

(2010) 01 BOM CK 0130
In the Bombay High Court
Case No : Suit No. 922 of 1990

Anurag Sites

APPELLANT

Vs

W.M.I. Cranes Limited, A Public Limited Company

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
Limitation Act, 1963 — Article 116, 22
Partnership Act, 1932 — Section 69

Citation : (2010) 2 BomCR 27

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : Tanvir Shaikh and S.A. Jabbar, for the Appellant; Karl Shroff and Raju Yadav, instructed by Dhru and Co., for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Heard.

2. Plaintiffs are a partnership firm duly registered under the provisions of Indian Partnership Act and they are carrying on business of acquiring various sites, erecting hoarding and permitting their customers to display their advertisements on the said hoarding at agreed rate and agreed terms and conditions. Defendants are a Company incorporated under the provisions of the Companies Act and they are manufacturers of cranes, steel plant equipments and material handling plants.

3. Plaintiffs have filed this suit seeking the following reliefs:

(a) That the Defendants be ordered and decreed to pay to Plaintiffs the sum of Rs 26,87,340/- as per particulars of claim Exhibit "G" hereto;

(b) That the Defendants be ordered and decreed to pay to Plaintiffs Rs 17,000/- per month for each of the said hoardings as compensation and as also the licence fees payable in respect of the said hoardings from the date of the suit till they

discontinue the displaying of their advertisements on the hoarding sites of the Plaintiffs at Industry Manor Building, Prabhadevi, Bombay - 400 025 or damages and/or compensation for wrongful use of the said site;

(c) pending the hearing and final disposal of the Suit the Defendants be directed to pay to Plaintiffs the licence fees in respect of the said two hoarding boards;

(d) That the Defendants be ordered and decreed to pay to Plaintiffs the costs of the suit;

(e) For such further and other reliefs as the nature and circumstances of the case may require.

4. In the plaint, it is averred by plaintiffs that sometime in the beginning of the year 1977, Defendants approached Plaintiffs to permit them to display their advertisement on the two hoardings of Plaintiffs in the compound of the building known as Industry Menor, Prabhadevi, Bombay. Accordingly, after negotiations between the parties an arrangement was arrived at between the parties on 15/3/1977 and it was agreed that Plaintiffs would allow Defendants to display their advertisement for a period of three years and Defendants agreed to pay Rs 1,250/- per month for each board inclusive of municipal taxes. The said agreement was reduced into writing on the said date. It was signed by Publicity Officer of Defendants and by the partner of Plaintiffs.

5. According to Plaintiffs, after expiry of period of three years in 1980, there were differences and disputes between Plaintiffs and Defendants and a new agreement was arrived at between the parties on 11/08/1980. The said agreement was also executed for a period of three years and Defendants agreed to pay to Plaintiffs Rs 600/- per month for each board for displaying the advertisement. By the said agreement, Defendants agreed to bear the cost of painting and maintenance of the said boards and they further agreed to pay directly to M/s Bandukwala & Moonim, the landlords of the site, rent of each board on behalf of Plaintiffs. According to Plaintiffs, they also agreed to pay municipal taxes on behalf of Plaintiffs in respect of two boards. According to plaintiffs, defendants agreed to pay Rs 30,000/- on behalf of Plaintiffs to the landlords on/or about 31/08/1980 and further sum of Rs 15,000/- was due by Defendants to Plaintiffs in respect of service rendered by them for various periods from 15/12/1978 to 30/06/1979 and out of the said sum of Rs 30,000/-, Rs 15,000/- was to be adjusted against the sum payable by Defendants to Plaintiffs and the balance amount of Rs 15,000/- was to be adjusted by deducting Rs 400/- per month from Plaintiffs' Bills. According to Plaintiffs, this agreement was also reduced into writing and signed by both parties.

6. According to Plaintiffs, one of the boards was damaged in November, 1992 and it was repaired by Plaintiffs though defendants had agreed to carry out maintenance and, as such, the said amount of Rs 15,000/- was due and payable by Defendants to Plaintiffs.

7. According to Plaintiffs, arrangement between the parties came to an end after completion of three years on 11/08/1980 and Defendants requested Plaintiffs by letter dated 09/08/1983 to renew the said agreement for further period of three years. According to Plaintiffs, since under Clause 8 of the arrangement dated 11/8/1980 the option to renew was with Plaintiffs, Plaintiffs declined to renew the said agreement. According to Plaintiffs, they, however, expressed their willingness to display their advertisement on fresh terms on payment of Rs 5000/- per month for each of the hoardings as compensation being the prevailing market rate. According to Plaintiffs, therefore, since the said offer was not accepted, the arrangement was not renewed and came to an end. It is the case of Plaintiffs that, therefore, Defendants had no right to use the said hoardings thereafter.

