

IN THE COURT OF RAVNEET KAUR BEDI, PCS, CIVIL JUDGE
JUNIOR DIVISION, AMRITSAR UID No. PB0640.

M/s Friends Advertisers v. Municipal Corporation and Ors.

CNR No: PBAS020051592021
CIS No: CS/3549/2021

Present: Sh. Pranav Piplani Adv., Counsel for Plaintiff.
Sh. U.K. Gaiind Adv., Counsel for Defendant no.1.
Sh. A.K. Arora Adv., Counsel for Defendant no.2.

Application under order XXXIX Rule 1 and 2 CPC

ORDER:-

1. This order of the court shall dispose of an application filed by the Plaintiff under order XXXIX Rule 1 & 2 CPC.
2. The Ld. Counsel for the Plaintiff submits that the plaintiff is a proprietorship concern running at 2561, 2nd Floor, Sector 37-C, Chandigarh through its proprietor Gaurav Uppal, dealing in the business of installation and display of advertisements, hoardings at various sites.
3. It is submitted that the defendant no.2 is the Cantonment board having jurisdiction for making provisions relating to the administration of Cantonments. As cantonments are Central territories under the constitution, the civic bodies functioning in these areas are not covered under the State Municipal laws. It is further submitted that an e-tender notice was issued by the defendant no.2 on 03.03.2021 for the purpose of collection rights for installation and display of

advertisements/ hoardings at 18 Nos. of specific sites and pole kiosks at putlighar and mall road in Amritsar Cantonment. The plaintiff proved to be a successful bidder for a bid amounting to Rs.2,15,416/- (Rupees Two Lacs Fifteen Thousand Four Hundred and Sixteen Only) per month and therefore was issued an acceptance letter by the defendant no.2 on 18.03.2021. The plaintiff entered into a license agreement with defendant no.2 (Cantonment Board, Amritsar) on 10.08.2021 in the capacity of licensee availing the right to use and occupy the license out for installation and display of advertisements/ hoardings at 18 Nos. of specific sites in the civil area of Amritsar Cantonment for the purpose of display of advertisement/hoardings only. The said agreement will remain in effect from 01.10.2021 up to 30.09.2023. it is alleged that soon after the installation and display of advertisements/hoardings at different areas of Amritsar Cantonment (as allotted by the cantonment board Amritsar) it was to the utter surprise of the plaintiff when the concerned officials of the Municipal Corporation Amritsar on 18.10.2021 started removing the flexes from the respective allotted unipoles installed in the areas of Cantonment chowk and Rani ka Bagh, Amritsar thereby alleging that the sites were facing the corporation area. However, the plaintiff has installed the flexes upon the sites as allotted by the defendant no.2 and have not changed those sites which were used by the previous contractor as well for the same purpose.

4. It is averred that on 18.10.2021 the plaintiff immediately contacted the Cantonment Board, Amritsar by the way of writing an e-mail regarding the aforesaid incident thereby requesting the concerned officials to look into the matter on priority basis. The plaintiff kept on intimating the defendant no.2 regarding the harassment faced at the hands of the defendant no.1 as the said act and conduct of the defendant no.1 is causing great financial loss to the plaintiff and further degrading the reputation of the plaintiff in the market. The said illegal and un-lawful action of the defendant no.1 was defeated with the timely intervention of the officials of defendant no.2. It is further averred that on 17.11.2021, the CEO, Amritsar Cantonment (defendant no.2) wrote a letter to the Commissioner of Municipal Corporation Amritsar (defendant no.1) regarding the un-authorized removal of the advertisement/hoardings installed by the Cantonment Board, Amritsar on the land under its jurisdiction. It is specifically mentioned in the said letter that the Cantonment Board Amritsar is a statutory urban local body and the advertisement policy-2018 of the Govt of Punjab read with Municipal Corporation Act, 1976 does not empower the Municipal Corporation Amritsar to remove the hoardings/flex/ banners so installed by others. Further it was requested to take necessary action to solve the long-standing problem in view of loss suffered by the Central Govt. due to inappropriate trespassing of the Defence land by the MCA officials. However, till date the defendant no.1 has not paid any heed towards the

aforementioned letters/representations. On 22.11.2021 the plaintiff wrote a detailed letter to the defendant no.2 regarding the removal of Advertisement in Amritsar Cantonment by Municipal Corporation Amritsar thereby requesting the defendant no.2 to resolve the issue with the Municipal Corporation Amritsar so that the plaintiff can display the advertisements upon the allotted sites. It is contended that the plaintiff has a strong prima facie in his favour and balance of convenience also lies in his favour. Further, it is submitted that the Plaintiff shall suffer irreparable loss if temporary injunction is not granted in his favour.

3. Upon notice, the Ld. Counsel for the Defendant no. 2 admitted the claim of the plaintiff. It is submitted by the Ld. Counsel for Defendant no. 2 from the bare perusal of Section 1 of the Punjab Municipal Corporation Act, 1976 it is crystal clear that the said Act extends to the whole of Punjab excluding the Cantonment areas therein therefore, municipal corporation has no right, title of interest over the jurisdictional area that falls under the Cantonments areas.

