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**(2010) 01 DEL CK 0359**

**In the Delhi High Court**

**Case No :** I.A. No. 14518 of 2007 in CS (OS) No. 226 of 2000

Bigdot Advertising and Communications Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 21-01-2010

**Acts Referred:**

**Citation :** (2010) 01 DEL CK 0359

**Hon'ble Judges :** Manmohan Singh, J

**Bench :** Single Bench

**Advocate :** K.R. Chawla, for the Appellant; A.S. Chandiok, ASG, B.V. Niren, Harsh Kaushik and Gitika Panwar for D-1 and P.K. Bansal, for D-2, for the Respondent

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## **Judgement**

Manmohan Singh, J.—This order shall dispose of the application u/s 151 of the Code of Civil Procedure, 1908 (hereinafter to as "the CPC") filed by the plaintiff being I.A. No. 14518/2007 to file additional documents on record.

2. The plaintiff filed the present suit for recovery of Rs. 3,16,39,009.64 with costs and pendente lite/future interest.

3. As per the plaintiff, it carried out advertisement work on the directions and under the supervision of the officials of the Defendants No. 1 and 2.

4. The defendants made a part payment of Rs. 59,82,166.80p in January 1997 out of the total amount of Rs. 1,95,83,910.00.

5. The plaintiff claimed the balance amount of Rs. 1,36,01,743.20 p (principal amount) plus interest and damages legally due to it which are being withheld by the Defendants without any reasonable cause or basis.

6. The plaintiff asserts that it has been claiming charges for publication of the advertisement of the Defendants based on fixed tariff as prescribed in the Indian Newspaper Society (INS) Press Hard Book, being a fully accredited advertising agency of the INS.

7. The plaintiff denied that it is liable to pay contractual DAVP rates as alleged by the defendants for a few publications. The plaintiff submits that it is neither a party to any DAVP rate contract nor the advertisement in question was released through DAVP.

8. The plaintiff further submits that in the list supplied by the Defendants for publications of the advertisement in question, the publications/their editions as well as the magazine are not on DAVP contractual rate list although these formed an integral part of the list.

9. The plaintiff contends that it applied for disclosure of certain information under Right to Information Act, 2005 on 19th December, 2006, relating to files/documents of the Defendant No. 1 which contains various orders/directions/correspondence inter se the defendants, having direct bearing on the case which was allowed by DOT's Appellate Authority on 5th February, 2007 but no response was received from the Chief Public Information Officer, Department of Telecom (DoT). The plaintiff filed an appeal before DoT's appellate authority which was allowed on 5th February, 2007.

10. The plaintiff also states that some documents under RTI were supplied to it on 29th August, 2007 much after than the cross-examination of the Defendant No. 1 which was completed on 1st February, 2007. It is stated that since the documents were supplied subsequent to the production of Defendant No. 1's evidence, they could not be exhibited before the evidence of defendant No. 1. The plaintiff pleads that there exists sufficient cause for not filing the said documents as there has been delayed disclosure by the Defendant No. 1.

11. The plaintiff urged that the above said documents have been signed and stamped as "attested true copies" by Sh. L.T. Tluanga, Deputy Secretary (Administration II), DOT in his capacity as deemed CPIO under RTI Act, 2005 of Defendant No. 1 who also deposed as its own witness. It is stated that the said documents have been supplied by Sh. S.L. Negi, CPIO of Department of Telecom under his own covering letter to the plaintiff as detailed in the enclosed list. The plaintiff therefore, urged that the genuineness and correctness of said documents which have been supplied as attested true copies from DOT's own records cannot be doubted. They do not require any evidence and can be straight away marked as exhibits.

