

Deepak Mehta and anr Vs. Yashi Multimedia Pvt Ltd and ors

Deepak Mehta and anr Vs. Yashi Multimedia Pvt Ltd and ors

SooperKanoon Citation : sooperkanoon.com/1137577

Court : Delhi

Decided On : Apr-21-2014

Judge : Rajiv Sahai Endlaw

Appellant : Deepak Mehta and anr

Respondent : Yashi Multimedia Pvt Ltd and ors

Advocate for Def. : Mr. Ravi Kant Chadha, Mr. R.K. Gautam

Advocate for Pet/Ap. : Mr. S.K. Agarwal, Mr. Umesh Kumr, Mr. N.P. Rakesh Panikar

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

21. t April, 2014 % + CS(OS) 869/2010 DEEPAK MEHTA & ANR Through: Plaintiffs Mr. S.K. Agarwal, Mr. Umesh Kumr & Mr. N.P. Rakesh Panikar, Advs. versus YASHI MULTIMEDIA PVT LTD & ORS Defendants Through: Mr. Ravi Kant Chadha, Sr. Adv. with Mr. R.K. Gautam, Advs. CORAM :HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J1 The two plaintiffs have instituted this suit on 27th March, 2010 for recovery of damages in the sums of US\$ 8,69,387.67 equal to Rs.4,02,00,486/- with pendente lite and future interest jointly and severally from the five defendants.

2. Summons of the suit were issued and a joint written statement has been filed by the defendants and to which a replication has been filed by the plaintiffs. The parties were referred to the Mediation Cell of this Court, which remained unsuccessful. The parties have filed affidavits of admission / denial of each others documents.

3. The suit was listed on 28th March, 2014 for framing of issues. While the counsel for the plaintiffs did not propose any issues, the senior counsel for the defendants handed over proposed issues including on the aspect of limitation. Perusal of the pleadings for the purposes of framing of issues having prima facie shown the suit to be barred by time, the counsels were heard on the said aspect and orders reserved with the observations that if the suit is held to be within time, issues shall be framed.

4. The case in the plaint is:(i) that the plaintiff no.1 is the proprietor and the CEO of the plaintiff no.2 Mehta Entertainment Inc. incorporated under the laws of United States of America; (ii) that the plaintiffs are engaged in organizing and promoting entertainment shows all over the world, either of their own or in association with other organizers; (iii) that the defendants no.2 to 4 Mr. Suresh Mohan Uberoi, Smt. Yashodhara Uberoi and Ms. Megha Uberoi are the Directors of the defendant no.1 Company and are as such jointly and severally liable for the dealings of the defendant no.1 Company; the defendant no.5 Mr. Vivek Oberoi is the son of the defendants no.2 and 3 and brother of the defendant no.4 and had authorized the defendant no.1 Company to deal on his behalf and to receive payments on his behalf; (iv) that the plaintiffs upon receipt of specific confirmation from the defendants that the defendant no.5 is willing to participate in the shows scheduled to be held in August / September, 2003 in good faith and belief and upon receipt of request from Mr. Farhath Hussain (not a party to the suit) remitted a total contractual amount of US\$ 3,00,000/- in the account mentioned by the defendants, for the said shows; the said contractual amount was then remitted to the defendants; (v) that though all the arrangements were made for the shows scheduled to be held in August and September, 2003 but the defendants could not keep their contractual obligations and failed to ensure the participation of the defendant no.5 in the said shows on the ground of his injuries and physical fitness;