8. Plaintiffs' case is that though the arrangement had come to an end, Defendants continued to display their hoardings and used to send their cheques to Plaintiffs as compensation at the rate stipulated in the arrangement dated 11/08/1980 and that the said cheques were received by Plaintiffs under protest and not receipt was issued for the payment received. Defendants by their letter dated 11/11/1987 informed Plaintiffs that they are ready and willing to pay compensation at the old rate upon Plaintiffs issuing the Bills in their favour and also issuing acknowledgment of payment received. Alongwith the said letter, Defendants forwarded cheque of Rs 7424/- being the license fees for the period from 1st August, 1986 to 30th November, 1987. This amount was not accepted by Plaintiffs. According to Plaintiffs, in spite of this, Defendants continued to illegally display their hoardings in collusion with landlords without making any payment to Plaintiffs. According to Plaintiffs, the license in respect of the two hoardings was issued by Municipal Corporation in their favour and the said license was not revoked and/or transferred and/or withdrawn and, therefore, according to Plaintiffs, neither the landlords nor Defendants could display advertisement in any manner without their permission. Plaintiffs initially filed suit against landlords and Defendants in the Bombay City Civil Court at Bombay being Suit No. 2289 of 1988 for a declaration that the said two hoarding boards are the properties and right of Plaintiffs alone and for permanent injunction restraining landlords and Defendants from using the said hoarding site or displaying any advertisement on the said hoardings. At the time of filing of this suit, the said suit was pending. According to Plaintiffs, therefore, Defendants were illegally using the said hoarding site and they were entitled to recover Rs 17,000/- per month for each hoarding as compensation and damages for wrongful use of the hoarding site. Plaintiffs' further case is that Plaintiffs are entitled to recover license fees paid by Plaintiffs to the Municipal Corporation from 01/08/1983. The case of Plaintiffs is that they had paid an amount of Rs 47,500/- at the old rate to the Corporation and they are entitled to recover the said amount from Defendants. According to Plaintiffs, Defendants made certain payment to Plaintiffs from time to time upto 1987 which was accepted under protest as part payment on account of Plaintiffs' claim with Defendants in

respect of the said hoardings. Plaintiffs, therefore, on these grounds filed a suit for recovery of the said amount.

9. Defendants file their Written Statement and denied the averments made in the plaint. According to defendants, the suit was barred by law of limitation since Plaintiffs had approached this Court after expiry of at least five years from the alleged expiry of the agreement. It is further contended that Defendants had been displaying their hoardings at the suit site. According to Defendants, Plaintiffs had received payment by way of compensation in respect of the hoardings which were displayed by Defendants even after August, 1983. It is further contended that Defendants had regularly paid ground rent to the landlords as also property taxes to the Corporation and they had offered payment of ground rent to the landlords for the period until March, 2006. It is, therefore, contended that Defendants were legally displaying their advertisements at the suit site. It is further contended that notice was sent by Municipal Corporation to Plaintiffs directing them to pay advertisement fees to the tune of Rs 2,06,263/- for the period from 01/06/1988 to 31/08/1999. It is contended that Plaintiffs failed to pay the said amount and Defendants had to pay the said charges till the end of September, 2006 in order to prevent the Municipal Corporation from cancelling license/permit which was given to Plaintiffs and from preventing Municipal Corporation from removing the hoardings. It is further contended that Defendants had paid the said fees to the Municipal Corporation which was within the knowledge of Plaintiffs and that Plaintiffs never objected to Defendants making payment of license fees on behalf of Plaintiffs. It is, therefore, contended that Plaintiffs had acknowledged Defendants' right to display their advertisements on the suit hoardings.

10. On the basis of pleadings between the parties, following issues were framed:

- (1) Whether the plaint does not disclose any cause of action against the defendants as stated in para 1 of the written statement?
- (2) Whether the claim in the suit is barred by Law of Limitation as stated in paragraph 1 of the written statement?
- (3) Whether the Plaintiffs are partnership firm duly registered under the provisions of the Indian Partnership Act, as stated in paragraph No. 1 of the plaint?
- (4) Whether the Plaintiffs are entitled to recover Rs 15,000/- from the defendants for the repairs to the hoarding board carried out in November, 1982, as stated in paragraph 4 of the plaint?
- (5) Whether the Plaintiffs prove that the Agreement, dated 1st August, 1980 came to an end by efflux of time as stated in paragraph 5 of the plaint?
- (6) Whether the Plaintiffs prove that the Defendants in collusion with M/s. Bandukwala and Munim wrongfully and without permission of the Plaintiffs displayed their advertisement on the two hoarding board as stated in paragraphs

5, 6 and 8 of the plaint?

