

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.151/2000**

% 21st January, 2011

M/S USHAK KAAL ADVERTISING (P) LTD. Appellant
Through: Mr. Sunil Bagai, Advocate.

VERSUS

SHRI K.L. SHROFF AND ANOTHER Respondent
Through: Mr. J.S.Bakshi, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 19.1.2000 whereby the suit of respondent/plaintiff for recovery has been decreed along with interest on account of non-payment by the appellant of the bills of the respondent/plaintiff pertaining to printing jobs which were done by the respondent/plaintiff for the appellant/defendant.

2. Before this Court, learned counsel for the appellant argued that the appellant was not responsible for any delay in payment and the delay

caused in making the payment was on account of the respondent/plaintiff not returning the positives. He has argued that since the respondent/plaintiff was thus guilty of breach of contract he was not entitled to any interest.

3. This aspect of the matter has been dealt with by the Trial court in the following words:

“It is argued by the Ld.Counsel for the defendant that the plaintiff did not return the positives worth Rs.7,000/- to the defendant as per oral agreement between the parties and relied upon a judgment of the Hon’ble Supreme Court in Tax Sem Singh vs. Sukhmender Singh (1998) 3 SCC 471 that there can be equally binding contract between the parties on the basis of oral agreement unless the law requires the agreement to be in writing. However, the defendant has not pleaded in the written statement that there has been an oral agreement between the parties to return the positives to the defendant on completion of the job done. In its written statement, the defendant has only pleaded that they have given a payments schedule in their fax letter dated 19.3.97 and the defendant has not given date of handing over the positives to them. Rather DW-1 admitted in cross-examination that he had neither verbally nor in writing demanded the positives. Even in the letter dated 4.12.96 Ex.PW1/115, fax message dated 20.9.97 Ex.PW1/114 and last letter dated 1.6.98 Ex.PW1/19, the defendant did not demand the positives or cost thereof from the plaintiff. The value of the positives has not been pleaded by the defendant in the written statement but DW-1 deposed the same as Rs.7,000/-. But this deposition of DW-1 is beyond pleadings and cannot be looked into. The defendant has neither claimed set off of the value of the positives nor filed counter claim against the plaintiff. So, when there is neither pleading on behalf of the defendant about the alleged oral agreement for return of positives nor claim by way of set off or counter claim, the admitted amount of Rs.69,530/- cannot be reduced by Rs.7,000/-. The Ld. Counsel for the defendant relied upon a judgment of hon’ble Himachal Pradesh High Court Himachal Fruit Grower Co-operative Market and Processing Society Ltd. vs. Upper India Food Preservers and Processors AllIR 1984

H.P.18 and pleaded that when there is breach on the part of the plaintiff and not on the part of the defendant, the plaintiff is not entitled to any damages or interest. But the defendant has failed to prove any oral agreement between the parties regarding return of positives by the plaintiff to the defendant and hence, it cannot be said that the plaintiff was at fault.”

4. I do not find any error whatsoever in the findings and conclusions of the Trial Court. The Trial Court has correctly observed that neither in the written statement there was any mention of any agreement to return the positives and nor was the value of such positives mentioned. The Trial Court has also referred to the last letter dated 1.6.98 being Ex.PW1/19 in which the appellant/defendant did not demand the positives of the cost thereof from the respondents/plaintiffs.

5. In view of the above, I do not find any error in the impugned judgment and decree. The appeal is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 21, 2011
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VALMIKI J. MEHTA, J.