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

Reserved on: 04.03.2025
Pronounced on: 12.06.2025

\+ RFA(COMM) 130/2025

R. SANTOSH .....APPELLANT
Through: Ms. R. Gayathri Manasa, Adv.

versus

ONE97 COMMUNICATIONS LTD. .....RESPONDENT
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. This Regular First Appeal, instituted under Section 13 of the Commercial Courts Act, 2015 (in short, 'the CC Act'), impugns the Judgment dated 25.11.2024 passed by the learned District Judge (Commercial Court-06), South-East District, Saket Courts, New Delhi (hereinafter referred to as the 'District Judge') in CS (COMM) 422/2023, titled ***ONE97 Communications Ltd. v. R. Santosh***, whereby the suit filed by the Respondent was decreed, and the Appellant was directed to pay to the Respondent a sum of ₹5,00,000/-, together with the *pendente lite* and future interest at the rate of 8% per annum. The appellant was further directed to pay the cost of the Suit to the respondent, and in case the cost was not paid within thirty days, it was to carry interest at the rate of 6% per annum.

2. The facts relevant for adjudication of the present appeal, as emerging from the record, are thus:

2.1 The Respondent (plaintiff before the learned District Judge), is a company engaged in the business of providing telecom-based value-added services, including services relating to bill payments, recharges, and ticketing. The Appellant, (defendant before the learned District Judge), being the owner of a movie theatre, namely Sharada Talkies, approached the Respondent for the purpose of marketing, promotion, listing, and booking of movie tickets of his cinema through the Respondent's platform.

2.2 Pursuant to the discussions, the parties entered into a Ticketing Agreement dated 07.12.2016 (hereinafter referred to as the 'Ticketing Agreement'), whereby the Appellant undertook to upload the ticket inventory of Appellant's theatre and such other information for listing the same on the Respondent's platform. In terms of the said agreement, the Respondent, in view of the services rendered to the Appellant, was entitled to charge convenience fee from the customers on every ticket booked through its platform, over and above the selling price of the tickets booked.

2.3 Subsequently, on 04.01.2017, the parties executed an Addendum Agreement (hereinafter referred to as the 'Addendum Agreement'), which was to operate with effect from the said date till its maturity. In terms of the Addendum

Agreement, the Respondent advanced to the Appellant a sum of ₹5,00,000/-, to be treated as an interest-free refundable security deposit, deemed to have been made at the time of execution of the Ticketing Agreement.

2.4 The Appellant's movie theatre remained operational till April 2022. Thereafter, it ceased operations, which led the Respondent to terminate both the Ticketing Agreement and the Addendum Agreement, *vide* the notice dated 13.12.2022. Along with the termination, the Respondent addressed a communication to the Appellant on the same date, calling upon the Appellant to refund the amount of ₹5,00,000/-, advanced as security deposit in terms of the Addendum Agreement.

2.5 As the Appellant failed to refund the said security amount, the Respondent instituted the aforementioned Suit before the learned District Judge, seeking recovery of the said sum.

2.6 The Summons in the said Suit were issued by the learned District Judge on 09.05.2023. As the Appellant failed to file the Written Statement to the plaint within the stipulated time, the right of the Appellant to file the Written Statement in Suit was closed by the learned District Judge on 13.10.2023, and the matter was posted for Plaintiff's Evidence.

2.7 On 09.11.2023, the Respondent herein tendered the evidence of PW-1- Sh. Jitendra Kumar by way of affidavit, and the matter was posted for cross-examination of PW-1 on 12.12.2023.

2.8 The right of the Appellant to cross-examine the Respondent's witness was closed by the Learned District Judge on 12.12.2023, as the Appellant failed to avail the opportunity and the matter was proceeded for final arguments.

2.9 On 29.02.2024, the Appellant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short, 'CPC'), seeking rejection of the plaint on grounds of non-joinder of necessary parties, absence of cause of action, and existence of an arbitration clause in the agreement.

2.10 The said application was dismissed by the learned District Judge, by an Order dated 08.10.2024.

2.11 The Suit was thereafter listed for final arguments on 12.11.2024.

2.12 Upon hearing the parties, the learned District Judge passed the Impugned Judgment, decreeing the suit in favour of the Respondent and against the Appellant, in the terms mentioned herein above.

2.13 Aggrieved thereby, the Appellant has preferred the present appeal.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

3. Ms. R. Gayathri Manasa, the learned counsel for Appellant submits that the learned District Judge has erroneously passed the Impugned Judgment in so far as it has prematurely decided that the

Appellant is liable to pay the Respondent a sum of Rs.5,00,000/- along with *pendente lite* and future interest at 8% per annum, without appreciating that there is no document on record to substantiate such payment being made by the Respondent to the Appellant.

4. She submits that Respondent was afforded two opportunities by the learned District Judge, on 12.12.2023 and again on 22.01.2024, to place on record the documentary proof of the alleged payment of Rs.5,00,000/-, however, the Respondent failed to do so on both occasions. Yet, without considering the said serious lapse on part of the Respondent, the Suit was decreed by the learned District Judge. In support of this submissions, reliance was placed on the Decision of the Supreme Court in ***Anil Rishi v. Gurbaksh Singh***, (2006) 5 SCC 558.

