

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 2/2009

UOI

..... Appellant

Through: Mr.Kirtimaan Singh and Mr.Waize  
Ali Noor, Advs.

versus

RANJAN KHANNA

..... Respondent

Through: Dr.Charu Wali Khanna and  
Mr.Dharmender Singh Pal, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE P.S.TEJI (ORAL)**

**ORDER**

**11.08.2017**

**P.S.TEJI, J.**

1. The appellant has preferred the present appeal against the judgment and decree dated 09.09.2008 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/respondent for recovery of money has been decreed in favour the plaintiff/respondent and against the defendant/appellant for recovery of sum of Rs.3,07,758/- with interest @ 12% from the date of filing of the suit till its realization.

2. The facts enumerating from the plaint filed before the Court below are that the plaintiff/respondent had claimed a sum of Rs.3,35,314/- as the balance principal amount which according to him was remaining unpaid by and on behalf of the defendants and has also

been claiming an amount of Rs.1,40,831.88 paisa as interest on this unpaid amount calculated @ 18% pa from 03.11.2001 to 03.03.2004, i.e. 28 months. The plaintiff also claimed pendentelite and future interest @ 18% p.a. The plaintiff/respondent is engaged in the business of advertising and publicity. Defendant nos.1 to 4/Appellants are Ministry of Heavy Industries and Public Enterprises and its officials. The plaintiff/respondent stated that the defendant/appellant, in the month of October, 2001 engaged the plaintiff/respondent for advertising needs of the concerned Ministry. The plaintiff/respondent was contacted by the appellant to design and publish advertisement for publicity of completion of two years of NDA Government, and on having received the order by the defendants; the respondent released the advertisement for publication. In relation to the above, the respondent raised bills for an amount of Rs.4,31,775/- (Bill no.610) and Rs.3,07,758/- (Bill No.611) totaling to an amount of Rs. 7,39,533/-. The respondent was allegedly informed by the appellants that there were some technical problems which were being sorted out at the end of the appellants, and the respondent claimed that after a period of about 2 years, the appellants paid only a part amount vide order dated 04.08.2003 for a sum of Rs.4,12,679/- contending it as full and final payment of the Bill No.610 and 611. A legal notice was thereafter sent by the respondent, seeking payment of the balance amount.

3. In the written statement filed on behalf of the appellant/defendants, it was admitted that the defendant no.2 is the Under

Secretary with whom the respondent/plaintiff was in communication for finalization of the advertisement for publicity of completion of two years of NDA Govt. and the said order for the release of the advertisement had been issued by Defendant no.3. It has been further stated that the respondent/plaintiff agency had preferred two bills, one of Rs.4,31,775/- (Bill no.610) and Rs.3,07,758/- (Bill No.611). While formal bill was preferred to Department of Heavy Industries, the other bill was preferred to M/s Maruti Udyog Ltd by enclosing a copy of the letter of the Department dated 13.10.2001. The appellant/defendant stated that the amount payable to the plaintiff agency was only Rs. 4,12,679/- and before releasing the said amount, the plaintiff agency was asked to show cause of why action should not be taken against them for producing the bill to Maruti Udyog Ltd. Since, plaintiff was pressing for the release of the said payment, a payment of Rs. 4,12,679/- was released by the Department to the plaintiff agency subject to the condition that it was a full and final settlement and no further claim would be entertained towards the same.

4. Replications to the written statements were filed on behalf of the defendants. On the basis of pleadings of the parties, following issues were framed by the Court below :

(1)Whether the total expenditure incurred by defendant for advertisement was limited to Rs.4.5 lacs as per letter dated 13.10.2001? (OPD)

(2)Whether the amount as shown in Bill No. 611 submitted by plaintiff was payable by Maruti Udyog Limited? (OPD)

(3) To what amount the plaintiff is entitled to recover from the defendant and, if so, at what rate and for what period? (OPD)

(4) Relief.

5. To prove his case, the plaintiff examined three witnesses namely PW1-Ranjan Khanna, proprietor of the plaintiff firm, PW2-Kamal Bhatia, manager of the plaintiff firm and PW3- Deepak Jain, handwriting expert. The defendant on the other hand, examined two witnesses, DW1-O.P.Verma and DW2-A.P.Pathak.