(vi) even thereafter the defendants, on one pretext or the other avoided and were not able to ensure the participation of the defendant no.5 in other shows for which the plaintiffs had made their best efforts; (vii) that because of non-compliance by the defendants of their contractual obligations, the plaintiffs suffered huge losses and bad name; (viii) that the plaintiffs have been requesting and persuading the defendants to ensure participation of the defendant no.5 in the subsequent shows or to return the amount paid by the plaintiffs to the defendants but all the efforts went futile till end of 2005 and which compelled the plaintiffs to write a letter dated 7 th January, 2006 to the defendants for settling the long outstanding dues; (ix) that the plaintiffs ultimately issued a legal demand notice dated 18th January, 2006 for refund of the amount along with interest totaling US\$ 3,90,000/-; (x) that the defendants vide their reply dated 2nd February, 2006, though admitted the receipt of contractual amount of US\$ 3,00,000/- on 31st January, 2003 but doubted the contract dated 29th January, 2003 with the plaintiffs for shows to be held in August / September, 2003 and also asked for proofs of the same because the amount was remitted on the instructions of the plaintiffs by Mr. Mannu Mehta brother of the plaintiff no.1; (xi) the plaintiffs vide their rejoinder notice dated 27th February, 2006 submitted all the required proofs; (xii) that on receipt of the proofs, the defendants sometimes assured to the plaintiffs refund of the amount and at other times promised adjustment of the same in future shows but kept neither of the promises; (xiii) that the plaintiffs sent another demand notice dated 20th March, 2007 demanding US\$ 4,20,000/- due with interest till then; (xiv) that the defendants again promised to make available the defendant no.5 in future shows by explicitly admitting that the defendants are liable to pay the amounts to the plaintiffs; that though the defendants acknowledged their liability by various mails in April / May, 2007 but failed to adhere to their commitment; (xv) that the defendants inspite of their assurances that they have money and can pay the plaintiffs at any time, avoided payment; (xvi) that owing to the aforesaid conduct of the defendants, the plaintiffs delayed legal action against the defendants; (xvii) that the plaintiffs issued a statutory notice dated 4th February, 2008 to the defendant no.1 Company to pay the dues and upon failure of the defendant no.1 Company filed C.P. No.360/2008 in this Court for winding up of the defendant no.1 Company and which company petition was pending on the date of institution of the

suit; and, (xviii) that the cause of action for the suit arose on 29th January, 2003 when the defendants confirmed the participation of the defendant no.5 for the shows in USA and Canada on 31st January, 2003 and 1st February, 2003; the cause of action further arose in August, 2003 when the defendants failed to ensure the participation of the defendant no.5 in breach of the contract; the cause of action also arose on subsequent occasions as and when the defendants committed to send the defendant no.5 for other shows but failed; the cause of action further arose when the defendants in their reply dated 2nd February, 2006 admitted receipt of the amount and asked for proofs of contract which were duly sent on 27 th February, 2006; the cause of action further arose on several occasions when the defendants started negotiating with the plaintiffs admitting their liability but failed to discharge the liability; the cause of action further arose in April / May, 2007 when the defendants started fresh negotiations for settling the outstanding by giving fresh offers stating that the money is ready and payable to the plaintiffs; that the cause of action further arose when the defendants failed to admit their liability in response to the petition for winding up.

5. Considering, that the aspect of limitation is being examined at a preliminary stage, without any evidence, it is not necessary to delve into the defence of the defendants.

6. Suffice it is to state that the petition for winding up of the defendant no.1 Company being C.P. No.360/2008 supra was dismissed vide order dated 21st May, 2012 with liberty to the plaintiffs to pursue the claim in this suit. No appeal is stated to have been filed against the said judgment which has attained finality.

7. The case of the plaintiffs is, for refund of the monies paid to the defendants upon an existing consideration i.e. of promise of participation of the defendant no.5 in the shows of the plaintiffs, which afterwards failed on the defendant no.5 failing to participate in the shows. Alternatively, the case of the plaintiffs is of breach by the defendants of the contract dated 29 th January, 2003 in consideration of which the payments are claimed to have been made by the plaintiffs to the defendants and which contract was to be performed by the defendants on 31st January, 2003 and 1st February, 2003.

8. Though the counsel for the plaintiffs inspite of prodding could not point out which Article of the Schedule to the Limitation Act, 1963 would be attracted, a perusal of the said Schedule shows, (a) Article 27 to be providing limitation of three years for compensation for breach of a promise to do anything at a specified time or upon the happening of a specified contingency, commencing from the date when the time specified arrives or the contingency happens; (b) Article 47 to be providing limitation of three years for a suit for money paid upon an existing consideration which afterwards fails, commencing from the date of the failure; and, (c) Article 55 to be providing limitation of three years for compensation for the breach of any contract, commencing from the date when the contract is broken. Under either of the said Articles, the limitation provided is of three years for suing, either for refund of the monies paid or for a compensation for breach of contract, commencing from the date when the contract is broken.

9. It is the case of the plaintiffs themselves that the contract dated 29 th January, 2003 was broken by the defendants by non participation in the shows on 31st January, 2003 and on 1st February, 2003. The suit thus had to be filed within a period of three years therefrom i.e. latest by 1 st February, 2006. The suit, as aforesaid has been filed on 27th March, 2010.