(7) Whether the Defendants prove that they regularly paid the rent to Bandukwala and Munim and property taxes to Municipal Corporation of Greater Mumbai, as stated in paragraph 8 of the written statement?

(8) Whether the Plaintiffs are entitled to recover from the defendants Rs 17,000/- per month for each of the hoarding board as compensation for wrongful use of the hoarding board?

(9) Whether the Plaintiffs are entitled to receive from the Defendants Rs 47,500/- being the license fee paid by the plaintiffs as stated in paragraph No. I of the plaint?

(10) Whether the Defendants prove that they have with the knowledge of the Plaintiffs paid Rs 2,06,263/- to Municipal Corporation of Greater Mumbai as advertisement fees in respect of said two hoarding board as stated in paragraph No. 10 of the written statement?

(11) If answer to issue No. 10 is in the affirmative, whether the defendants prove that the plaintiffs have by their conduct, acknowledged the defendants right to display on the suit hoarding board as stated in paragraph 10 of the written statement?

(12) Whether the Plaintiffs are entitled to recover from defendants Rs 26,87,340/- as stated in paragraphs No. II and 12 of the plaint?

(13) Whether the defendants are liable to pay to the Plaintiffs Rs 17,000/- per hoarding board per month from the date of the suit till they discontinue the use of the hoarding board as stated in paragraph 12 of the plaint?

(14) What relief and order?

FINDING ON ISSUE No. 3 : Whether the Plaintiffs are partnership firm duly registered under the provisions of the Indian Partnership Act, as stated in paragraph No. I of the plaint?

11. So far as this issue is concerned, in view of the amendment to Section 69 of the Indian Partnership Act wherein it has now been provided that even in respect of unregistered Partnership Firm, the partners can file suit against the partners and third parties. The dispute raised by Plaintiffs, therefore, would survive and the suit would still be maintainable.

FINDING ON ISSUE No. 2 : Whether the claim in the suit is barred by Law of Limitation as stated in paragraph 1 of the written statement? and on ISSUE No. 4: Whether the Plaintiffs are entitled to recover Rs 15,000/- from the defendants for the repairs to the hoarding board carried out in November, 1982, as stated in paragraph 4 of the plaint?

12. In the present case, Plaintiffs have filed suit and are seeking a decree for an amount of Rs 26,87,340/- as per particulars of claim. Plaintiff have claimed

damages / compensation as per particulars of claim at Exhibit-F to the Plaint which is a compensation for the use of two hoardings for the period from 01/08/1983 till 28/02/1990 @ Rs 17,000/- per month per hoarding and have, therefore, claimed an amount of Rs 26,86,000/-. They have also claimed further compensation @ Rs 17,000/- per month per hoarding from the month of March, 1990 till the Defendants discontinue the use of the said two hoardings. Plaintiffs have then claimed license fees payable by Defendants to Plaintiffs as per particulars of claim at Exhibit-G. In Exhibit-G, Plaintiffs have claimed license fees payable by Defendants to Plaintiffs for a period from 01/08/1983 to 30/03/1985 for the two hoardings @ Rs 232/- per month per hoarding. Plaintiffs have then claimed license fees for a period from 01/04/1985 to 30/05/1985. Lastly, Plaintiffs have claimed the amount paid by them for repairing the hoardings as per Bill dated 22/11/1982.

13. In the Written Statement filed by Defendants it is contended that the suit is barred by law of limitation. It is claimed that Plaintiffs have approached this Court after expiry of atleast five years from the alleged expiry of the agreement.

14. The present suit is filed by Plaintiffs on 13/03/1990. In my view, so far as claim of Rs 15,000/- which is towards repairing hoardings as per bill dated 22/11/1982 is concerned, it is clearly barred by law of limitation. Plaintiffs have received this Bill in the year 1982. The present suit has been filed in 1990. This claim, therefore, in my view, is clearly beyond the period of three years.