6. Feeling aggrieved by the judgment and decree in the present suit, the present appeal has been filed. Argument advanced by the counsel for the appellants is that they do not deny the order (Ex PW1/2) placed with respect to the publishing of the said advertisements with the plaintiff agency. The appellants in furtherance of the order placed with the plaintiff agency wrote a letter (Ex PW1/4) dated 13.10.2001, confirming the publication of the said advertisement in newspapers on 15.10.2001. It is further argued that they had specifically stated that the advertisement was to be published keeping the budget of Rs.4.5 lacs in mind, and the same was not to be exceeded by the plaintiff agency. It was further contended that Maruti Udyog Limited was liable to clear bill No.611 and thus the appellants hold no liability to clear the same.

7. On the other hand, argument advanced by the counsel for the plaintiff/respondent is that after having received the order for publication, the plaintiff firm was apprised that it would not be

possible to publish the said advertisements within the given limit of Rs.4.5 lacs. The advertisements were published on specific order placed by the appellants and the appellants were liable to make the payment of the bills raised. There is no infirmity or illegality in the judgment and decree passed by the Court below.

8. Arguments advanced by the counsel for the parties were heard and I have gone through the evidence, documents and material placed on record.

9. With respect to the fact that the said order of publishing the advertisement could not be carried out within the apparent budget limit set by the appellants, the same has been corroborated by DW2 in his cross examination that PW-2 Kamal Bhatia had discussed with him that the approved advertisements could not be printed within the price limit of Rs.4.5 lacs. Thereafter, after having placed the initial order via fax message with the plaintiff agency for publication of advertisement in the prescribed newspapers on 15.10.2001, a fresh order (Ex.PW1/3) with an amendment was issued in which no limit of Rs.4.5 lacs was put up.

10. Appellant/defendant witness DW-1 Sh.O.P. Verma during his cross-examination has stated that the dictation of document Ex.DW1/1 (Ex.PW1/5) was given by him and it was given to Sh.A.K. Pathak for onward communication to the plaintiff. The said communication was sent through a fax message to the plaintiff. Note on Ex.PW1/5 encircled red was written by him. He further stated that document Ex.PW1/5 as corrected by officer on special duty attached to the

Minister. He further stated that the rates of DAVP were not known to him at the time of executing document Ex.PW1/5. He further stated that when letter Ex.PW1/5 was given, the words in red encircled were not written.

11. Thus, it is evident from the document placed on record that the budget limit as mentioned by the appellants /respondents was with respect to the initial order only, placed vide Ex. PW1/1. The subsequent amended order Ex.PW1/3 did not carry any such condition of a budget limit and thus, the appellants shall not be precluded from paying the entire amount due in respect of both bills No.610 and 611.

12. Further, with respect to the issue whether Maruti Udyog Limited is due to pay the amount of bill no.611 to the plaintiff/respondent, the same is clear from the written statement filed by Maruti Udyog Limited wherein they have stated that there is no privity of contract between the plaintiff/respondent and Maruti Udyog Limited. It has further been submitted that the plaintiff/respondent had allegedly issued the bill at the alleged instance of the defendants/appellants who had declined to pay the said pending bill. From the material placed on record, it becomes evidently clear that the plaintiff agency had no transaction for the said order of publishing advertisements with Maruti Udyog Limited and hence any such bill shall not be enforceable against Maruti Udyog Limited. Contention of the appellant/defendant is that they were not liable to made the payment of said bill as two copies of the bills were sent by the plaintiff/respondent, one to the concerned Ministry and other to Maruti

Udyog Limited. The contention of the plaintiff/respondent to this effect is that the original bill was sent to the Ministry concerned and on their asking a copy of the bill was sent to Maruti Udyog Limited. Therefore, Bill no.611 cannot give a cause of action against Maruti Udyog Limited and the same was subject to be cleared by the appellants with respect to their placing the order of publishing advertisements through the plaintiff agency/respondent on 15.10.2001. It is an admitted fact that the advertisements published by the plaintiff agency were ordered by the appellants/defendants and they cannot deny their liability to make the payment for the same.

13. In view of the above discussion, this Court is of the considered opinion that the issues have been rightly decided by the Court below in favor of the plaintiff and against the defendants. There is no error in the judgment and decree passed by the trial court and the same is accordingly upheld.

14. The present appeal is accordingly dismissed.

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**(P.S.TEJI)  
JUDGE**

**AUGUST 11, 2017**  
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