10. Though the plaintiffs in the plaint have pleaded subsequent assurances / promises by the defendants to ensure participation of the defendant no.5 in subsequent shows to be organized by the plaintiffs, but as the pleadings in the plaint as set-out hereinabove would show, there is no averment / plea of novation or of the contract dated 29th January, 2003 having been substituted by any subsequent contract. It is not the plea of the plaintiffs that the parties at any time after 1st February, 2003 reached any agreement for participation by the defendant no.5 in lieu of consideration already received under the contract dated 29th January, 2003, in any subsequent show. No particulars of any subsequent show organized by the plaintiffs and in which the defendant no.5 may have agreed to participate or in which the other defendants may have agreed to the participation of the defendant no.5, have been pleaded.

11. That leaves only the aspect of extension of limitation by acknowledgment in writing under Section 18 of the Limitation Act. The same provides that where before the expiration of the prescribed period for a suit, an acknowledgment of liability has been made in writing signed by the party against whom the claim is made or by anyone on his behalf, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

12. Though the plaintiffs, in the plaint, have not unequivocally and expressly, as required by law (Order 7 Rule 6 CPC) (where the suit is ex facie barred by time, the Court cannot embark upon a roving and fishing enquiry to help the plaintiff on the question of limitation in the absence of pleading of the ground upon which exemption is sought), pleaded any such acknowledgment in writing within the meaning of Section 18, but the documents filed by the plaintiffs have still been perused. The relevant documents in this regard (de hors the admission / denial by the defendants thereof) may be mentioned as under: (a) Letter dated 29th January, 2003 signed by the defendant no.5 and addressed to Mr. Farhath Hussain of M/s Cine Entertainment Promoters Ltd., UK, with respect to the shows from 22nd August to 30th September, 2003, confirming that he had authorized the defendant no.1 Company to deal on his behalf and to receive payments. (b) Letter dated 29th January, 2003 of the defendant no.1 Company through defendant no.2 to Mr. Farhath Hussain confirming the willingness of the defendant no.5 to participate in the shows organized by Mr. Farhath Hussain and authorizing Mr. Farhath Hussain and his partners / promoters to remit the contract amount in the account of the defendant no.1 Company but clarifying that the said confirmation was only for the shows held by M/s Cine Entertainment Promoters Ltd. between 24th August to 30th September, 2003. (c) Letter dated 1st February, 2003 of Mr. Farhath Hussain to the plaintiffs to transfer US\$ 3,00,000/- to defendant no.1 Company for the show of the defendant no.5 in September, 2003. (d) Letter dated 7th January, 2006 of the plaintiffs to the defendants no.2&5 for refund of US\$ 3,00,000/- for the reason of their not agreeing to the offer of the plaintiffs for the defendant no.5 to participate in a subsequent show in lieu of the amount received on 31st January, 2003. (e) E-mail dated 14th April, 2007 of Mr. Mahesh Uberoi from uberois@aol.com to Kevin H. Lewis, Advocate for the plaintiffs, as under: Dear Mr. Lewis, I am the brother of Suresh Oberoi, who is a Director of Yashi Multi Media

Pvt. Ltd., (YMM) Mumbai, India. I understand there was a contractual agreement made between a Mr. Farhad Hussain (FH), now residing in the UK and YMM for the purpose of having Vivek Oberoi (VO) participate in shows in US and Europe. I also understand that your client Deepak Mehta (DM) is an associate/friend of FH. I am only trying to help solve the problem and nothing herein may be construed as a representation or an agreement of any kind. I understand that DM and or his company has advanced to YMM certain amounts of money on behalf of FH. This money has indeed been received by YMM. The show was canceled due to several reasons. A new show was proposed several times and nothing has materialized inspite of several promises made by FH. This has caused YMM to miss several opportunities to send VO for shows in the US and UK in the past few years as a moral commitment had been given to FH. This is indeed a great opportunity loss for a budding actor like VO. I propose the following: Please request your client DM to get in touch with FH and get to the bottom of this contract. If FH not interest in doing any more shows with YMM, he should clearly express his intentions and write to YMM that the contract is cancelled. Also, FH should authorize in writing asking YMM to return the funds to him or to DM. Please understand that DM advanced the money on behalf of FH. As far as I can see, the contract to do the show is still on and is still valid. YMM is willing to do the show at the agreed upon price at a date that is suitable to all. Alternatively, if DM wishes to have another party do the show and apply the advanced funds to that new event, YMM is willing to work with that proposal as well, as long as the price/terms remain the same as originally contracted with FH. Even in this case, YMM would need a letter of authorization from FH. I have been asked by DM to contact you. If you have any questions or need to contact me, please call me at 1-561-251-0301. Thank you for your time. Best regards, Mahesh Uberoi (emphasis added) (f) E-mail dated 16th April, 2007 of Mr. Mahesh Uberoi from uberois@aol.com to Kevin H. Lewis as under: Subject: Re: Representation from Farhath Hussain I thought the amount was \$300K and alternate arrangements were made by Mr. Mehta. While we accept this scanned letter from Mr. Hussain, can you please request him to send the original notarized to Yashi Multi Media?. Thank you. Best regards, Mahesh Uberoi (g) E-mail dated 2nd May, 2007 of Mr. Mahesh Uberoi from uberois@aol.com to Kevin H. Lewis as under:

Dear Kevin, It is true that I have spoken with Mr. Mehta. Please understand that nothing herein should hold me responsible as I am only trying to help. The deal is as follows: -Kamal Dandona is to pay YMM a sum of US\$36,000.00. YMM has already received an advance of \$4,000 (10%). (The total amount for the show to be done by Vivek Oberoi is \$40,000.00). YMM can authorize Kamal Dandona to remit the \$36,000 to Mehta Entertainment/Deepak Mehta. This amount is to be treated as good faith payment. Mehta should ensure that money is paid to him prior to Viveks performance on May 26th in NYC. We will also assist in the same.-.The balance amount of \$264,000 will be paid by YMM through services performed. Vivek will do 5 shows towards this amount anywhere in the US at anytime mutually convenient to both parties. This works out to be an average of \$52,800 per show. I had quoted \$50K on the phone, but it actually works to be a bit higher. A minimum total of 10 shows is to be planned. The shows over and above the 5 mentioned here will be at the rate of \$50,000 per show. YMM will also assist but not guarantee to get Hrithik Roshan to perform for Mehta Entertainment. Hope this email captures the essence of the dialog. Please have Deepak contact Suresh should he have any question. Thanks for you help. Best regards, Mahesh Uberoi.

(emphasis added) (h) E-mail dated 24th May, 2007 of Mr. Mahesh Uberoi from uberois@aol.com to Kevin H. Lewis as under:

Dear Mr. Lewis, I am on my way back from India and writing to you from London. Pursuant to my last email, my brother has advised me to ensure the following:

1. We are still awaiting Farhaths notarized letter authorizing YMM to release the funds to your client, Deepak Mehta. We have no problem in doing so, but as a lawyer, I hope you understand our position. It has been a while now since we have asked for this letter, but for some reason we do not get a response.

2. We need to put together a simple agreement that YMM will pay a good faith amount of \$36,000 to your client and will agree to do 5 shows for the balance amount of \$264,000. However, the tour will have a minimum of 10 shows in USA and Canada and shows beyond 5 will be at \$50,000 per show. There are the same terms we had sent you in our last email.

3. At anytime prior to confirmation and announcement of the Show/Tour, YMM reserves the right to payoff the balance amount of \$264,000 to satisfy its obligation. Please note that I am only helping this cause and am not be held responsible for any actions by either party. We are in receipt of \$36,000/- and this amount will be released at time of signing the agreement. Please include in the agreement things like, First Class Air Travel for Vivek Oberoi and father, costumes and other expenses to be borne by the tour organizers. Documenting these will minimize any future misunderstandings. I am happy we have come to an amicable resolution of the problem. Best regards, Mahesh Uberoi.

(emphasis added) (i) E-mail dated 25th May, 2007 from uberois@aol.com to Kevin H. Lewis as under: I have the money I can pay Deepak anytime. However, I need a simple agreement signed. Mr. Hussain has disappeared and is not responding to our calls. His friends in India feel some else may be corresponding on his behalf. We need to be careful. Pl help by getting the original notarized. Money is there and will be paid. 5 shows is sufficient if that is all what Deepak wants to do. However, we can all have a win win situation if we have more shows. Thanks (j) Reply dated 2nd February, 2006 of the Advocate of the defendants to the notice dated 18th January, 2006 and a letter dated 7th January, 2006 denying the contract dated 29 th January, 2003 though admitting receipt of US\$ 3,00,000/- from Mr. Farhath Hussain through Mr. Mannu Mehta and further stating that no shows as proposed were held for the reason of nonavailability of other actors supposed to participate in the same.

