

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on : July 09, 2012
Judgment Pronounced on: July 13, 2012

+ RFA(OS) 27/2010

DABUR INDIA LTD. & ANR. Appellants
Represented by:Mr.Sudhir K.Makkar, Advocate

versus

HANSA VISION LTD. & ANR. Respondents
Represented by:Mr.N.B.N.Swamy, Advocate and
Mr.I.C.Kumar, Advocate for R-1.
None for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J.

1. Respondent No.1 Hansa Vision Ltd. filed a suit seeking decree in sum of ₹43,85,605/-. It pleaded being engaged in the business of marketing T.V. serials and advertising on television. It pleaded that Dabur India Ltd., defendant No.1, had appointed Adbur Pvt. Ltd., defendant No.2, as its agent to advertise its products and in turn Adbur Pvt. Ltd. had appointed M/s A.V. Communications, defendant No.3, as the sub-agent, which defendant, in said capacity i.e. of a sub-agent, approached M/s Hansa Vision Ltd. to advertise products of the first defendant during telecast of various programmes by various television networks and for which defendant No.3 issued release orders on April 06, 1995 and April 26, 1995 as also a release order dated nil, pursuant whereeto, Hansa Vision obtained slots in various programmes

aired by various T.V. networks in which advertisements of defendant No.1 were aired and for which it was pleaded that as per the agreement a sum of ₹47,13,897/- became payable to it. Alleging that defendants acknowledged liability to pay ₹23,39,177/- but defendant Nos. 1 and 2 thereafter informed having paid ₹32,34,250/- to defendant No.3, and washed off their hands; alleging further that ₹23,39,177/- was admittedly payable as of July 23, 1999 and claiming pre-suit interest @ 18% per annum, suit was filed praying for a decree in sum of ₹43,85,650/-.

2. In the written statement jointly filed by Dabur India Ltd. and Adbur Pvt. Ltd., it was pleaded that the plaintiff executed the works as per a contract with defendant No.3 with respect to the publicity/advertising job assigned by defendant No.2 to defendant No.3 on principal to principal basis; and that the relationship between the plaintiff and defendant No.3 was also of principal to principal. It was denied that defendant No.3 acted as the sub-agent of defendant No.1. As regards defendant No.2, requiring defendant No.3 to execute the publicity work on behalf of defendant No.1, it was pleaded that the said pertained to an internal working between defendant No.1 and defendant No.2 and had no concern with the claim of the plaintiff. It pleaded having paid full money to defendant No.3.

3. In a nutshell, the pleading was that for advertising the products of defendant No.1, defendant No.2 had entered into a principal to principal contract with defendant No.3 and defendant No.3 had likewise entered into a principal to principal contract with the plaintiff. As per defendants No.1 and 2, they had made the entire payment to defendant No.3

and it was for the plaintiff to realize the money, if any unpaid, from defendant No.3.

4. Defendant No.3 remained ex-parte.

5. On the pleadings of the parties, the following issues were settled as per order dated January 27, 2004:-

“ 1. Whether the suit is within time? OPP

2. Whether the plaint has been signed, verified and filed by a duly authorized person? OPP

3. Whether the written statement filed on behalf of defendants No.1 and 2 has been signed, verified and filed by a duly authorized person? OPD

4. Whether the defendants No.1 and 2 have no privity of contract with the plaintiff as averred in the written statement? OPD

5. Whether there is no cause of action against the defendant Nos. 1 and 2? OPD

6. Whether the plaintiff is entitled to recover the suit amount from defendants No. 1 and 2 on the grounds mentioned in the plaint? OPP

7. Whether the plaintiff is entitled to interest as prayed? If so, on what amount and for which period? OPP

8. Relief.”

6. The plaintiff examined Subhash Gulati, its Senior Finance Manager and R.Jaganathan its Senior Accounts Officer as PW-1 and PW-2 respectively and apart from reiterating the case pleaded in the plaint the two proved the bills Ex.PW-2/1 to Ex.PW-2/23 raised by the plaintiff on defendant No.3 on various dates between April 20, 1995 and October 31, 1995 as also the telecast certificates Ex.PW-2/24 to Ex.PW-2/37 evidencing advertisements pertaining to defendant No.1 being

telecast. They also proved the authority in favour of Subhash Gulati to institute the suit. The witnesses deposed that plaintiff acted pursuant to release orders issued by defendant No.3 as also the certificates Ex.PW-1/7 to Ex.PW-1/34 being certificates of telecasts.

