In the Court of Dig Vinay Singh, District Judge (Commercial Court)-03, West, Tis Hazari Courts Extension Block, Delhi

CNR No. DLWT01-009409-2023
CS (COMM) No.867/2023

T. V. TODAY NETWORK LIMITED
Registered office at:
F-26, First Floor, Connaught Place,
New Delhi-110001
Corporate Office at:
FC-8, Film City, Sector 16A,
Noida, Uttar Pradesh-201301 ***……... Plaintiff***

Versus

1. ENORMOUS SPORTS
At: 11/39B, Tilak Nagar,
New Delhi-110018
Also at:
EC-288, Maya Enclave,
Hari Nagar, New Delhi-110064

2. MR. VIPIN KAPOOR
At: C-2/311, Opp. Mother Dairy,
Janakpuri, New Delhi-110058
Also at:
EC-288, Maya Enclave,
Hari Nagar, New Delhi-110064 ***…… Defendants***

Date of institution: 22.11.2023
Date of arguments: 19.03.2025
Date of judgment: 21.04.2025

JUDGMENT

1. This is a '*commercial suit*' seeking recovery of ***₹19,29,000/-*** *(Nineteen Lakh Twenty-Nine Thousand)*, with pendent lite and future interest @ 24% pa.

1.1. The dispute between the parties is a 'commercial dispute' within the definition of Section 2 (1)(c)(i) of the Commercial Courts Act, 2015, being a dispute arising out of an ordinary merchant transaction.

1.2. Pre-institution mediation between the parties remained unsuccessful vide a Non-Starter Report dated 30.07.2021, issued by the concerned District Legal Services Authority.

2. The plaintiff avers that it is in the business of News publication as well as the printing, publishing, and distribution of various Magazines, Journals, Periodicals, Online News Portals, and related activities. Defendant no.2 (D2) is claimed to be a partner of Defendant no. 1 firm (D1), whereas D2 is the proprietor of D1 and not a partner.

2.1. Sometime in 2018, D2 approached the plaintiff to promote its business by participating as a 'sponsor' in the events that were being organized by the plaintiff over various topics on women's empowerment and education.

2.2. One such program organized by the plaintiff was under the name of "*MAIL TODAY FEMAIL SUMMIT 2018*", on 25.08.2018, at Shangri-La's- Eros Hotel New Delhi, which was to be attended by prominent figures, including politicians and actors from the Film Industry. In that event, the defendants were advertised as one of the sponsors. On 17.08.2018, vide an e-mail, the plaintiff sent an invitation to the defendants asking them to sponsor the event as a 'Sports Partner'. In response, vide an e-mail dated 21.08.2018, D1 confirmed its participation in the event. The event was successfully organized by the plaintiff on 25.08.2018. It is claimed that in the 'Mail Today'

Newspaper dated 24.08.2018, an advertisement of the Summit was published, which mentioned Pro Kickboxing League (*PKL for short*) as a Sports Partner. It was also published in the 'Mail Today' Newspaper (Weekend) dated 25.08.2018; in the 'Business Today' Magazine issues dated 21.10.2018 & 02.12.2018; and also in the India Today Magazine dated 01.10.2018. The plaintiff claims that as per the agreement between the parties, it provided services to the defendants successfully, and the said event was covered in the Mail Today Newspaper dated 26.08.2018 & 31.08.2018. Thereafter, the plaintiff raised an invoice dated 28.09.2018 for an amount of ₹3.54 lakhs, which was delivered to the defendants through e-mail as well as courier.

2.3. After that Summit, the plaintiff organized another event, namely, "*MAIL TODAY EDUCATION AND SKILL SUMMIT 2018*" on 27.09.2018 at The Oberoi's hotel, New Delhi. Even that event was widely covered on various platforms of the India Today Group through different advertorials. The defendants again conveyed their inclination to participate in the said Summit and to be a Sports Partner in that event. D1 executed a Release Order dated 20.09.2018, and it was agreed that the plaintiff would provide a half-page coverage to the defendant's brand in 'Mail Today'/ 'Zest' on page no.7 for a total space of 16 sq. cms. Through an e-mail dated 24.09.2018, D2 confirmed participation in the said event, and the e-mail also stipulated terms of payment to be made by the defendants in installments of 30% +30% + 40%, and the last transaction was to be made during the event. It is claimed that in response to the e-mail dated 24.09.2018 from the defendant and the release order, the plaintiff invited D2 as a Sports Partner for the event. The plaintiff also agreed to promote the defendant's brand by advertising a half-page publication on the Mail Today Sports page. Even that event, dated 27.09.2018, was completed, and the services to the defendants are claimed to have been rendered successfully by the plaintiff. The plaintiff claims that the said event was published in the Mail Today newspaper on 30.09.2018, and it was also covered in India Today Magazine dated 29.10.2018. Thereafter, the plaintiff raised the second invoice dated 30.09.2018 for a sum of ₹ 15.75 lakhs.

2.4. As per the plaintiff, the payments should have been made by the defendants within 60 days of the issuance of invoices, but the defendants failed to make the payments, therefore, the total of both the invoices is claimed as the suit amount, i.e., ₹19.29 lakh.

2.5. The plaintiff issued a demand notice dated 23.08.2019 to the defendants, which was served upon the defendants, but the defendants neither replied to the notice nor paid the amount. After undergoing the necessary Pre-Institution Mediation, the suit was filed on 22.11.2023.