15. So far as claim in respect of license fees is concerned, particulars of which have been given by Plaintiffs in Exhibit-D to the Plaint. The said claim also, in so far as it relates to license fees payable for the period from 01/08/1983 to 30/03/1985 and for the period from 01/04/1985 to 30/05/1985 is concerned, it is clearly barred by law of limitation.

16. So far as difference in license fees for a period from 01/04/1985 to 30/01/1988 is concerned, the said aspect would be considered when other issues pertaining to the payment of license fees by Defendants are taken in to consideration.

17. So far as particulars of claim in Exhibit-F is concerned, Plaintiffs have claimed damages or compensation for the used of the said hoardings for the period from 01/08/1983 till 28/02/1990 @ Rs 17,000/- per month. So far as the claim of Plaintiffs from 01/08/1983 upto 1986 is concerned the said claim is clearly barred by law of limitation.

18. So far as rest of the claim is concerned, Counsel for Defendants vehemently urged that since claim of Plaintiffs is essentially a money claim, after expiry of the agreement between the parties, at the highest, plaintiffs would have claim upto 1989 which amount also, according to Counsel for Defendants, Plaintiffs would not be entitled to claim. He submitted that rest of the claim of Plaintiffs was not maintainable since the suit was essential filed for money claim and the Plaintiffs ought to have filed suit every three years.

19. On the other hand, the learned Counsel appearing on behalf of Plaintiffs contended that in view of prayer Clause (b), Plaintiffs are entitled to make this claim, particularly when the issue was covered by Section 22 of the Limitation Act. It is further submitted that Section 22 of the Limitation Act will apply as damages/breach is continued and every single continuing breach/damages gives fresh cause of action. It is submitted that plaintiffs, therefore, are entitled to the decree as claimed till such time defendants continue to wrongfully use the plaintiffs' hoardings. It is then contended by the learned Counsel appearing on behalf of plaintiffs that the plaintiffs had filed a suit in the City Civil Court at Bombay in the year 1989 against the defendants herein and also against the landlord for injunction and declaration that the plaintiffs are tenants of M/s Bandoorkwala & Moonim in respect of a strip of land upon which two hoarding boards of plaintiffs are erected. He submitted that the suit is now transferred to the Small Causes Court and the said suit is still pending. It is, therefore, submitted that the submission of defendants that the plaintiffs permitted defendants to display the hoardings on the same terms and conditions as in the earlier agreement dated 11/8/1980 is false.

20. The learned Counsel appearing on behalf of plaintiffs then submitted that defendants witness Suresh Gopichand Narang has admitted that they were making payments of the license fee from 1983 till 1999 and that in view of the said admission, the claim of plaintiffs for compensation from 1993 is not barred by limitation since the suit was filed in 1990. It is then submitted that from the evidence of defendants' witness and the admission which was given by the said witness, collusion between the landlord and defendants had been proved by plaintiffs. It is, therefore, submitted that plaintiffs are entitled to claim compensation @ Rs 17,000/- per month. It is, therefore, submitted that the plaintiffs have established and proved that defendants were wrongly continuing to display the hoardings at the plaintiffs' site and the license still stands in the name of plaintiffs. It is submitted that plaintiffs have established that the prevailing market rate was Rs 17,000/- per month at the time of filing of suit in 1990.

21. The submissions made by the learned Counsel appearing on behalf of plaintiffs that Section 22 of the Limitation Act would apply in the present case cannot be accepted. It cannot be said that the act of displaying hoardings on the two sites is a continued wrong. Firstly, so far as prayer Clause (a) of the suit is concerned, claim upto January, 1987 is clearly barred by limitation since, admittedly, after 1987, no further payments have been made to plaintiffs in respect of compensation. Plaintiffs have admitted in para 11 of the plaint that the payments were made by defendants only upto the year 1987. Defendants in their letter dated 11/11/1987 clearly stated that the compensation for the period from January 1987 to 31/11/1987 would only be sent when bills are drawn and stamp receipts are issued by plaintiffs. Therefore, no payments were made thereafter and the plaintiffs' witness has admitted in the cross-examination that defendants have not made any payment after 01/01/1987. The present suit has been filed

on 12/3/1990 which is beyond the period of three years from January 1987 and, therefore, even assuming that defendants had paid the compensation for displaying of hoardings at the old rates from 1983 to 1987 and they were accepted under protest as part payment even then the plaintiffs cannot claim any compensation for the period from 1983 to January, 1987 as the suit is filed beyond three years i.e in January 1987. The second question which, therefore, falls for consideration is : whether the claim of plaintiffs for the period from March 1987 to March, 1990 and the subsequent period during pendency of suit for compensation @ Rs 17,000/- per month for each hoarding would survive?

