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

\+ CM(M) 1185/2021

FLICK STUDIOS PVT. LTD ..... Petitioner

Through: Mr. Dheeraj Gupta, Advocate.

versus

GRAVITY ENTERTAINMENT PVT. LTD ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

% 20.12.2021

CM No. 46231/2021 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

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3. The present petition under Article 227 of the Constitution of India assails the order dated 12th October, 2021 passed by the District Judge (DJ) Saket Courts, New Delhi (Commercial Court) in CS No.113/2021, whereby the commercial suit filed on behalf of the petitioner/plaintiff has been converted from a suit under Order XXXVII of the Code of Civil Procedure, (CPC), 1908 to an ordinary suit for recovery on the ground that the invoices raised by the petitioner on the respondent did not bear the signatures of either parties.

4. The counsel for the petitioner has drawn attention of the Court to the earlier order dated 28th July, 2021 passed by the Commercial Court, whereby

the suit was taken to be a suit under Order XXXVII of the CPC and summons were accordingly issued. It is stated that the summons were served on the respondent/defendant on 18th August, 2021. However, the respondent failed to enter appearance. When the matter was taken up by the Commercial Court on 12th October, 2021, the suit was unilaterally converted into an ordinary suit only on the basis that the invoices were not signed.

5. The counsel for the petitioner submits that there was no requirement to sign the said invoice as the same was sent through an email dated 26th June, 2018. In this regard, necessary application under Section 65 B of the Indian Evidence Act, 1872, has been filed by the petitioner before the Commercial Court. He has further drawn attention of the Court to the receipt of the aforesaid invoice which was duly acknowledged by the respondent/defendant vide email dated 11th November, 2020, (page 35 of the electronic file).

6. Reliance is placed on the judgment of this Court in ***Flint Group India Private Limited vs. Good Morning India Media Private Limited*** 2017 SCC OnLine Del 7894 to contend that suit under Order XXXVII of the CPC is maintainable on the basis of an invoice.

7. Relying upon the previous judgments passed by this Court, the Court in ***Flint Group India*** (supra) has observed that once the details of goods/services, price and purchaser are clearly stated in the invoice and the invoice has been acted upon and accepted, it cannot be said that suit based on such invoice would not be maintainable under Order XXXVII of the CPC.

8. In the present case, the additional factor in favour of the petitioner would be that summons were already issued on 28th July, 2021 on the basis

of suit under Order XXXVII of the CPC and despite service, the respondent has failed to enter appearance within the statutory period of ten days.

9. The only reason given by the Commercial Court to unilaterally change the suit from being a suit under Order XXXVII of the CPC to an ordinary recovery suit is that the suit is based on an unsigned invoice and that the original of the invoice has not been placed on record.

10. In the modern-day businesses, where all communications are through emails, invoices are routinely sent through email and such invoices are not signed by the parties. Therefore, there is no such thing as the original of the invoice. Invoice in the present case has been raised by the petitioner on the respondent and details of services as well as the purchaser have been duly mentioned in the invoice and receipt of the said invoice has also been acknowledged by the respondent. Further, application under Section 65 B of the Evidence Act, 1872, has been duly filed by the petitioner before the Commercial Court. Therefore, the dicta of this Court in ***Flint Group India*** (supra) is squarely applicable in the present case.

11. Since the impugned order has been passed in the absence of the respondent/defendant who is yet to enter appearance before the Commercial Court, need is not felt to issue notice to the respondent.

12. Accordingly, it is held that unsigned invoices can be a valid basis to file a suit under Order XXXVII of the CPC. The impugned order suffers from material illegalities and warrants interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

13. In view of the above the present petition is allowed and the impugned order is set aside. It is directed that the suit will be treated as a suit under Order XXXVII of the CPC.

14. Needless to state that any observations made herein shall not influence the Trial Court in further proceedings in the suit.

AMIT BANSAL, J

DECEMBER 20, 2021
Sakshi R.