



A.S.No.802 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.802 of 2008

Madura Garments,
Rep. by its Vice President - Finance
Madura Garments,
"MG House", 110, 4th Cross, 5th Block,
Koramangala Industrial Lay Out,
Koramangala, Bangalore - 560 095. .. Appellant

Versus

1. Messrs. Trout Partners Ltd.,
Rep. by its P.O.A. Prakash Idnani,
2. Vikram Singh .. Respondents

Cause title accepted *vide* order of Court,
dated 23.09.1908 made in M.P.No.1 of 2008 in
A.S.SR.No.11376 of 2004.

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code to allow the above Appeal setting aside the judgment and decree of the learned Additional District Judge (Fast Track Court No.V), Chennai, dated 11.08.2003 in O.S.No.29 of 2001 and to dismiss the said suit as against the appellant.

For Appellant : Mr.K.Siva Subramaniam



A.S.No.802 of 2008

WEB COPY

For Respondents : No Appearance
JUDGMENT

This Appeal Suit is directed against the judgment and decree in O.S.No.29 of 2001 passed by the Additional District Judge, Fast Track Court No.V, Chennai, dated 11.08.2003, in and by which, the suit filed by the first respondent / plaintiff for recovery of a sum of Rs.7,63,250/- with further interest on the principle amount of Rs.5,37,500/- with 18% per annum has been decreed by the Trial Court, however, with interest at the rate of 9% per annum from 05.04.1997 till the date of realisation. Hereinafter, in this judgment, parties are referred to as per their array in the suit.

2. The plaintiff is a firm organizing seminars and lectures by one *Jack Trout* who is an expert in marketing and management, having written a book and having traveled all over the globe on payment basis for delivering lectures on the subject. On behalf of the second defendant, the first defendant contacted the plaintiff and there was an agreement to arrange for lectures at Bengaluru and Chennai on 03.04.1997 and 05.04.1997 for a total agreed fee of USD 35,000. However, the first defendant paid only a sum of



A.S.No.802 of 2008

WEB COPY

USD 22,500 leaving a balance of USD 12,500. In spite of several letters and reminders, no amount was paid and therefore, the suit.

3. The suit was resisted by the first defendant inter *alia*, on the ground of limitation. The case of the second defendant is that when he directly approached the Power of Attorney of the plaintiff, they did not come forward to conduct the seminar. Therefore, they contacted the first defendant, who agreed to organise the seminars. A total consideration of Rs.15.4 lakhs was agreed upon by the letter dated 07.01.1997 and the same was paid to the first defendant. The second defendant, being a third party vis-à-vis the plaintiff, having no privity of contract, cannot be arrayed as defendant in the suit and they cannot be made liable to pay the amount.

4. On the said pleadings, the following issues were framed by the Trial Court :-

1. Is the plaintiff entitled to the suit amount from the defendants 1 & 2?

2. Is the suit barred by limitation?

3. Is the plaintiff entitled to suit relief?

4. To what relief?



A.S.No.802 of 2008

WEB COPY

5. On the said issues, the parties let in evidence. One *Prakash Idnani*, the Power of Attorney Agent of the plaintiff was examined as **P.W.1** and **Exs.A-1** to **A-24** were marked on behalf of the plaintiff. On behalf of the second defendant, one *Rahul Shukla*, General Manager, Marketing, was examined as **D.W.1** and no documents were marked on behalf of the second defendant.

6. Thereafter, the Trial Court proceeded to consider the case of the parties. The Trial Court found that it is only the first defendant who had organised the seminars and lectures. From the various correspondences of the plaintiff, the contract was only between the plaintiff and the first defendant. The Trial Court had found that there is no privity of contract between the second defendant and the plaintiff. However, the Trial Court ultimately decreed the suit against the second defendant also by holding that as per Section 70 of the *Indian Contract Act, 1872*, where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to



A.S.No.802 of 2008

WEB COPY

restore, the thing so done or delivered. Aggrieved by the same, the second defendant is on the appeal before this Court.

7. Even though notices are served in the Appeal Suit, the plaintiff as well as the first defendant remained *ex parte*. Heard *Mr.K.Siva Subramaniam*, learned Counsel appearing for the second defendant and perused the material records of the case. Upon consideration thereof, the point which arises for consideration in the case is that whether or not the Trial Court is right in fastening the liability on the second defendant?

8. It is seen from the averments of the plaint itself that it is only the first defendant who organised the lectures. A perusal of the exhibits which are marked before the Trial Court categorically indicate that the second defendant was in no way directly involved with the plaintiff in organising the lectures. As a matter of fact, in the cross-examination of *P.W.1*, he has categorically admitted that the second defendant is included in the suit only to facilitate collecting the payments from the first defendant. It is also further admitted that the transaction is between them and the first defendant alone. As a matter of fact, the Trial Court, after analysing the entire



A.S.No.802 of 2008

documents, has found that neither from the plaint nor from the oral or documentary evidence, it can be concluded that the second defendant was in any manner involved in the contract between the first defendant and the plaintiff and there is a categorical finding that there is no privity of contract.

9. That being so, the Trial Court decreed the suit only on the basis of Section 70 of the *Indian Contract Act, 1872*. The Trial Court grievously erred in applying Section 70 of the *Indian Contract Act, 1872* to the facts scenario herein. Section 70 of the *Act* applies to a case where intendedly or unintendedly, if a person receives any article or service and he enjoys the benefit thereof without paying amount due for the same, even in the absence of any contract, once if he avails the service or enjoys the benefit of any article, he has to pay for the same. But, in this case, the second defendant enjoyed the service of lectures not gratuitously or unintendedly, but, by a specific contract with the first defendant. The second defendant had entered into a contract with the first defendant fixing the total consideration as Rs.15.4 lakhs and the second defendant had paid the said amount to the first defendant. The Trial Court completely overlooked the same and there was no gratuitous enjoyment by the second defendant and therefore, the



A.S.No.802 of 2008

WEB COPY

judgment and decree of the Trial Court is erroneous in law. In that view of the matter, I answer the point that once it is clear that there is absolutely no privity of contract between the plaintiff and the second defendant and when the second defendant has paid the entire sum agreed by it to the first defendant, the second defendant cannot be made liable to the suit claim.

10. In the result,

(i) The Appeal Suit in A.S.No.802 of 2008 is allowed;

(ii) The judgment and decree of the learned Additional District Judge, Fast Track Court No.V, Chennai, dated 11.08.2003 in O.S.No.29 of 2001 is partially set aside and modified as follows :-

"(a) That the first defendant shall pay to the plaintiff a sum of Rs.5,37,500/- (Rupees five lakhs thirty seven thousand five hundred only) together with interest at 9% per annum from 05.04.1997 till the date of realisation;

(b) That the first defendant do also pay to the plaintiff another sum of Rs.74,026.50 ps (Rupees seventy four thousand twenty six and



A.S.No.802 of 2008

fifty paise only) towards the costs of the suit as taxed and noted in the decree;

(c) The suit be and hereby dismissed in respect of the balance amount;

(d) That the suit be and hereby dismissed in entirety in as much as it concerned with the second defendant."

(iii) As far as the Appeal Suit costs is concerned, the parties shall bear their respective costs.

12.06.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

1. The Additional District Judge
(Fast Track Court No.V), Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras.



WEB COPY



A.S.No.802 of 2008

D.BHARATHA CHAKRAVARTHY, J.,

grs

A.S.No.802 of 2008

12.06.2023