7. Defendants No.1 and 2 examined A.K.Sharma and M.L.Wadhwa as the two defence witnesses who deposed in sync with the defence taken.

8. Deciding issue No.1 and issue No.2 in favour of the plaintiff and issue No.3 in favour of defendants No.1 and 2, which issues were in the nature of technical objections and in respect whereof no arguments were advanced before us in appeal, and thus we eschew reference to the first three issues and proceed directly to the main issue between the parties i.e. Issue No.4, 5 and 6.

9. From the pleadings of the parties it is apparent that the core issue was : Whether defendant No.3 acted as a sub agent, under power being given by defendant No.2; and whether defendant No.2 was the agent of defendant No.1. For if, the defence taken by defendants No.1 and 2 that their transaction with defendant No.3 was on principal-to-principal basis and in turn defendant No.3 acted on principal-to-principal basis with the plaintiff, the suit could have been decreed only against defendant No.3 upon proof that the plaintiff did not receive the full money from defendant No.3.

10. The findings returned by the learned Single Judge on issue No.4 need to be extracted by us verbatim. They read as under:-

“32. Defense of defendants No.1 and 2 reiterated on oath is that there was no privity of contract of

the answering defendants with the plaintiff. At best, if the plaintiff has any claim, it is against defendant No.3. Defendant No.1 i.e. M/s Dabur (India) Limited had entrusted the second defendant i.e. M/s Adbur Private Limited with the job of carrying advertisement of its company products over Doordarshan National Network and other T.V. Channels. This was an internal arrangement between defendants No.1 and 2 and had no concern whatsoever with the plaintiff. The answering defendants No.1 and 2 did not have any contract or transaction with the plaintiff. Defendant no.2 had thereafter on a principal to principal relation with the third defendant namely M/s A.V. Communications entrusted him the job of telecasting advertisements which was to be done on various T.V. Channels in the television network. Defendants No.1 and 2 had never appointed defendant No.3 as their agent or sub-agent. Relations of defendants no.2 and 3 was of principal to principal and not of an agency. The contract evidenced by the release orders ex.P-1/3 to Ex.P-1/6 was a transaction between the plaintiff and defendant No.3.

33. Ex.P-1/3 to Ex.P-1/6 are the release orders which have been issued by defendant No.3 to the plaintiff. They are dated 6.4.1995, dated nil, dated 26.4.1995 and dated nil. These documents evidence that defendant No.3 had pursuant to discussions with the plaintiff regarding co-sponsorship over the various T.V. channels mentioned therein had confirmed the booking with the plaintiff on behalf of their client M/s Dabur (India) Limited for advertisements to be effected by the plaintiff at the rates mentioned therein. The duration of the advertisements, the channel on which they were to be aired and details of the products were contained therein. Price of the confirmed booking was also mentioned. Ex.P-1/3 to Ex.P-1/6 were admittedly on exchange of communication between defendant No.3 and the plaintiff; name of defendant No.1 found mention as the product which was to be beamed on the TV channels by the plaintiff were of defendant No.1

company. There was no mention of defendant No.2.

34. Ex.P-1/3 to Ex.P-1/6 are admittedly the only written communications exchanged between the plaintiff and defendant No.3 on the basis of which the plaintiff is now endeavoring to fasten liability on all the defendants i.e. defendants No.1 to 3 co-jointly.