22. So far as the period from the date of filing of the suit is concerned, admittedly, the present suit is not filed for possession and for mesne profit under Order XX Rule 12 of the Civil Procedure Code. In such a suit, a preliminary decree may be passed for possession and, thereafter, profit can be ascertained for wrongful possession by defendants in an inquiry under Order XX Rule 12. In the present case, so far as prayer Clause (a) is concerned, it is a suit for recovery of money and, therefore, no decree can be passed for recovery of compensation after the date of the suit upto the date of the decree or after the date of the decree until recovery of possession.

23. The next submission made by the learned Counsel appearing on behalf of plaintiffs is that the present suit is covered by provisions of Section 22 of the Limitation Act. The learned Counsel for plaintiffs in support of the said submission has relied upon the judgment of the Apex Court in Balakrishna v. Saree DM. Sansthan 1959 SC 799 . He has also relied upon the judgment of the Nagpur High Court in AIR 1947 224 (Nagpur) . He has also relied upon the judgment of the Madras High Court in Bharathamatha Desiya Sangam, Madhavaram and Another Vs. Roja Sundaram and Others, . He has also relied upon the judgment of the Apex Court in M/s. Bengal Waterproof Limited Vs. M/s. Bombay Waterproof Manufacturing Company and Another, .

24. On the other hand, Mr. Shroff, the learned Counsel appearing on behalf of defendants has submitted that the provisions of Section 22 of the Limitation Act will not apply in the present case. He submitted that the ratio of the judgments on which reliance has been placed by the Counsel for plaintiffs would not apply to the facts of the present case. He, on the other hand, relied on the Full Bench Judgment of the Travacore, Cochin High Court in Ittipennu Amma Devaki Amma v. Krishna Kammathi Ramachandra Kammathi AIR 1955 TC 146 (Vol.42, C.N.54).

25. In my view, submissions made by the learned Counsel appearing on behalf of plaintiffs that the present case would be covered by the provisions of Section 22 of the Limitation Act, cannot be accepted. Section 22 of the Limitation Act reads as under:

22. Continuing breaches of torts.- In the case of continuing breach of contract or in the case of continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be,

continues.

26. In the present case, plaintiffs have already filed a suit which is now pending in the Small Causes Court for a declaration that they are tenants against the present defendants as well as landlord of the property. Secondly, the contract which was executed between plaintiffs and defendants has already expired in 1983 and the plaintiffs have not renewed the said contract but continued to accept the rent at the old rate upto January, 2007. From the evidence which is on record, it is evident that plaintiffs were aware that defendants were paying license fees to the Municipal Corporation. Admittedly, license stood in the name of plaintiffs. At the highest, therefore, it can be said that defendants are tenants holding over after expiry of the lease and, in such a case, limitation for recovery of rent during holding over is three years. The Full Bench of the Travancore, Cochin High Court, had, in a case where the facts were similar, observed in para 11 of its judgment in the case of Ittipennu Amma Devaki Amma (supra) as under:

(11) Point No. 2 : The second point relates to the period of limitation for recovery of rent due during the period of the holding over independently of a charge on property. The lease during holding over is a new lease though there is no break in the tenancy from its start. The terms in the old lease are deemed to continue in the absence of a contract. Such a contract may be oral and may relate to any one or more of the terms. In respect of any matter not agreed to afresh the original terms apply. The period of limitation to enforce recovery of rent during holding over is only three years because the six year period under Article 116, Limitation Act would be available only when there is a contract in writing registered. The Travancore High Court held so in 24 Trav LR 129 (V) and 26 Trav LR 63 (W). When a lease for a term certain is created by a registered instrument and there is a holding over and the tenant continues, there is an extension of the tenancy but there is no extension of the document of lease.

The ratio of the aforesaid judgment squarely applies to the facts of the present case. The ratio of the judgments on which reliance is placed by the learned Counsel appearing on behalf of plaintiffs will not apply to the facts of the present case. The issue No. 2 is, therefore, answered in the affirmative. However, in view of answer to issue No. 2, issue Nos. 1 & 4 to 7 and 9 to 13 do not survive.

