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

+ **RFA(OS) 128/2013**

BIGDOT ADVERTISING AND COMMUNICATIONS PVT LTD

..... Appellant

Through: Mr.M.L.Lahoty with Mr.Dhruv
Chawla and Mr.Vaibhav Chawla,
Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms.Manisha Agrawal Narain, CGSC
(Through VC) with Ms.Shivangi
Gumber and Ms.Khushi Mangla,
Advocates for R-1/UOI.
Mr.P.K.Bansal, Advocate for R-2.

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Date of Decision: 03rd October, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. The underlying suit CS(OS) No.226/2000 was filed by the Appellant/Plaintiff for recovery of total amount of Rs.3,16,39,009/- [(i) outstanding amount – Rs.1,36,01,794/-, (ii) accrued interest @ 18% – Rs.1,30,37,266.44/- upto 25th January, 2000, aggregating to Rs.2,66,39,009.64/-, and (iii) damages – Rs.50,00,000/-]
2. The learned Single Judge vide judgment dated 27th November, 2012 decreed the Suit for a sum of Rs.1,36,01,743.20/- alongwith interest from



01st February, 1997 and also *pendent lite* and future interest @ 6% per annum simple interest. The learned Single Judge further directed that “*the amount which would be payable by Defendant No.2 to the Plaintiff, on this judgment becoming final, will necessarily be deposited only in this court and will not be released to the Plaintiff unless the negotiated dues of different publication in which advertisements were done by the Plaintiff are first cleared*”. Further, Mr. Prasouk Jain, Advocate was appointed as the Receiver for taking all actions with regard to distribution of the decretal amount to the respective publications for a fee of Rs.1,00,000/- alongwith all out-of-pocket expenses.

3. The present appeal has been filed by the Appellant/Plaintiff for modification of the said judgment and decree with a prayer for payment of outstanding principal amount of Rs.1,36,01,743/- alongwith accrued interest @ 18% aggregating to Rs.2,66,39,009.64/- and also a sum of Rs.50,00,000/- towards damages.

4. Learned counsel for the Appellant states that after the death of the father of Mr. Vimal Anand and Mr. Rajiv Anand, the present directors, the Appellant company is no longer interested in carrying on with the advertisement business. He further states that as the amount of Rs.2,67,27,425/- deposited by Respondent No.2 is lying in this Court since 03rd April, 2013 i.e., over the last ten years, the Appellant has decided not to press the present appeal in case this Court agrees to release the aforesaid amount along with the accrued interest thereupon, subject to the Appellant filing an undertaking to the effect that in case any publication claim payment arises towards the said advertisements, the Appellant shall be liable to settle their claims.



5. After hearing the parties at some length as well as keeping in view the fact that ten years have passed since the present appeal was filed and no suit has been filed by any publication against the Appellant, this Court on the last date of hearing directed the two serving directors of the Appellant to file affidavits of undertaking and indemnity bond on behalf of the Appellant company to the effect that they have settled and/or negotiated claims of publications (including newspaper and magazines) in whom the advertisements had been published and that in case any newspaper and/or magazine agency approaches either the Court or the Appellant or the Respondents with respect to outstanding payment toward publications forming the subject matter of the above suit, the Appellant shall settle and negotiate the same at its own risks and costs.

6. In pursuance to the said direction, the learned counsel for the two directors of the Appellant company (Mr. Vimal Anand and Mr. Rajiv Anand) has handed over affidavits of undertaking as well as indemnity bonds to the Court. The same are taken on record.

7. A sample copy of the affidavit of undertaking and indemnity bond filed by one of the directors of the Appellant company is reproduced hereinbelow:-

“AFFIDAVIT OF UNDERTAKING

I, Rajeev Anand S/o Late Shri Satya Pal Anand, aged about 55 years, R/o M-177, Greater Kailash-2, New Delhi, do hereby solemnly affirm and state as under:

- 1. I am one of the Director of Appellant Company herein and am well conversant with the facts and circumstances of the present case and I can accordingly depose to the same.*
- 2. Initially, when the Appellant Company was incorporated in the year 1992, it comprised of Mr. Satya Pal Anand, and his two sons, namely myself and Vimal Anand, as the Directors. Mr. Satya Pal Anand passed away on 04.12.2018, and only*



myself and Mr.Vimal Anand remained the Directors of the Appellant Company.

