

**109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-587-2022 (O&M)
Decided on : 20.07.2022**

Municipal Council, Bahadurgarh through its Executive Officer
... Appellant

Versus

M/s V-Image Maker ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Visesh Dahiya, Advocate
for Mr. Deepak Balyan, Advocate
for the appellant.

MANJARI NEHRU KAUL, J.

CM-4747-C-2022

Civil Misc. Application is allowed, as prayed for. Documents contained at Annexure A-1 are taken on record, subject to all just exceptions.

Main case

Suit filed by the plaintiff-respondent seeking mandatory injunction against the appellant-defendant for refunding the amount of security etc. deposited by the plaintiff before it, along with interest @ 18% per annum and for further directions to the appellant-defendant to hand over the Unipole, Tree guards etc. to the plaintiff in its original condition, was dismissed by the trial Court vide order and judgment dated 30.09.2016.

The appeal preferred against the judgment and decree of the trial Court was partly allowed by the lower Appellate Court vide order dated 27.08.2019, whereby, the defendant-appellant was directed to hand over 4

unipoles and 150 tree-guards to the plaintiff-respondent confiscated by it illegally. The remaining claim of the plaintiff for refund of Rs.25-30 lakhs, however, was not accepted as the matter was sub-judice before the Court of Collector, Bahadurgarh. The defendant is now before this Court in Regular Second Appeal. The parties to the *lis* hereafter shall be referred to by their original positions in the suit.

As per the pleaded case of the plaintiff, it entered into an agreement (Exhibit P-6) with the defendant regarding display of advertisement within the Municipal limits of Bahadurgarh. The agreement was for a period of three years w.e.f. 01.02.2007. The plaintiff, at the time of the agreement, deposited refundable security amount in the sum of Rs.50,000/- with the defendant. As per the agreement arrived at between the parties, during the contract period, no other persons/firm/company would be given any advertisement work and in case, some other media or private site carried out advertisement etc., the defendant was duty bound to get those sites vacated/cleared of any such advertisements. The plaintiff alleged that the defendant had violated the terms and conditions of the agreement arrived at between the parties. It was also claimed by the plaintiff that he had incurred a lot of expenditure while installing unipoles and tree guards etc. at different places, however, despite repeated oral and written requests to the defendant to provide sites to the plaintiff for display of advertisements, it failed to yield any response. Instead, the defendant took money from other parties against proper receipt and permitted them to display advertisements for which a legal notice was sent by the plaintiff to the defendant. The plaintiff also filed a civil suit, wherein, a stay was

granted in its favour. However, the defendant violated the stay order, as a result of which, a contempt petition was filed against the defendant. During the pendency of the civil suit filed by the plaintiff, the period of agreement arrived at, between the parties expired, as a result of which, the aforementioned civil suit was rendered infructuous. The plaintiff, thus, prayed that the defendant be directed to refund the security amount deposited with it and also to hand over all the unipoles, tree guards etc. which had been confiscated after illegally removing them.

In the written statement, the defendant denied any violation of the terms and conditions of the agreement. However, it was not disputed that after the sites had been made available to the plaintiff by the defendant, the plaintiff had installed unipoles and tree guards. The defendant alleged that it had permitted other parties to display advertisements because the plaintiff had erred in making payments to the defendant as per terms and conditions of the agreement (Exhibit P-6). It was further submitted that the unipoles, tree guards etc. had been retained by the defendant in its stores and the same could be taken away by the plaintiff after clearing the arrears.

The learned Appellate Court, on the basis of material and other evidence led, especially the agreement (Exhibit P-6), held that the terms and conditions of the agreement did not stipulate any confiscation of unipoles and tree guards installed by the plaintiff and hence, the defendant could not have confiscated them.

Learned counsel for the defendant has reiterated the submissions made in the written statement filed before the trial Court and the stand taken before the Courts below by urging that the plaintiff had

breached the terms of agreement (Exhibit P-6) and still further, had not made payment of the requisite fee in the month of August, 2008. Hence, the directions of the lower Appellate Court of handing over 4 unipoles and 153 tree guards confiscated by it to the plaintiff, deserved to be set aside.

I have heard learned counsel and perused the relevant material on record, including agreement as Exhibit P-6.

Learned counsel has miserably failed to bring to the notice of this Court any such terms and conditions from which it could be even remotely inferred that in case of any default in payment by the plaintiff, the 04 unipoles and 153 tree guards installed by the plaintiff would be confiscated.

Upon being pointedly asked, learned counsel for the appellant failed to refer anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffered from any material illegality. The appeal being devoid of any merit, is accordingly dismissed.

Pending application/s, if any, shall also stand disposed of.

(MANJARI NEHRU KAUL)
JUDGE

July 20, 2022
gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No