35. Onus to discharge this issue is on the defendants. Question first to be answered is whether defendant No.1 and defendant No.2 had a principal-agent relation; further if defendant No.3 was a sub-agent of defendant No.2.

36. Defendant No.2 is the advertising agency of defendant No.1. This position stands admitted by both the defendants. DW-1 in his cross-examination has admitted that business of defendant No.2 is the handling of the advertisement campaign of defendant No.1 as also of other companies; advertisement bill is raised by a third party on defendant No.2; essential documents would be the bills of the said party i.e. the release orders as also the telecast certificates. Rates would be negotiated between defendants No.2 and 3; defendant No.3 would raise a bill directly on defendant No.2. The Media Manager of defendant No.2 would prepare two sets of bills; one to be forwarded to defendant No.1 and the second to its accounts branch for payment to defendant No.3. Defendant No.2 would then pay the bill.

37. Defendant No.2 in his cross-examination has reiterated the stand of DW-1. It has been admitted that the advertisement order placed on behalf of defendant No.1 with defendant No.2 was by the marketing department of defendant No.1. Plaintiff was never notified by defendants No.1 and 2 that bonus spots in the southern area being free spots would not be entitled for payment of advertisements. Defendants No.1 and 2 did not have any dealings with the plaintiff.

38. In Lakshminarayan Ram Gopal and Son, Ltd, vs. Government of Hyderabad, through the Commissioner, Excess Profits Tax AIR 1954 SC 364 while expounding the relations vis a vis a master-servant and principal-agent, it was held that the principal has a right to direct what work the agent has to do, but a master has a further right to direct as to how the work is to be done; the agent is bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal.

39. DW-2 was admittedly the inhouse advertising agency of defendant No.1 which had entrusted this job of its advertisements to defendant No.2. Both are located at the same address. Defendant No.2 could release payment to a third party only after one copy of the bill was sent by it to defendant No.1 and the second copy was to be retained by its account branch. Further the marketing division of defendant No.1 had placed the order of the advertisement on defendant No.2 which was doing no other work except being an accredited advertising agency. Their relationship as principal-agent stands established. Defendant No.2 is liable for the acts of its principal i.e. of defendant No.1.

40. The relations of defendants No.2 and 3 however do not establish a sub-agent relationship. Defendant No.2 being an advertising agency was placing orders of advertisement on defendant No.3. Defendant No.3 is a proprietorship firm; it was receiving orders for advertising from various persons. This position is not in dispute. Defendant No.3 was not doing the job of defendant No.2 alone. Rates were negotiated between defendant No.2 and defendant No.3 independent of any interference by defendant No.1; defendant No.3 would raise the bill directly on defendant No.2 and was getting its payment from defendant No.2 directly and independently of defendant No.1. Dealings between defendant No.2 and defendant No.3 were essentially on a principal to principal basis.

41. The submission of the counsel for the plaintiff that in para 8 of the written statement the defendants have admitted that defendant No.2 and defendant No.3 were sub-agent of one another is not borne out from the record; the written statement as also the averments on oath of both the witnesses of the defendants i.e. DW-1 and DW-2 is that defendant No.3 had an independent relation with defendant No.2. PW-2 in his cross-examination has also admitted that his averment in his affidavit that defendant No.3 was a sub-agent of defendant No.2 is based on the documents which are the release orders only.

42. Evidence has failed to establish that defendant No.3 was an agent of defendant No.2. It was however been established that defendant No.2 was an inhouse advertising agency of defendant No.1.

43. Defendant No.3 had approached the plaintiff to advertise certain products which included the products of defendant No.1. This contract is evidenced by the release orders Ex.P-1/3 to Ex.P-1/6. Defendant No.3 in his independent capacity entered into this contract with the plaintiff. Defendant No.1 has been referred to as 'client' in these release orders; there is no mention of defendant No.2; PW-1 in his cross-examination has admitted that he had not raised any bill upon defendants No.1 and 2; no release order was issued by defendants No.1 and 2 to the plaintiff. PW-2 has also admitted that he had not dealt with defendant No.1 or defendant No.2 at any point of time; defendants No.1 and 2 had never entrusted any work to the plaintiff. This evidence on record has established that there was no privity of contract between the plaintiff and defendants No.1 and 2.

