(2012) 05 DEL CK 0317

In the Delhi High Court

Case No : Regular First Appeal No. 226 of 2012

HDFC Bank Ltd. APPELLANT

Vs

Delhi Gymkhana Club Ltd. RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96

Citation : AIR 2013 Delhi 10

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Dharam Dev, for the Appellant; Tungesh, for R. Dayal and Co., for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

Caveat Nos.527 & 528/2012

Since the respondent/Delhi Gymkhana Club Ltd. has filed the caveats, I have heard counsel for both the parties in appeal. Caveats stand disposed of.

RFA No. 226/2012

1. The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908(CPC) is to the impugned judgment of the trial Court dated 27.1.2012 decreeing the suit filed by the respondent/plaintiff for an amount of Rs. 65,000/- per month from April, 2006 to December, 2007 alongwith pendente lite and future interest at 8% per annum simple. The suit has been decreed on account of the fact that the respondent/plaintiff/M/s. Delhi Gymkhana Club Ltd. for the aforesaid period in its magazine/newsletter issued advertisements of M/s. Bank of Punjab Ltd., the predecessor-in-interest of the appellant no.1/defendant no.1. Appellant no.1/defendant no.1/M/s. HDFC Bank Ltd. is the successor-in-interest of M/s. Bank of Punjab Ltd. and thereafter M/s. Centurian Bank of

Punjab Ltd., inasmuch as, the Centurian Bank of Punjab Ltd. merged with M/s. HDFC bank Ltd. pursuant to a scheme of merger. The facts of the case are that the respondent/plaintiff at the request of the then Bank of Punjab Ltd. issued advertisements in its magazine/newsletter. The charges for advertisements of Rs. 65,000/- per month were regularly paid by the Bank of Punjab Ltd. from January, 2004 onwards till March, 2006. The last payment of Rs. 1,95,000/- was made by M/s. Centurian Bank of Punjab Ltd. on 31.3.2006. The advertisement charges having not been paid for the months from July, 2006 to December, 2007, the subject suit came to be filed after the legal notice dated 21.10.2008 failed to yield any appropriate response.

2. The appellant no.1/defendant no.1 contested the suit on the ground that there were no written instructions of or written agreement with the Bank of Punjab Ltd. or Centurian Bank of Punjab Ltd. for the respondent/plaintiff to publish the advertisements in its magazine/newsletter. It was further pleaded in the alternative that when the payment of Rs. 1,95,000/- was released by the Centurian Bank of Punjab on 31.3.2006, clear instructions were given not to publish further advertisements. In the replication, the respondent/plaintiff stated that the advertisements were always published as per the instructions, and in fact this becomes clear from the fact that logo of the bank in the magazine/ newsletter was also changed by the respondent/plaintiff/M/s. Gymkhana Club Ltd. from time to time

3. Trial Court has decreed the suit by giving the following findings/conclusions:-

"27. Question for consideration before the court is that in the absence of any written agreement between the plaintiff club and defendant bank whether plaintiff is entitled for charges for publication of advertisement of defendant bank. It is submitted b the plaintiff club that defendant bank was continuously assuring he plaintiff club that the pending dues of plaintiff club would be released very soon.

28. In the WS, defendant mentioned that the last payment of Rs. 1,95,000/- which was released on 31.3.2006 was with the clear instructions that no advertisement shall be published further. So as per the admission of defendant it can safely be arrived upon that the payment made by the defendant bank till 31.3.2006 were on account of publication charges only and the submissions of the counsel that these payments were on account of charges for ATM does not stand in the eyes of law.

29. It is further submitted by the plaintiff that design and material of the advertisement was also changed by the defendant from time to time by submitting fresh designs on stencils and CD.

30. Submissions made by the counsel for plaintiff that since defendant was paying the publication charges from January, 2004 to March, 2006 on the basis of oral agreement only then it also substantiate his claim for the period April 2006 to December 2007 onwards attracts merit.