27. So far as the period from March, 1987 till filing of the suit is concerned, in my view, it has not been established by plaintiffs that market rate was Rs 17,000/- per month. In my view, plaintiffs have not proved in evidence that a sum of Rs 17,000/- is the compensation actually received or paid by any party for similar hoardings in the same area. Following evidence of P.W. 1 and answers given by him to questions which were put in cross-examination clearly establish that plaintiffs have not been in a position to substantiate their claim that at the relevant time rate of the hoardings was Rs 17,000/- per month:

Q. No. 73 : Since you have claimed that you are entitled to receive Rs 17,000/- per month from August 1983 till the filing of the suit in 1990, why have you not

brought on record a single instance showing actual payment of such rates at Rs 17,000/-for your hoardings? Answer: I do not feel any need to do so.

Q. No. 74: Did any party during the period 1983 to 1990 approach you with an offer to pay Rs 17,000/- per hoarding for the sites?

Answer: No as the matter was in dispute.

Q. No. 75: Did Rajasthan Spinning & Weaving Mills in fact take the hoarding at serial No. 4 of your alleged letter dated 5th October, 1990 and pay for the said hoarding? Answer: That was only an offer which according to me was a prevailing rate at that time.

Q. No. 82: Is it not correct that in fact you had only received an offer to take the site from Deepak Advertising but this site was never actually taken? Answer: The site was taken by me and it was conducted by me for four months.

Q. No. 83: If the site was conducted by you for 4 months why have you not mentioned this in the Affidavit of Evidence?

Answer: Because, I do not feel any necessity.

Q. No. 84 : Why have you not mentioned and even in your evidence that the cheque of Rs 14,500/- was encashed by Deepak Advertising, and that you paid a further three cheques of Rs 14,500/- each allegedly for four months, if your case is to be believed? Answer: Because I do not feel it necessary.

Q. No. 90: I put it to you that you have never taken the site at Worli offered by Deepak Advertising? Answer: It is not at Worli. It is at Prabhadevi.

Q. No. 107 : Do you actually take any hoardings from Mr. K.K. Nayar? Answer: No.

Q. No. 108: Do you agree that since you have not taken any hoarding from Mr. K.K. Nayar you have not brought on record any evidence that the rates allegedly quoted and typed at page 15 and 16 of your Compilation were actually paid for the hoarding at item Nos. 2 & 3.

Answer: I deny. I say that I have brought on record the same in my affidavit.

Q. No. 109: Can you show in which part of your affidavit you have brought on record the fact that Rs 45,000/- and Rs 50,000/- for the sites at Worli Naka at Serial Nos. 2 and 3, page 15 of your Compilation of Documents is actually paid for? Answer: It is only a Circular sent by Soverign Advertising and Marketing Services, the rates which they are charging.

Plaintiffs also examined P.W.2 for the purpose of proving this fact. Plaintiffs have produced xerox copies of Bills and, as rightly pointed out by the Counsel for defendants, these xerox copies have not been proved as secondary evidence. No foundation has been laid down for leading secondary evidence. These documents have not been included in the affidavit of documents. The documents were

already produced in compilation of documents. However, these documents were not included in the said compilation of documents. Apart from that the contents of the said documents which are relied upon by plaintiffs cannot be admitted in evidence since the contents of these documents have not been proved either by primary or secondary evidence. Similarly, answers to questions in cross-examination of P.W.2 would also show that he has not proved that the amount of Rs 17,000/- was actually paid for the hoardings as suggested to P.W.2.

Q.12: You have said that monthly advertising charges of Rs 17,250/-were paid. Have you brought anything on record to prove this?

Answer: No. I have not. As it is very old record, it is not traceable.

The witness volunteers that, at that time he had received the amount of the bills marked as Exhibits A, B and C.

Q.13: Apart from the statement that you have received the money, do you have any receipts to show that you have received the amount? Answer: No. Today I do not have.

Q.43 : Why have you not stated anywhere that the payment in respect of these bills were received? Answer: I never realized this was important. Now you are asking me so I am saying that I had received the payment, at that time.

Q.44 : I put it to you that you neither produced any document to show payment received for these bills, nor stated these facts, because in fact payment were not received for these bills?

Answer: I deny.

Plaintiffs, therefore, have not been in a position to establish that market rate of the hoardings was Rs 17,000/- per month from March, 1987 to March, 1993. Hence, this claim, cannot be granted. Issue No. 8 is, therefore, answered in the negative. 28. In view of the answer on issue No. 2, issue Nos. 4 to 7 & 9 to 13 do not survive. Issue No. 8, however, is answered in the negative. The aforesaid issues are answered as under:

29. In the result, suit is dismissed. Under the circumstances, there shall be no order as to costs.