

(1996) 03 DEL CK 0069

In the Delhi High Court

Case No : Interim Application No. 7173 of 1995 and Suit No. 1793 of 1994

Paramount Publicity Pvt. Ltd. and Another

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Citation : (1996) 62 DLT 156

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : S.K. Manaktala and H.A. Ahmadi, for the Appellant;

Judgement

N.G. Nandi, J.

(1) In a suit for permanent injunction seeking to restrain defendant from removing, defacing, damages and/or interfering in any manner whatsoever, with the plaintiff's hoardings as detailed in Annexure-A, the plaintiffs by this application seeks to the restrain the defendant in identical terms pending the hearing and disposal of the suit.

(2) -THE plaintiff is engaged in the business of outdoor publicity/advertisement, inter alia, display of hoardings and limited display of neon signs in Delhi and other places at various places; that the plaintiff applied for the permission from the defendant for advertisement and display of hoardings for the sites. As shown in Annexure-A; That out of the six sites shown in Annexure-A, four belongs to Northern Railways whereas two others to private individuals. The communication of the plaintiff seeking permission is said to be Annexure-F; that the defendant is required to dispose of the said application within the period of 60 days and that as the defendant failed to dispose of the plaintiff's application for permission for display of the hoardings within 60 days, after the expiry of the period of 60 days, by virtue of the provisions contained in bye-laws the plaintiff is deemed to have been granted the permission to display the advertisements; that the advertisement display hoardings put up by the plaintiff at the sites numbers 1 to

4 in Annexure- A are absolutely legal and as per the statutory requirements of the Punjab Municipal Act, 1911 (the Act of 1911) and the bye laws framed thereunder; that the plaintiff has been paying advertisement tax for the actual display of the hoardings; that defendant on 11.8.1994 attempted to forcibly remove and/or pull down the advertisement hoardings of the plaintiff-Company and cut the steel frame structure at the sites referred to hereinabove. This action of the defendant is challenged in the suit.

(3) It is submitted by Mr. S.K. Maniktala, learned Counsel for the plaintiffs that hoardings at sites Nos. 5 and 6 in Annexure-A, because of the dispute, have been removed after two weeks of 17.8.1994 and after the order dated 17.8.1994 there are no hoardings at sites No. 5 and 6. That sites No. 1 and 4 have been allotted to the plaintiff by the Northern Railways in June, 1994. That on the date of the suit the advertisement hoardings were very much displayed at the sites. That the photographer is recovered for sites, which is payable quarterly. That the permission under By- Law No. 3 is per site and not per advertisement. That for change of text of advertisement no sanction is necessary. As against this, it is submitted by Mr. H. Ahmadi, learned Counsel for the defendant that the sanction under Bye Law No.3 is as per text of the advertisement. That on the date of the suit the advertisement was not displayed and in existence at the site. That the plaintiff has suppressed these facts. That the contract by the plaintiff with the Northern Railways is in June, 1994 whereas the plaintiff says that the plaintiff had applied for permission in February 1994. That it is not possible that the plaintiff would apply for the permission before the allotment of the sites by Northern Railway, under the contract in June, 1994. That the plaintiff has not applied for any permission under Bye Law No.3 and there is no proof of the plaintiff having submitted any application for permission and Therefore the deeming provisions under Bye Law No.3 would not come into play. That there is no evidence prima facie to suggest that the private owners as regards sites No.5 and 6 had given no objection for the display of the advertisement and there is no evidence of subsequent resiling by the owners of sites No.5 and 6. That scaffolding is not a hoarding within the meaning of Clause-F of Bye Law No.3; that assuming every thing in favor of the plaintiff the injunction can be only for scaffolding. That in the alleged application page:84notextofadvertisementhas been stated and it is not an application as contemplated under the bye laws; there is no location shown nor any plan attached; there is no proof of the pasting of the application and the deeming provisions does not come into play; that the postal slip at page-86 does not suggest that t it is addressed to the defendant; that the sanctioned contemplated under Bye Law No. 3 is qua advertisement.

(4) According to the plaintiff, the permission sought for displaying the hoardings of advertisement is vide application at page-84 and the same was posted to the defendant vide page-86 and the failure on the part of the defendant to communicate the plaintiff within the statutory period of 60 days as contemplated under Bye Law No. 3 by virtue of the deeming provision ,the plaintiff is entitled to display the advertisement hoardings.

(5) It may be noted that page-86 is the photocopy of the receipt No. 4185 suggesting the tender of the article to the postal authority for being delivered to the addressee. The copy of the receipt bears the impression of the postal seal and that the addressee as - "The Secretary, New Delhi..... Committee, New Delhi". At the end of page-86 as it is could be said that the present purpose is that the plaintiff tendered articles to the postal authority for being delivered to the addressee which look like the defendant. In my opinion since the plaintiff contends that the deeming provision has come into operation on defendant failure to communicate to the plaintiff within the statutory period of 60 days. It would be necessary for the plaintiff to produce the registered acknowledgement card suggesting the receipt of the plaintiff within the statutory period of 60 days in order to invoke the deeming provisions as per Bye-law No. 3.

(6) Even assuming that the defendant received application as at page-84 seeking permission for display of advertisement hoardings, it may be seen that Bye Law 3(3) provides,.....Committee may on receipt of an application referred to above sanctioned with or without modification or sanction subject to certain conditions or refuse to sanction, the erection, alteration of display of the sign,, as may be deemed proper and shall communicate the decision to the applicant. If within sixty days of receiving an application the Committee fails to intimate in writing to the applicant, the application shall be deemed to have been sanctioned.

