

Thomson Press (i) Ltd. Vs. Advertising Plus and anr.

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Court : Delhi

Decided On : Jul-28-1999

Reported in : 80(1999)DLT648

Judge : Vikramajit Sen, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 37, Rule 2(3)

Appeal No. : Suit No. 1699 of 1997

Appellant : Thomson Press (i) Ltd.

Respondent : Advertising Plus and anr.

Advocate for Def. : Nemo

Advocate for Pet/Ap. : R.V. Sinha and; R.N. Singh, Advs

Judgement :

Vikramajit Sen, J.

1. This is a summary suit under Order xxxv II of the Code of Civil Procedure for the recovery of Rs. 6,13,491/- (Rs. six lakh thirteen thousand four hundred ninety-one only) Along with pendente lite and future interest @ 21% till the realisation, and for costs.

2. Summons in the prescribed form under Order xxxv II of the Code of Civil Procedure were issued on various occasions and service on the defendants was finally affected on 17.2.1999. These notices also indicated that the suit would be listed on 24.2.1999 before the Joint Registrar of this Court, for further directions.

3. As envisaged in Order xxxv II, Rule 2(3) the defendant was to enter appearance and in default of his entering appearance the allegations in the plaint would be deemed to have been admitted. The plaintiff was thereupon entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified up to the date of the decree and such sum for costs as may be determined by the Court.

4. In the plaint it is averred, inter alia, that an agreement has been reached between the parties herein for printing of 'Intel Folder' and 'Intel Brochure' and subsequently these Folders and Brochures were printed by the plaintiff. A liability of Rs. 3,15,730/-(three lakh fifteen thousand seven hundred thirty only) was incurred on account of the 'Intel Folders and Rs. 1,63,560/- (Rs. one lakh sixty three thousand five hundred sixty only) on account of 'Intel Brochures'. The defendants were jointly and severally liable to pay to the plaintiff a total sum of Rs. 4,79,290/- (four lakh seventy nine thousand two hundred ninety only) towards the aforesaid two bills. It is further averred that in its letter dated 5.12.1995 defendant No. 1 confirmed this liability and promise to pay the same by 15th of January, 1996, which was not done. Two cheques were issued in favor of the plaintiff but these were dishonoured.

5. It is further averred that there was an agreement of payment of interest at the rate of 21% per annum till realisation and, accordingly, a sum of Rs. 134,201/- (one lakh thirty four thousand two hundred one only) was payable by the defendants to the plaintiff for the period commencing 1.1.1996 till 30.4.1997, the date on which the suit was filed. In this manner the defendants have become liable for a total sum of Rs. 6,13,491/-.

6. Although all these averments must be deemed to have been admitted by the operation of Order xxxv II, Rule 2(3), I have also perused the documents placed on record which also substantiate the claim.

7. I, therefore, hold that the plaintiff has proved its case and that a sum of Rs. 6,13,491/- is due and payable by the defendants to the plaintiff. Although, interest at the rate of 21% per annum has been claimed from the date of filing of the suit till its realisation, I award interest for this period at the rate of 18% per annum. The plaintiff will be entitled to costs.

8. In view of the above findings, the suit is decreed for the amount of Rs. 6,13,491/- together with interest from the date of the filing of the suit till the recovery of amount at the rate of 18% per annum together with costs.

Decree sheet be drawn up accordingly.

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