3. Accordingly, both the surviving Directors of the Appellant Company, i.e., myself and my brother are filing the present personal affidavits pursuant to proceedings before this Hon'ble Court on 14.08.2023.
4. Vide judgment dated 27.11.2012, the Ld. Single Judge, decreed the Suit for Recovery i.e., CS (OS) No. 226 of 2000 in favour of the Appellant and directed the Respondent No.2 to pay the sum of Rs.1,36,01,743.20/- along with simple interest from 01.02.1997 till filing of the suit i.e., 27.01.2000 @6% per annum along with pendente lite and future interest @6% per annum, till the payment.
5. That, dissatisfied with the said Judgment, the Appellant filed the present Appeal, for the modification of the said judgment, with the prayer for payment of outstanding amount of Rs.1,36,01,743/- along with accrued interest @18% per annum and Rs.50,00,000/- towards damages.
6. Pursuant to the Judgment, the Respondent No .2, on 03.04.2013, had deposited the amount of Rs. 2,67,27,425/- with the Registry of this Hon'ble Court in CS (OS) No.226 of 2000.
7. I state that since 03.04.2013, the said amount is lying with the Registry of this Hon'ble Court, as such, the Appellant Company has decided not to press the present RFA.
8. The Appellant Company has also filed an affidavit of undertaking dated 08.08.2023 to this effect. The contents of the said affidavit of undertaking may be read as part and parcel of this affidavit as well and the same are not repeated herein for the sake of brevity.
9. I state that the claims of publications (newspaper/magazine), which were subject matter of the abovesaid Suit, have already been settled or negotiated by the Appellant Company. However, I, being one of the Director of the Appellant Company, personally undertake that in case, any newspaper/magazine agency claims any amount against the Appellant Company and/or Respondent No.2, with respect to the publications which were subject matter of the abovesaid Suit, the same would be settled and negotiated by me at my own risk and cost.
10. In view of the above, it is humbly prayed that the amount of Rs.2,67,27,425/-, deposited by the Respondent No.2 with the Registry of this Hon'ble Court, along with the accrued interest, may please be released to the Appellant company i.e., Bigdot Advertising and Communications Pvt. Ltd.
11. My affidavit is correct.”



“INDEMNITY BOND

This Indemnity Bond is executed at Delhi on this 28th day of August, 2023 by Mr. Rajeev Anand S/o Late Shri Satya Pal Anand, aged about 55 years R/o M-177, Greater Kailash-2, New Delhi, one of the Director of the Appellant Company.

I, Rajeev Anand S/o Late Shri Satya Pal Anand, aged about 55 years, R/o M-177, Greater Kailash-2, New Delhi, state that even though claims made by publications (newspaper/magazine) have already been settled or negotiated by the Appellant Company.

I further state that on the release of the decretal amount along with interest accrued thereupon by this Hon'ble Court in favour of the Appellant Company, I shall indemnify and hold harmless the Respondent No.2 from claims, if any, from the Newspaper Agency/Magazine Agency with respect to the publications which were subject matter of the suit for recovery bearing CS (OS) No.226 of 2000.

The engagement of this bond is such that the above named person binds himself, his heir and legal representative to this effect.”

8. The aforesaid affidavits of undertaking and indemnity bonds are accepted by this Court and the two directors of the Appellant company are held jointly, severally and personally bound by the same. It is clarified that in the event, the affidavits of undertaking and indemnity bonds are not complied with, the two directors of the Appellant company as well as their legal heirs, if the need so arises, shall apart from civil or criminal action be also liable for criminal contempt of Court.

9. With the aforesaid clarification, the affidavits of undertaking and indemnity bonds are accepted by this Court and the two directors of the Appellant company are held personally held bound by the same. The original affidavits of undertaking and indemnity bonds shall be kept in a sealed cover under the custody of Deputy Registrar (Appellate).

10. Accordingly, present appeal is disposed of and the amount deposited with the Registry of this Court is directed to be released along with the



accrued interest, if any, to the Appellant company. List the matter before the concerned Registrar on 10th October, 2023 for release of the said amount to the Appellant company by way of an account payee cheque.

MANMOHAN, J

MINI PUSHKARNA, J

OCTOBER 03, 2023
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