13. The counsel for the plaintiffs has contended the e-mails dated 14th April, 2007, 16th April, 2007, 2nd May, 2007, 24th May, 2007 & 25th May, 2007 aforesaid to be containing an acknowledgment of liability.

14. Even if the same were to be accepted, the said e-mails are of 14th April, 2007, 16th April, 2007, 2nd May, 2007, 24th May, 2007 & 25th May, 2007 i.e. though of a date within three years prior to the institution of the suit but of a date beyond three years from the date of expiration of the prescribed period of limitation from the date when the cause of action accrued. As per the plaint, the amount of US\$ 3,00,000/- was paid for participation by the defendant no.5 in the shows scheduled

on 31st January, 2003 and 1st February, 2003, though as per the documents the amount paid was for participation in the shows in August / September, 2003. Be that as it may, the cause of action as aforesaid accrued to the plaintiffs upon non-participation by the defendant no.5 in the said shows i.e. whether on 31st January, 2003 / 1st February, 2003 or August / September, 2003. The period of three years therefrom expired either on 1 st February, 2006 or in September, 2006. No acknowledgment of liability within the said time has been shown. Without such an acknowledgment of liability, the acknowledgment of liability even if any in the e-mails dated 14th April, 2007, 16th April, 2007, 2nd May, 2007, 24th May, 2007 & 25th May, 2007 supra is of no avail.

15. No plausible answer was forthcoming from the counsel for the plaintiffs in spite of the same being expressly put to him.

16. The Supreme Court in J.C. Budhraj Vs. Chairman Orissa Mining Corp. Ltd. (2008) 2 SCC 444 has reiterated that an acknowledgment made with respect to a liability cannot extend limitation for a time barred liability.

17. Not only so, I am unable to find any acknowledgment of liability in e-mails aforesaid. The defendants in the reply dated 2 nd February, 2006 to the legal notice, what to talk of admitting any liability to the plaintiffs, denied having even any privity of contract with the plaintiffs. Merely because the defendants in the said reply admitted the receipt of US\$ 3,00,000/- from another, would be of no avail.

18. Similarly, the e-mail dated 14th April, 2007, though again admits receipt of money but blames the cancellation of the show on factors other than attributable to the defendants and mentions the opportunities missed by the defendant no.5 and for the reason of the said cancellation, though also communicates the willingness of the defendants to do shows in future and to apply the advance received to the same.

19. It has been held in S.F. Mazda Vs. Durga Prasad AIR 1961 SC 1236 that the words used in the acknowledgment must indicate the existence of jural relationship between the parties such as that of debtor and creditor and it must appear that the statement is made with the intention to admit such jural

relationship. However, in all the communications aforesaid, though by Mr. Mahesh Uberoi and not by the defendants, but even if read as on behalf of defendants, the defendants claim the privity with Mr. Farhath Hussain and not with the plaintiffs and keep on insisting on the certificate from Mr. Farhath Hussain.

20. Moreover, acknowledgment of liability within the meaning of Section 18 of the Act has to be clear, unambiguous, unequivocal and unconditional. The communications aforesaid though clearly admit the receipt of amounts for refund of which the suit is filed, but nowhere clearly admit a jural relationship of debtor and creditor with the plaintiffs or admit any liability to the plaintiffs. The willingness to adjust the advance received in subsequent transactions on certain terms, cannot be said to be an acknowledgment of liability within the meaning of Section 18 of the Act. Not only so, the communications are predicated with clarification that the same be not construed as a representation or agreement and are only in an attempt to resolve the controversy. The said communications rather deny that there was any breach by the defendants and place the blame for the shows not materialized on other factors.

21. The same is the position with respect to the contents of the e-mails dated 2nd May, 2007, 24th May, 2007 & 25th May, 2007 aforesaid which are all in the nature of negotiations between the parties and not in the form of acknowledgment of liability.

22. The counsel for the plaintiffs also has not shown any case law to persuade me to hold otherwise.

23. The suit thus, from the averments in the plaint and the documents filed therewith, has but to be held to be barred by limitation. In this view of the matter no purpose would be served by putting the suit unnecessarily to trial on the other issues arising between the parties.

24. The suit is accordingly dismissed. Though I find the plaintiffs to have filed the suit without paying heed to the aspect of limitation and without addressing the same and having thereby not only put the defendants to expense but having also wasted the time of this Court but I refrain from imposing any costs. Decree sheet

be prepared. RAJIV SAHAI ENDLAW, J APRIL21 2014 pp..

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com