending application also stands disposed of.

11. Copy of the order be sent to the Court concerned for information.

(S.P.GARG)
JUDGE

JANUARY 08, 2018 / tr