44. Issue No.4 is answered in favour of defendants and against the plaintiff."

11. The learned Single Judge has, with reference to Ex.PW-1/3 to Ex.PW-1/6 rightly returned a verdict that

defendant No.3 was not acting as a sub-agent under the authority of defendant No.2. The learned Single Judge has rightly returned a verdict that evidence establishes that defendant No.3 had approached the plaintiff to advertise certain products which included the products of defendant No.1 as per release orders Ex.PW-1/3 to Ex.PW-1/6. The finding returned by the learned Single Judge in para 43 of the decisions is that *defendant No.3 in its independent capacity entered into the contract with the plaintiff*. We may highlight that the learned Single Judge has correctly noted that in the release orders, defendant No.3 referred to defendant No.1 as its client. The learned Single Judge has concluded, and rightly, that there was no privity of contract between the plaintiff and defendants No.1 and 2. The learned Single Judge has correctly opined in paragraph 40 that dealings between defendant No.2 and defendant No.3 were on principal to principal basis.

12. But, with respect to issue No.5 and 6 i.e. whether the plaintiff had a cause of action against defendants No.1 and 2 and if yes, what sum has to be paid by them to the plaintiff, the learned Single Judge has proceeded to hold that since the benefit of the works performed by the plaintiff i.e. in managing goods of defendant No.1 to be advertised has been accepted by defendant No.1, it must pay on account of Section 70 of the Indian Contract Act 1872.

13. The learned Single Judge has extensively relied upon the law laid down in the decisions reported as:-

“47. In State of West Bengal v. M/s.B.K.Mondal and Sons AIR 1962 SC 779 the pre-conditions for the application of the provisions of the Section 70 of the Contract Act have been discussed. The first condition is that a person should lawfully do something

for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied Section 70 imposes upon the latter person, the liability to make compensation to the former in respect of or to restore, the thing so done or delivered. In the facts of the said case plaintiff/respondent had constructed a warehouse; the benefit of which was enjoyed by the defendant/appellant; defendant/appellant could have called upon the plaintiff/respondent to demolish the said warehouse and take away the materials used by it in constructing it; but if the defendant/appellant accepted the said warehouse and used it and enjoyed its benefit then different considerations come into play and Section 70 could be invoked.

48. Section 70 which occurs in Chapter V of the Contract Act deals with certain relations resembling those created by contract. In such cases which are filed under Section 70 a person doing something for another cannot sue for specific performance of the contract nor ask for damages for the breach of the contract for the simple reason that there is no contract between him and the other persons for whom he does something or for whom he delivers something. Section 70 provides if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus, where a claim for compensation is made by one person against another under Section 70, it is not on the basis of any subsisting contract between the parties but it is on the basis of the fact that something was

done by the party for another and the said work so done has been voluntarily accepted by the other party.

49. These principles have been reiterated by the Supreme Court in the subsequent judgment i.e. New Marine Coal Company Pvt. Ltd. vs. The Union of India AIR 1964 SC 152. In this case it had been held that Section 70 of the Contract Act would be applicable even when a Contract Act had been held void; in view of the provisions of Section 173(5) of the Govt. of India Act 1935, the contract had been declared to be void; since A had performed his part of the contract and the Govt. of India had received the benefit of the performance of the said Act, provisions of Section 70 of the Contract Act were held applicable and the Govt. of India was made to pay compensation for the benefit received by it.

50. In V.R.Subramanyam v. B. Thayappa & Ors. AIR 1966 SC 1034, it has been held that if a party to the contract has rendered service to the other not intending to do so gratuitously and the other person has obtained some other benefit, the former is entitled to compensation for the value of the services rendered by him.