5. The learned counsel submits that the learned District Judge has arbitrarily observed that a payment has been made to one 'Santosh Talkies', whereas there is no such entity in existence, and in fact, the Ticketing Agreement itself mentions the name on the bank account of the Appellant as 'Mysore Talkies'

6. She submits that since the entire Suit revolved around the recovery of Rs.5,00,000/, it should have been proved that such payment was received by the Appellant. The Respondent has merely relied upon a statement of account marked as **Ex.PW-1/4**, filed along with the Suit, which in no way substantiates the claim that the amount was paid to the Appellant.

7. The learned counsel submits that the Schedule 'C' to the Ticketing Agreement, as filed by the Respondent before the learned District Judge with the plaint, provides the Bank Account details of one 'Mysore Talkies', which has not been made a party to the Suit. She submits that, therefore, the Suit is also bad on account of non-joinder of necessary parties as 'Mysore Talkies' and Mr. Manjunath Gowda have not been made parties.

8. Further, she submits that the learned District Judge has erred in disposing of the application under Order VII Rule 11 of the CPC without appreciating that there was an arbitration agreement between the parties in the Ticketing Agreement, therefore, the parties should have been referred to arbitration in accordance with Section 8 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act'). To support her contention, she placed reliance on the decision in ***R.K Roja v. U.S Rayudu & Anr.***, (2016) 14 SCC 275. The learned counsel, while relying upon the decision in ***Madhu Sudan Sharma & Ors. v. Omaxe Ltd.***, 2023 SCC OnLine Del 7136, submits, that non-filing of the written statement cannot be a ground to not to refer the parties to arbitration.

ANALYSIS & FINDINGS

9. We have considered the submissions made by the learned counsel for the Appellant and gone through the record.

10. First and foremost, it is to be noted that the appellant neither filed written statement nor cross-examined the witness of the

respondent. Therefore, there was no defence offered by the appellant to the Suit.

11. Secondly, the appellant does not deny that the Addendum Agreement is signed by him.

12. As noticed from the facts of the case, the Respondent is seeking a refund of the security deposit paid by it as per Addendum Agreement. Clause 3 of the Addendum Agreement stated that the respondent shall pay an interest free security deposit of Rs. 5 lakhs to the appellant. It reads as under:-

> *"3. Sub clause (6) with title "Security Deposit" is hereby added under · Schedule B in the Principal Agreement and shall be read as under:*
> *(6). Security Deposit: "Paytm shall pay an interest free refundable security deposit to the Merchant amount INR 5, 00, 000/- (Rupees Five Lakhs only).*
> *Merchant agrees and acknowledge that under no circumstances the Security Deposit shall be deducted/withhold/set off during the term of the Principal Agreement. The said security deposit will be refunded by the Merchant to Paytm within 7 days of the termination of this Agreement."*

13. The major challenge of the appellant to the Decree is that the respondent failed to prove that it had paid the amount of Rs. 5 lakhs as the Security Deposit to the appellant. We do not find any merit in this submission.

14. The Respondent has substantiated its claim by leading the evidence of PW-1, exhibiting the documents including the Ticketing

Agreement (**Ex.PW-1/3**), the Addendum Agreement (**Ex.PW-1/4**), the Appellant's statement of accounts (**Ex.PW-1/4**)(inadvertently mentioned twice in the affidavit), and the notice of termination (**Ex.PW-1/6**). Notably, the Appellant chose not to cross-examine PW-1 on 12.12.2023, thereby not challenging the testimony or the documents presented. This failure to challenge the Respondent's evidence by the Appellant, leads to the inference that the Appellant has no defence to the Respondent's claim, and the evidence produced by the Respondent stands proved. In this regard, the learned District Judge has also observed as under :-

> *"21. The Defendant has taken an objection that the Plaintiff has not filed any document on record to show the transfer of security deposit of Rs.5 Lakhs to the account of Defendant. The said objection is devoid of merits since the amount has been transferred in the name of Santosh Talkies as reflected in Ex.PW-1/4, i.e. Statement of Account and transfer to the account of Santosh Talkies is transfer to R. Santhosh in the capacity of proprietor of Santosh Talkies. The Plaintiff has also filed e-mails dated 14.04.2020 and 19.04.2020, Ex. PW-1/5 (Collectively) which reflect that tenure of the agreement was also extended by the Defendant as per mail dated 19.04.2020. Further Ex.PW-1/4, i.e. Statement of Account, reflects not only the payment of security deposit but also payments towards Net convenience fees and entertainment convenience Fees for the period from 27.03.2017 to 21.07.2017. Therefore, the Plaintiff has proved that the security deposit of Rs.5 Lakhs was made by the Plaintiff to the Defendant."*

15. Subsequently, on 10.02.2024, after forfeiting the right to cross-examine PW-1, the Appellant filed an application under Order VII Rule 11 of the CPC, alleging that the agreement was procured through manipulation and fraud by one Mr. Manjunath Gowda. The Appellant contended that he cannot read or write English and that the entire control was in the hands of Mr. Gowda, who received the payment. In the application, the Appellant has averred as under:

> *"5. It is pertinent to ·mention that, in the alleged Ticketing Agreement, the details of Karnataka Bank Ltd. furnished at Schedule-C, does not belong to Appellant, on the other hand the bank account furnished at Schedule-C in the alleged Ticketing Agreement belongs to said Mysore Talkies owned by Sri. Manjunath Gowda @ Jack Manju...*
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> *****
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> *7. That the Appellant denies the fact or receipt of Rs. 5,00,000/- to his account under the alleged Ticketing Agreement. It is pertinent to note that the alleged amount of Rs. 5,00,000/- is straightaway remitted to the account ·of Mis. Mysore Talkies having its bank account in Karnataka Bank and the said bank account is handled by said Sri. Manjunath Gowda@ Jack Manju as he is the proprietor of Mysore Talkies…"*

16. From the above, it is apparent that the only reason for the appellant stating that he has not received Rs. 5 lakhs from the respondent is that he claims that this amount has been credited in the bank account of Mysore Talkies owned by Shri Manjunath Gowda as its proprietor. However, the appellant does not dispute or deny his signatures on the Ticketing Agreement and the Addendum Agreement

thereto, and even the receipt of Rs.5,00,000/-. Therefore, it was for the appellant to prove his defence, which he miserably failed to prove.

17. As far as Mysore Talkies or Mr. Gowda are concerned, the learned District Judge has also observed as under:-

> *"19 The suit has been filed against R. Santhosh in the capacity of proprietor of M/s Sharada Talkies. The ticketing agreement dated 07.12.2016 as well as Addendum Agreement dated 04.01.2017 bears the signatures of R. Santhosh in the capacity of proprietor of M/s Sharada Talkies. ·Under the provisions of CPC also, the suit against the proprietorship is filed in the name of the proprietor.*
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> *20. There is no reference to name of any Manjunath Gowda in the ticketing agreement dated 07.12.2016 as well as Addendum Agreement dated 04.01.2017. The reference to name of Manjunath and Santosh R. is found as purchasers of e-Stamp for 'Lease Agreement for Exhibition of Cinematography Films at Sharada Talkies, Bangaluru'. However, the present suit has not been filed for seeking any relief under the said lease agreement. Therefore, there is no merit in the submissions of learned Counsel for Defendant that the present suit is bad for misjoinder of parties."*

18. We find no reason to disagree with the above finding

19. The judgment in ***Anil Rishi*** (supra) would also not come to the support of the appellant. It is the case of the appellant that the money mentioned in the Addendum went to Sharada Talkies and Mr. Gowda. He had to therefore, also establish his relationship with Mr. Gowda and Sharada Talkies as he had admitted his signatures on the

Addendum, which mentioned that the money had been paid under that contract.

20. Coming to the submission of the learned counsel for the Appellant *qua* the maintainability of the Suit on account of the arbitration agreement between the parties, once the appellant had failed to file his written statement, the above objection could no longer be entertained. The appellant had filed the application under Section 8 of the A&C Act filed after the closure of the Respondent's evidence. This Court, in ***Hitachi Payments Services (P) Ltd. & Anr. v. Shreyans Jain & Anr.***, 2025 SCC OnLine Del 1042, has held that where the written statement is not filed within the period granted and the right to file the written statement stands closed, application under Section 8 of the A&C Act would no longer be maintainable:

> *"9. In Ranjana Bhasin v. Surender Singh, 2024 : DHC : 499-DB, a Co-ordinate Bench of this Court placing reliance on the Judgment of this Court in SPML Infra (supra), held that an application under Section 8 of the Act is not maintainable if filed beyond the period prescribed for filing of the written statement.*
> *10. In view of the above, the application filed by the Appellants itself was not maintainable, the period for filing of the written statement having expired and, in fact, the defence of the Appellants having been struck of by the learned Trial Court vide the Order dated 22.12.2023."*

21. In ***Madhu Sudan*** (supra) it was held that the objection under Section 8 of the A&C Act had been taken by the appellant therein at

an early stage and even before filing of the written statement. The said judgment therefore, cannot come to the aid of the appellant herein.

22. In ***R.K. Roja*** (supra), the Supreme Court, while holding that as the application under Order VII Rule 11 CPC must be decided on the reading of the plaint, it should be decided before the court proceeds for trial, at the same time held that the liberty to file an application for rejection under of the plaint under Order VII Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement. In the present case, we find that the application filed by the appellant was such an attempt only.

23. Upon reviewing the plaint, the evidence presented, and the Appellant's lack of participation, it is evident that the Respondent has proved its case. The Appellant's failure to contest the evidence led by the Respondent and present a valid defence, leads to the conclusion that the Respondent's claims are substantiated.

24. Therefore, we find no infirmity in the Impugned Judgment and decree passed by the Trial Court.

25. The appeal, being devoid of merits, is hereby dismissed. Pending application, if any, are disposed of as infructuous.

SHALINDER KAUR, J

NAVIN CHAWLA, J

JUNE 12, 2025/ab/frk/***VS***

Click here to check corrigendum, if any