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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/266/2015
WITH WPO/859/2011
BINAYAK ADVERT AGENCY PVT. LTD. & ANR.
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE :

THE HON'BLE THE JUSTICE ARIJIT BANERJEE
And
THE HON'BLE JUSTICE M.V. MURALIDARAN
Date : 9th February, 2024

Appearance :
Mr. Jishnu Chowdhury, Adv.
Mr. Syed Nurul Arefin, Adv.
Mr. Rahul Singh, Adv.
...for appellants/writ petitioners

Mr. Ashok Kumar Banerjee, Sr. Adv.
Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
...for respondents

The Court : A judgment and order dated May 12, 2015, whereby the appellants' writ petition being WP 859 of 2011 was dismissed by a Learned Judge of this Court, is the subject matter of challenge in this appeal filed by the writ petitioners.

The writ petitioners had participated in a tender floated by Hooghly River Bridge Commissioner (in short, HRBC) for utilising certain locations for putting

up advertisements. They emerged as the highest bidder. A letter of acceptance dated November 23, 2005 was issued in their favour by HRBC.

It is the contention of the appellants/writ petitioners that although they complied with all the terms and conditions of the tender, HRBC did not enter into any formal agreement with them. Consequently, permission for putting up advertisement at the specified locations was not granted by HRBC. Therefore, the writ petitioners could not put up any advertisement during the entire period of the subsistence of the contract i.e. between November 23, 2005 and July 23, 2008.

The writ petitioners challenged a demand notice issued by the Kolkata Municipal Corporation (in short, KMC) to the writ petitioners on account of advertisement tax, license fee and permission fee. The demand was to the tune of approximately Rs.22 Lac as on July 8, 2011. They contended that since because of lack of permission from HRBC, they could not put up any advertisement, no question of paying advertisement tax or license fee or permission fee can arise.

In the writ petition the appellants also claimed refund of a sum of approximately Rs.3.32 Lac that they had paid to HRBC on account of earnest money, etc. However, such prayer in the writ petition was given up at the time of hearing, as recorded by the Learned Single Judge in the impugned judgment and order.

Before the learned Single Judge, KMC contended that it was not concerned with whether or not HRBC granted permission to the writ petitioners to put up advertisement. On local inspection it had been found that

advertisements have been put up at the specified locations. Therefore, KMC is justified in raising its demand on the writ petitioners.

In the affidavit-in-opposition filed by HRBC before the learned Single Judge, it is admitted that no formal agreement was executed by and between HRBC and the appellants. The stand of the HRBC is that since no such formal contract was executed, the question of granting permission to the writ petitioners to put up advertisement did not arise.

The Learned Judge upon going through the documents on record came to the conclusion that firstly, the writ petitioners failed to cooperate with KMC in reconciliation of accounts prepared by KMC in connection with its demand against the writ petitioners. In spite of requests made by KMC, the writ petitioners failed and neglected to depute their officers to sit with KMC officials and settle the accounts. This indicates that the writ petitioners accepted the accounts prepared by KMC.

With respect, we are unable to agree with the Learned Single Judge. Mere refusal to sit across the table with KMC officers, could not be construed as admission of the claim of KMC by the writ petitioners. The writ petitioners may be justified in contending that since their case is that no advertisement ever was put up, no question of settling any accounts in relation to advertisement tax could arise. There was nothing to settle. Hence, the aforesaid finding of the learned Single Judge is set aside.

Secondly, the learned Judge noticed a communication from the Police personnel who were posted on Vidyasagar Setu asking the writ petitioners or their representatives to meet such Police personnel with relevant documents

pertaining to advertisements put up on that flyover. The writ petitioners, in reply, sent a letter saying that they had not put up any advertisement. The Police personnel could take necessary action if any person displayed hoardings in the name of the writ petitioner no.1. From this exchange of correspondence, the learned Judge came to the conclusion that the conduct of the writ petitioners showed that they had, in fact, put up advertisements.

Again, with respect, we are unable to agree. There was not, in our opinion, sufficient material before the learned Judge, to come to such a factual finding.

Thirdly, the learned Judge observed that the writ petitioners have not denied that advertisements were, in fact, put up at the specified locations. Therefore, there is an admission on their part. We again beg to differ. The writ petitioners have consistently run a case, good, bad or indifferent, correct or incorrect factually, that they never put up any advertisement. Hence, the finding of the learned Judge on that count also does not stand scrutiny and is set aside.

The learned Judge observed that, “the fact that the advertisements had been set up in the name of the first writ petitioner stands established.” We do not find sufficient material on record to come to such a finding. It is true that in the reply to the Police communication referred to above, the writ petitioners said that the Police can take necessary action if any person displayed hoardings “in our name”. That may be more of a loose language rather than any admission. However, we express no final opinion thereon. It is also true that in the legal notice dated April 20, 2011, sent on behalf of the writ petitioners, addressed to amongst others, the KMC officers, it is stated inter alia : “You are further requested to demolish all such boards erected against our name.” However, the

same also is not sufficient, in our opinion, by itself, to establish that hoardings were put up in the names of the writ petitioners, far less that the writ petitioners themselves put up the hoardings.

In fine, we are of the opinion that the learned Judge should not have entertained the writ petition at all since disputed questions of fact are involved. Trial on evidence is necessary to resolve such disputes. On one hand, the appellants contend that they were prevented from putting up any advertisement by the lack of permission from HRBC. On the other hand, KMC contends that on inspection it was found that advertisements were put up in the names of the writ petitioners. This kind of a dispute surely cannot be conveniently or effectively adjudicated in a writ application which is really in the nature of a summary proceeding. Such questions can hardly be resolved on affidavits only. In view of the aforesaid, we are constrained to set aside the order under appeal.

Learned Advocate for the appellants says that the appellants should be permitted to file a civil suit before the appropriate forum. The appellants would like us to observe that the statute of limitation would not come in the way if the civil court is approached. We are not inclined to make any such observation. However, if the appellants are entitled to take advantage or benefit of Section 14 of the Limitation Act, 1963, the appellants will be at liberty to do so.

We clarify that we have not interfered with the demand raised by the KMC on account of advertisement tax, license fee and permission fee on the appellants/writ petitioners. The KMC will be at liberty to press such claim in accordance with law.

We further clarify that all our findings and observations in this judgment and order are only for the purpose of disposal of this appeal. If any future litigation takes place between the parties, the same should be decided by the concerned forum without being influenced by any observation or finding of ours in this judgment and order.

The appeal accordingly stands disposed of.

(ARIJIT BANERJEE, J.)

(M.V. MURALIDARAN, J.)