(7) BYE-LAW 2(a) which defines "advertisement sign" reads as under :-

"2(A)"ADVERTISING SIGN" MEANS ANY surface or structure with characters letters or illustrations applied thereto and displayed in any manner whatsoever out of door for purposes of advertising or to give information regarding or to attract the public to any place, person public performance, articles or merchandise whatsoever, and which surface or structure is attached to, forms part of or is connected with any building, or is fixed to a tree or to the ground or to any pole, screen fence or hoarding or displayed in space. By-law 3 deals with consideration of urban aesthetics and public safety. Sub laws 1, 2 and 4 reads respectively as under ;-

(1) The Committee may regulate in the manner laid down hereinafter the pasting of bills and advertisements and determine the position, size, shape and style or any advertisement sign, including name-boards sign-boards and sign-posts, keeping in view the consideration of the aspects of urban aesthetics public safety, decency, morality and other relevant factors. (2) Subject to the provisions contained in clause (6), every person who intends to erect alter or display an advertising sign which is regulated by these bye-laws shall make an application to the Committee on the form, as per Appendix to these bye-laws containing such particulars and such amount of advertisement tax as may be required. Such a form shall be signed by the applicant and by the owner of the site upon which such sign is or is to be situated. (4) When a sign has to be altered, information only on such plans and statements as may be necessary, shall be included in the form. However, the changing of movable parts of a sanctioned sign that is designed for such changes shall not be deemed an

alteration, if the conditions of the original sanction are not violated".

(8) It be seen from the above reproduced bye laws that an advertising sign would mean any surface or structure with characters letters of illustrations applied thereto, the defendant has the powers to regulate such advertising and while exercising these powers it has to be kept in mind the consideration of urban aesthetics and public safety, decency, morality and other relevant factors. It is, Therefore because of such consideration the application form as per Appendix-F must contain besides other things, the aspects of the sign and also the bye laws of the sign including the name and the address of the manufacturer. The application form has to necessarily contain the particulars of the proposed advertisement sign which would enable the Committee to consider the aspect of urban aesthetics, public safety, decency morality etc. besides the manufacturer's name and address. If this is the requirement then the sanction of the application would necessarily be confined to the advertising sign with name and address is to be supplied and must also confined to that particular sign only which is found inconsistent with urban aesthetics, public safety, decency morality etc. This would suggest that the sanction would be restricted i.e. restricted to particular manufacturer and confined to a particular advertisement sign. In other words the sanction cannot be made available to undisclosed and or unnamed manufacturer or to such advertisement in which these particulars and details have not been supplied and approved.

(9) In the light of the above the application seeking sanction said to have been made by the plaintiff, vide page-84 (Annexure F), copy of the application dated 4.2.1994, suggests the size of the hoarding of advertisement with site/place for displaying the same. It is pertinent to note that in the application Annexure-F, the name of the manufacturer or the advertisement sign with particulars and contents have not been supplied. Under the circumstances, the application, page : 84 Annexure- F cannot be said to prima facie conform to the requirements of Bye Law reproduced above.

(10) One of the arguments advanced on behalf of the defendant is that on the date of the suit and obtaining exparte injunction, the advertisement signs were not in existence.

(11) In this regard the defendant has produced certain photographs as Annexures R-1 to R-7. It will be seen that Annexure R-1 to R-3 suggests the scaffolding without any advertisement sign or board with text whereas Annexure-R-4 also does not indicate any advertisement sign or the board. Annexures R-5 to R-7 suggest advertisement signs/boards. Overleaf these photographs the writing suggests the site to which the photograph relates and the date of taking the photograph. On the other hand the plaintiff has produced photographs as Annexure-G (pages-93 to 95). In the submission of the defendant photographs land 2 at page-93 do not pertain to sites I or 2. Photographs at page-94 do not pertain to any of the sites shown in Annexure-A whereas the photographs at page-95 pertain to the place beyond Lodh Hotel. In paragraph-7 of the reply to

the plaintiff's application under Order 39 Rules. 1 and 2 CPC it has been stated by the defendant that it is a matter of fact, none of the hoardings existed on 17.8.1994 at the sites as is evident from the photograph; of the six sites stated to have been taken on 22.8.1994 (Indian Express). The photographs Annexure-G at pages 93-95 and photographs Annexure R-1 to R-7 would not by themselves suggest the site and whether a particular photograph pertains to particular site could be decided only on evidence and the date on which these photographs have been taken. Under the circumstances it cannot be prima facie Mr. Ahmadi, that the plaintiff has suppressed material facts while obtaining ex parte injunction deserves no evidence.

(12) ANNEXURE-D at page-63, Clause-2 (f) defines "hoarding" means a board, a surface or structure which is attached to, forms part: or is connected with any building, or is fixed to a tree or to the ground or to any pole, screen, fence or displayed in space, out of door for purpose of advertising or to give information regarding or to attract the public to any place, person, public performance, article or merchandise whatsoever....."

(13) It be seen from the above that word scaffolding is not specifically included in the definition of the hoarding under Clause-2 (f) reproduced above. Advertisement board/hoarding would necessarily be fixed or attached on some structure/ frame/scaffolding. I am unable to accept the submission of learned Counsel for the defendant that scaffolding is not an internal part of the hoarding and would, Therefore, be not included within the meaning of performance.

(14) In the above prima facie view of the matter, in my opinion, the plaintiff is not able to suggest the questions which requires further scrutiny so as to constitute prima facie case for the grant of ad interim injunction.

(15) In the result I.A. fails and the ex parte order dated 17.8.1996 as regards sites detailed in Annexure-A to the plaint is vacated. Order accordingly.

(16) None for the above observations shall be construed to mean an expression of opinion on the merits of the rights and contentions in the suit.