3. The Ld. Counsel for Defendant no.1 took preliminary objection to its maintainability and on the ground that at the present stage the plaintiff has concealed the material and true facts from the knowledge of this Court. It is submitted that the Amritsar Cantonment land on all sides is bounded by Municipal areas falling within Municipal Corporation Amritsar limits. As such the land within cantonment area being central Govt. property is entitled to certain privileges.

However, this situation does not allow Cantonment Board to use its boundary wall facing the Municipal Corporation, Amritsar roads for third party advertisements. Any information relating to functions of the army or name of the board is exempted from Outdoor Media Devices (OMD) fee imposed by the Municipal Corporation, Amritsar. The assignment of unipoles by Cantonment Board abutting the boundary wall or even the inside of the boundary wall so as to be visible from outside attracts imposition of Outdoor Media Devices (OMD) fee. As per the Cantonment Board Act, the assignment of sides for which cantonment board can charge rent needs to be approved by the Government of India under the policy for use of land. It is contended that third party advertisement facing Municipal Corporation, Amritsar roads not relating to any activity of the Army or Govt. of India is liable to pay Outdoor Media Devices (OMD) fee. It is further submitted that the replying defendant No.1 is only enforcing advertisement policy-2018 in the area of Municipal Corporation, Amritsar. The replying defendant is taking action as per provisions of section 123 of Punjab Municipal Corporation Act, 1976. The plaintiff has not applied for permission from Municipal Corporation, Amritsar for the advertisement as such the plaintiff is liable to pay Rs.50,000/- for every advertisement. The officials of the replying defendant are taking action as per law and as per provisions of Punjab Municipal Corporation Act, 1976. The rest of the

averments made by the plaintiff as more or less denied. It is therefore prayed that the present application be dismissed as being devoid of any merits.

4. I have heard the respective the Counsels of the parties and gone through the record carefully.

5. Perusal of the file shows that the plaintiff contends that being a successful bidder, the plaintiff entered into a license agreement with defendant no.2 (Cantonment Board, Amritsar) on 10.08.2021 in the capacity of licensee availing the right to use and occupy the license out for installation and display of advertisements/ hoardings at 18 Nos. of specific sites in the civil area of Amritsar Cantonment for the purpose of display of advertisement/hoardings only. However, on 18.10.2021 the defendant no.1 started removing the flexes from the respective allotted unipoles installed in the areas of Cantonment chowk and Rani ka Bagh, Amritsar thereby alleging that the sites were facing the corporation area and since the plaintiff has not paid the Outdoor Media Device fee to them, he cannot be allowed to put his advertisements. It was alleged that as per Section 123 of the Punjab Municipal Act and advertisement policy-2018 in the area of Municipal Corporation, Amritsar, the defendant no.1's officials are taking action as per law.

6. The Hon'ble Apex Court in **Seema Arshad Zaheer & Ors. vs. Municipal Corporation of Greater Mumbai & Ors., (2006) 5 SCC 282**, has held as under:

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“The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.”

7. Section 1 of the Punjab Municipal Corporation Act 1976 is reproduced as follows:-

“Section 1: Short title, extent and Commencement

(1) This Act may be called the Punjab Municipal Corporation Act, 1976.

(2) It extends to the whole of the State of Punjab excluding the Cantonment areas therein.

(3) It shall come into force at once.”

The above said shows that the Punjab Municipal Corporation Act does not extend to the Cantonment Area. The defendant no.2 has also while admitting the claim of the plaintiff has emphasized on the same. Further, the stance taken by the defendant no.1 that since the advertisements are being viewed from outside attracts imposition of Outdoor Media Devices (OMD) fee, does not seem to be convincing at this stage. The plaintiff on the other hand has been able to show the existence of prima facie case in their favour. The balance of convenience also tilts in favour of the Plaintiff. Further, if a temporary injunction is not granted at this stage, the Plaintiff stands to suffer irreparable loss or injury. Accordingly, the Defendant no.1 is restrained from interfering or forcibly removing the flexes from the respective allotted unipoles to the plaintiff by the Defendant no.2 installed in the areas of Cantonment chowk and Rani ka Bagh, Amritsar till the disposal of the present suit.

8. Hence, the present application is allowed and accordingly disposed of. However, it is made clear that none of the views expressed by the undersigned shall have any bearing on the merits of the case.

Pronounced in Open Court
Dated: 03.10.2022

Ravneet Kaur Bedi, PCS
Civil Judge, Jr. Division
Amritsar, UID No. PB0640

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 Sh. A.K. Arora Adv., Counsel for Defendant no.2.

Arguments heard. Vide my separate order of even date, application under Order 39 Rule 1 and 2 CPC is disposed of as allowed. From the pleadings of the parties the following issues are framed:

1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
2. Whether the plaintiff has not come to the court with clean hands?OPD
3. Whether the suit of the plaintiff is not maintainable?OPD
4. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD
5. Relief

No other issue arise or pressed for. For evidence of the plaintiff, to come up on 26.10.2022. PF/DM and list of witnesses be filed within fifteen days, failing which the plaintiff will produce the witnesses at own responsibility and will not seek assistance of the Serving agency.

Pronounced in Open Court
 Dated: 03.10.2022

Ravneet Kaur Bedi, PCS
 Civil Judge, Jr. Division
 Amritsar, UID No. PB0640

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(Ravneet Kaur Bedi)
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