12. The plaintiff alleges that the said documents now disclosed by the Defendant No. 1 under RTI Act, 2005 would provide documentary evidence to the effect that the Defendant No. 1 has been making payments through its PSUs based on INS tariff as given in the Indian Newspaper Society Press Hand Book to the plaintiff as well as to other INS accredited advertising agencies for publication of their advertisements. The defendants have denied this fact and stated that the payment to the plaintiff has to be made through DAVP rates for its advertisement. The plaintiff contended that the filing of the said documents is necessary for determination of the controversy between the parties and for final

and effective adjudication of the matter.

13. The defendant No. 2 in reply submits that the application of the plaintiff to bring on record additional documents should not be entertained at this stage as it has been filed in December 2007 although the suit has been filed in the year 2000. It is further submitted that the said application has been filed by the plaintiff after the evidence of defendant No. 1 was completed and the evidence of defendant No. 2 was also substantially complete. The documents sought to be brought on record are either letters/notings of defendant No. 1 or letter of plaintiff/third parties.

14. Mr. A.S. Chandhiok, Additional Solicitor General and Senior Counsel for Defendant No. 1 argued that the application filed by the plaintiff is not maintainable mainly on the ground that these documents ought to have been filed along with the plaint as per the provision of Order 7 Rule 14 CPC. It was the duty of the plaintiff to produce the documents before the admission/denial of documents took place. I find myself unable to accept this contention as I am of the view that it is the substance of the application that matters and not the nomenclature given in the cause title of the application. u/s 151 CPC the court has inherent power to consider an application wherein a wrong provision is mentioned. No party can be permitted to sidetrack the main issue and to delay the court proceedings by going into elementary procedural law and by pressing hyper-technical issues.

15. In case any application has to be made under RTI Act to receive the information it should have been done by the plaintiff at the earlier stage and not at this stage when the evidence of the parties is almost concluded. It is vehemently argued that since the plaintiff has failed to prove its case on merit, the present application has been filed in order to delay the matter.

16. He further argued that admission and denial of documents in this matter was completed on 12th February, 2002. Issues were framed on 2nd April, 2003 and PW1 was cross examined on 19th October, 2005. By this time, the documents and pleadings of the parties were in the knowledge of the plaintiff who could have applied for these documents at that stage if necessary but the plaintiff filed an application under RTI on 19th December, 2006 after the cross examination of witness of Defendant No. 1. It is contended that the plaintiff is trying to prove his case on the basis of the documents which were supposed to have been filed earlier.

17. I agree with the contention of the plaintiff that the RTI documents could not be filed earlier as Right to Information Act, 2005 (22 of 2005) itself came into force on 15th October, 2005 where after TCIL and DOT documents/file notings were sought from TCIL by the plaintiff by application dated 19th December, 2006.

18. I agree with the contention of the learned Counsel for the plaintiff that these documents could not be confronted in cross-examination of defendant No. 1 which was already completed on 1.2.2007 as the same were received by the

plaintiff subsequently in the month of August, 2007.

19. In view of the above mentioned documents it is clear that the defendant No. 1 has all along been making payments through PSUs based on INS tariff as given in the Indian Newspaper Society Press Hand Book to the plaintiff and to other INS accredited advertising agencies for publication of the advertisements. Since the attested copies of the said documents were supplied to the plaintiff on 29th August, 2007, the attested true copies were earlier denied by the defendant No. 1 at the time of admission/denial of the document. Prima facie it appears that the said documents are relevant documents which will go into the root of the cause and the plaintiff has been able to make sufficient cause for not filing the documents earlier because of their delayed disclosure under the Right to Information Act, 2005 by the defendant No. 1.

20. Without going into the merit of the documents, although I agree with the learned Counsel for the defendant that the matter is almost ready for final disposal, however, in the interest of justice, equity and fair play, I allow the application and direct that the documents enclosed with the application be taken on record, however, it is made clear that the question of admissibility of these documents in evidence has to be considered as per their own merit and in accordance with the law.

21. The present application is accordingly disposed of with the said directions.

CS (OS) No. 226/2000

List before court on 15th February, 2010.