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(2009) 02 DEL CK 0145

In the Delhi High Court

Case No : CS (OS) No. 1465 of 2007

Montage Advertising P. Ltd. — APPELLANT

Vs

Shree Giri Raj Kripa Colonisers P. Ltd. and Another — RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0145

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Vinod Trisal, for the Appellant; Nemo, for the Respondent

Judgement

S.N. Aggarwal, J.—The plaintiff has filed this suit against the defendants for recovery of Rs. 37,26,501/- including interest up to the date of filing of the suit. The suit was filed on 25.07.2007.

2. Briefly stated the facts of the case are that the plaintiff company is engaged in the business of advertising under the name and style of M/s Montage Advertising Pvt. Ltd. Defendant No. 1 is a company incorporated under the Companies Act and defendant No. 2 is stated to be its Director. It is stated that defendant No. 1 company through its Director defendant No. 2 approached the plaintiff company to place advertisement of defendant No. 1 company in various newspapers. The defendants are stated to have placed order for advertisement and after its approval, the advertisements were prepared and published by the plaintiff company in various newspapers i.e. Hindustan Times (Estate) and Times of India (Property). The plaintiff company raised total 8 bills upon defendant No. 1 company in respect of the advertisements published by it for the said company in Hindustan Times (Estate) and Times of India (Property). The details of these 8 bills are given in para 6 at pages 3 & 4 of the plaint. The total amount of the bills raised by the plaintiff company upon defendant No. 1 company is to the tune of Rs. 35,55,343.23 paise. Defendant No. 1 company is stated to had made part payment of Rs. 20 lacs against the abovementioned bills by means of cheque bearing No. 000376 dated 12.10.2006 drawn on Kotek Mahindra Bank. However,

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the said cheque issued by defendant No. 1 company was returned unpaid with the remarks ''Funds Insufficient''. The plaintiff company thereafter immediately contacted the defendants and apprised about the fate of the cheque and consequent thereto, the defendants issued another cheque bearing No. 000442 for Rs. 35,50,000/- on 22.12.2006 to settle all the 8 bills raised by the plaintiff company on defendant No. 1 company. However, even this cheque of Rs. 35,50,000/- given by defendant No. 1 company to the plaintiff company was also bounced when presented for encashment. Thereafter, defendant No. 1 company paid Rs. 4.5 lacs to the plaintiff by means of two separate demand drafts, one for Rs. 2 lacs and second for Rs. 2.5 lacs and gave a cheque of Rs. 23 lacs bearing No. 00572 dated 29.05.2007. However, this cheque of Rs. 23 lacs given by defendant No. 1 to the plaintiff also bounced when presented for encashment and this time, the said cheque was returned with the remarks ''Account Closed''. The plaintiff has stated in the plaint that after adjusting the amount of Rs. 4.5 lacs received by it from defendant No. 1, the plaintiff company is still entitled to recover Rs. 31,05,543/- being the balance amount of the bills mentioned in Para 6 of the plaint. The plaintiff company is stated to has sent the legal notice dated 11.07.2008 demanding the said balance payment from defendant No. 1 company but despite service of the said legal notice, defendant No. 1 did not pay the said amount and therefore the plaintiff has filed the present suit seeking recovery of Rs. 37,26,500/- against the defendants which include interest up to the date of filing of the suit.

3. The defendants were served with the summons of the suit but none appeared on their behalf and therefore they were proceeded ex-parte vide order passed by this Court on 06.05.2008.

4. The plaintiff has filed its ex-parte evidence by way of affidavit of its Director Mr. Karunendra Mathur who has proved 26 documents in his affidavit and the same are Ex. PW-1/1 to Ex. PW-1/26.

5. I have heard the arguments of Mr. V. Trisal, learned Counsel appearing on behalf of the plaintiff and have also gone through all the documents tendered by the plaintiff in its ex-parte evidence. On going through the case file, particularly the documents tendered by the plaintiff in its ex-parte evidence, it appears to me that the claim of the plaintiff against the defendants is based upon bounced cheques. Since the defendants have failed to pay the balance amount of Rs. 31,05,343.23 paise being the amount outstanding against 8 bills raised by the plaintiff, defendant No. 1 company has rendered itself liable to suffer a decree for the said amount. The petitioner has proved the cheques given by defendant No. 1 company which were later on bounced when presented for encashment and the same are Ex. PW-1/13, Ex. PW-1/16 & Ex.PW-1/21. The return memos of these cheques received by the plaintiff company from its banker are Ex. PW-1/14, Ex.PW-1/17 & Ex.PW-1/22. The legal notice dated 11.07.2007 served by the plaintiff company upon defendant No. 1 company prior to filing of this suit is Ex. PW-1/123 and the A.D. card showing service of the legal notice is Ex. PW-1/24.

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From a perusal of these documents, it is evident that an amount of Rs. 31,05,343.23 paise was due and outstanding to the plaintiff company from defendant No. 1 company as on 30.09.2006. The plaintiff company has claimed interest on the said amount of Rs. 31,05,343.23 paise @ 24% per annum from 01.10.2006 to 31.07.2007 i.e up to the date of filing of this suit. This Court is of the opinion that the interest @ 24% claimed by the plaintiff company is exorbitant and on higher side. The interest of justice will be adequately served by directing recovery in favour of the plaintiff for Rs. 31,05,343.23 paise with interest @ 12% per annum from 01.10.2006 onwards till realization.

6. One thing more need to be dealt with before parting with this judgment. The plaintiff has sued defendant No. 2 in his capacity as a Director of defendant No. 1. This Court is of the opinion that the Director of a limited company has no personal liability in respect of debt owned by the company. Hence decree cannot be passed against defendant No. 2 in his individual capacity. The suit of the plaintiff against defendant No. 2 is, therefore, dismissed.

7. For the foregoing reasons and having regard to the facts and circumstances of the case, a decree of Rs. 31,05,343.23 paise with costs and interest @ 12% per annum w.e.f. 01.10.2006 till realization is hereby passed in favour of the plaintiff and against defendant No. 1 company. Decree sheet be prepared accordingly.

8. This suit stands disposed of accordingly.

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