31. Plaintiff has also placed on record two copy of Newsletter- "Club Life" dated April 2006 and December 2007. In both these newsletter logo of defendant bank is published. There is no doubt that advertisements of defendant bank is published by the plaintiff club but whether the same was published consequent upon agreement or not. However, no direct evidence is available. But it is admitted by defendant that publication for the period from January 2004 t March 2006 was with their consent.

32. It is submitted by counsel for plaintiff tat from time to time the logo has been changed as per the material/disk provided by defendant bank only. From the facts and circumstances, although no direct evidence has been led by the plaintiff to prove its agreement but it is admitted by the defendant that there was an agreement between the plaintiff for the period January 2004 to March 2006 in para 17 of the WS which reproduced herein below:

"That the contents of the para no. 17 of the plaint are not denied to extent that the payment has been released till 31.3.2006 with clear instructions that no advertisements shall be published. It is submitted that the plaintiff was not given any instructions by the defendants to publish the advertisements after 31.3.2006. The plaintiff may be put to strict proof of it."

33. It is submitted by Ld. counsel for plaintiff that from time to time a new logo has been provided by the defendant bank and provided same to the plaintiff club shows that defendant bank was fully aware of the publication, but no letter for stopping the same was written by defendant bank. It is also admitted that the logo cannot be changed by the plaintiff on its own and there are strong presumption that the material of the changed logo would have been provided by defendant bank only. Hence, it was in the knowledge of the defendant bank that the advertisements in the Newsletter- "Club Life" are being published by the plaintiff club on providing date to them. No document refusing or directing the plaintiff club not to publish the advertisement has been placed on record by the defendant bank. It is a matter of fact that the advertisement was published in the Newsletter- "Club Life" of plaintiff club from January 2004 to December 2007.

34. Upon facts and circumstances, I am of this considered opinion that the plaintiff is entitled for recovery of charges for the publication done. However, there is no written agreement as to the rate of publication charges but on the basis of previous charges which the defendant himself has admitted for the period January 2004 to March 2006 was Rs. 65,000/- per month hence plaintiff is entitled for recovery of amount @ Rs. 65,000/- for the period April 2006 to December 2007 alongwith pendente lite interest and future @ 8% p.a. till the recovery. No order as to cost."

(Underlining added)

4. I completely agree with the aforesaid findings and conclusions of the trial Court inasmuch as if there was no contract, there would be no question of having made payments of the monthly charges upto March, 2006. Appellant no.1/

defendant no.1/HDFC Bank has also failed to file any instructions given at the time of payment of Rs. 1,95,000/- made on 31.3.2006 that no advertisements be published further. Trial Court has rightly held that once payment of Rs. 1,95,000/- was made for advertisements upto 31.3.2006, it does not lie in the mouth of the appellant no.1/defendant no.1/HDFC Bank to contend that for the earlier period there was no contract to publish the advertisements. Trial Court has also rightly held that the logo of the Bank in the advertisements were changed from time to time by submitting fresh designs on stencils and CDs showing that it cannot be said that the advertisements were published without any instructions. To the aforesaid reasoning, I must add that the respondent/ plaintiff is not an individual but is M/s Gymkhana Club Ltd., and therefore, it cannot be said that there can exist collusion between the respondent/plaintiff and the Manager of the erstwhile Bank of Punjab Ltd.

5. A civil case is decided on balance of probabilities. The balance of probabilities in the present case shows that the appellant no.1/defendant no.1 was liable to pay the charges for advertisements inserted by the respondent/plaintiff in its magazine/newsletter. An appellate Court will not interfere with the findings of the Court below, unless, findings of the Court below are illegal or perverse. I do not find any illegality or perversity in the impugned judgment which calls for interference in this appeal. In view of the above, the appeal being without merit is accordingly dismissed, leaving the parties to bear their own costs.