51. In Aries Advertising Bureau v. C.T.Devaraj AIR 1995 SC 2251 this principle was reiterated. This was the case where the plaintiff had advertised certain products of the respondent; Section 70 was held inapplicable as no benefit has been derived by the respondent pursuant to the advertisement made by the appellant.

52. In Food Corporation of India & Ors. v. Vikas Majdoor Kamdar Sahkari Mandli Limited (2007) SC 544 it was held that the provisions of Section 70 of the Contract Act are more liberal interpretation of the doctrine of

quantum merit. This principle has no application where there is a specific agreement in operation. This section also prevents an unjust enrichment; being a principle of equity.”

14. Section 70 of the Indian Contract Act 1872 reads as under:-

“Obligation of person enjoying benefit of non-gratuitous act – Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

15. As explained by the Supreme Court in R.K.Mondal's case (supra) there are three conditions which attract Section 70 of the Contract Act. Firstly, the person claiming benefit must do something lawfully for another, secondly while doing so he should not intend to act gratuitously, and lastly, the other person enjoys the benefit from or under the act done by the first person. Explaining the meaning of the word ‘lawfully’ which finds a mention in Section 70, the Supreme Court clarified:-

16. Expanding further, in para 18 of its opinion the Supreme Court observed:-

“There is no doubt that the thing delivered or done must not be delivered or done fraudulently or dishonestly nor must it be delivered or done gratuitously. Section 70 is not intended to entertain claims for compensation made by persons, who officiously interfered with the affairs of

another or who impose on others services not desired by them." *Emphasis supplied*

17. Thus, it is clear that Section 70 of the Indian Contract Act would have no application where parties have acted pursuant to a contract for the reason the section is founded upon the principle of restitution and prevention of unjust enrichment i.e. equity recognized by Common Law in the words of Lord Wright in the decision reported as 1943 AC 32 *Fibrosa v. Fairbairn*: '*It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, any other which it is against its conscience that it should keep.*'

18. Though the terms of Section 70 of the Indian Contract Act 1872 are unquestionably wide, but have to be applied with discretion to do substantial justice in cases where it is difficult to impute to the persons concerned relations created by contract. In other words, if parties are bound by a contract, it is the contract alone which governs their respective obligations and as observed by the Supreme Court in the decision reported as AIR 1968 SC 1218 *Mulamchand v. State of Madhya Pradesh*, Section 70, rested on principle of restitution and prevention of undue enrichment, can never be applied if there is a contract between the parties.

19. Evidence establishes that defendant No.2 paid full amount to defendant No.3 for getting executed the job assigned to air the advertisements of defendant No.1 and that defendant No.3 did not pay the money due and payable to the

plaintiff. Liability could thus be fastened only on defendant No.3.

20. The impugned judgment runs in the teeth of the afore-noted settled principles of law, and thus the finding returned by the learned Single Judge with respect to issues No.5 and 6 is reversed and keeping in view the logical inference which flows from the determination of issue No.4 by the learned Single Judge, which finding has been affirmed by us, the appeal is allowed. Impugned judgment and decree dated January 15, 2010 is set aside and suit filed by respondent No.1 against the appellants is dismissed with costs all throughout.

21. We find that pursuant to an interim order dated May 05, 2010 the appellants deposited ₹23,39,177/- in this Court which amount was released in favour of respondent No.1 upon said respondent furnishing a bank guarantee for said sum in favour of the Registrar General of this Court. We accordingly direct the learned Registrar to invoke the bank guarantee and pay over ₹23,39,177/- by drawing a cheque in the name of appellant No.1 and needless to state if said appellant has a claim with respect to interest on said amount it would be entitled to seek restitution by initiating appropriate proceedings.

**(PRADEEP NANDRAJOG)
JUDGE**

**(MANMOHAN SINGH)
JUDGE**

**JULY 13, 2012
KA / DK**