2.6. On the above-mentioned principal amount of ₹19.29 lakhs, the plaintiff also prays interest totaling ₹22,76,220/- calculated @ 24% from the date of invoices till the institution of the suit, the total of which comes to ₹42,05,220/-.

3. The defendants contested the suit, claiming that D2 is the authorized representative of D1. The status of D1 is not clarified in the WS as to whether it is a company or what is the juristic identity of D1. However, during final arguments it was clarified by the counsel for defendant that D1 is a proprietorship concern of D2.

3.1. It is claimed that D2 organized PKL and for its promotion and arranging sponsors, D2 approached the plaintiff, which is a Media corporate, and after negotiations vide an e-mail dated 17.08.2018 it was mutually decided that the plaintiff will promote the defendant's event of PKL by providing following services, as noted in the WS:-

- *"Logo as Sports Partner in all Media communication (PRE & POST, Please refer Media Plan in the presentation)*
- *Logo during the event (Podium, Backdrop, screen, Stage etc)*
- *2 min AV running during the event*
- *Logo on the invitation cards*
- *Logo presence at the registration desk backdrop*
- *6 entry passes*
- *PKL players friendly fight display during the event*
- *Web Banner with 2 Lakh impressions dedicated to PKL*
- *1 Full page Ad/ Advertorial in India Today Magazine (Delhi NCR Daily Monthly Edition)*
- *2 Half Page Ad/ Advertorial in Zest Mail Today (Delhi NCR Fortnightly Edition)*
- *2 Half Page Ad/ Advertorial in Mail Today (Delhi NCR Daily Newspaper)."*

3.2. As per the defendant, initially, the amount agreed upon was ₹3.5 lakhs + service tax. However, the said deal was rephrased in another e-mail dated 21.08.2018, sent by the plaintiff to the defendants, and as per this e-mail, the deliverables were as follows:-

- *"Logo as Sports Partner in all Media communication (PRE & POST)*
- *Logo during the event (Podium, Backdrop, screen, Stage etc)*
- *2 min AV running during the event*
- *Logo on the invitation cards*
- *Logo presence at the registration desk backdrop*
- *6 entry passes Social*
- *Media interview regarding PKL*

- *PKL players friendly fight display during the event*
- *Web banner with 2 Lakhs impressions dedicated to PKL*
- *1 Full page Ad/ Advertorial in India Today Magazine (Delhi NCR Daily Monthly Edition)*
- *2 Half Page Ad/ Advertorial in Zest Mail Today (Delhi NCR Fortnightly Edition)*
- *2 Half Page Ad/ Advertorial in Mail Today (Delhi NCR Daily Newspaper).”*

3.3. The new cost agreed upon was ₹3.54 lakhs, inclusive of everything.

3.4. Defendants also claims, that during the negotiations between the parties regarding the defendant’s PKL event, the plaintiff informed the defendants that the plaintiff was organizing an event on 25.08.2018 at the above-mentioned Shangri-La hotel and the plaintiff gave a proposal that it would promote the defendants’ event in the said event of the plaintiff, to which the defendants agreed.

3.5. It is also claimed that the plaintiff never rendered the deliverables as required and mentioned in the e-mail dated 21.08.2018. The plaintiff was to run two-minute audio-visuals during the event, which was not done, and also the web banner with 2 lakh impressions dedicated to PKL; one full-page advertisement in India Today Magazine (Delhi NCR daily monthly edition); two half-page advertisements in Zest Mail Today (Delhi NCR fortnightly edition); two half-page advertisements in Mail Today (Delhi NCR Delhi newspaper), but they were not done and they were most important deliverables as they had a vital role in promoting PKL event of the defendants and which was vital for arranging sponsors for the defendant. It is claimed that the plaintiff only published half a page advertisement in Mail Today, and the rest of the deliverables were never rendered.

3.6. The Defendants also claim that in an e-mail dated 20.09.2018, the plaintiff proposed a plan wherein the plaintiff offered to publish 32 half-page advertisements in Mail Today/ Zest Mail Today, and the cost of the same was proposed to be ₹20 lakhs + 5% GST. In reply to the said e-mail, the defendants sent an e-mail dated 24.09.2018, wherein the defendants proposed to purchase 24 articles dedicated to the PKL tournament.

3.7. The defendants also claim that during negotiations between the parties, the defendants conveyed their dissatisfaction with the services of the plaintiff, which fell on deaf ears. It is also claimed that the plaintiff was told that if the PKL event of the defendants gets canceled due to any circumstance, then the payment will be made to the plaintiff according to ₹ 50,000/- per article only.

3.8. The defendants claim that the PKL event got canceled, which was also communicated to the plaintiff, and the defendants requested that the plaintiff issue a revised invoice. However, the plaintiff started claiming the entire amount of the two invoices, which were issued within a span of two days, without properly delivering the articles.

3.9. Both invoices are claimed to be fabricated, and the defendants claim that it has no liability towards the plaintiff.

3.10. The defendants also challenge the limitation in the filing of the suit.

3.11. In its affidavit of admission/denial, the defendants admitted authorization in favour of AR of the plaintiff; e-mails dated 17.08.2018, 21.08.2018, 24.09.2018; the release order dated 20.09.2018; and the receipt of the legal notice.

4. In replication, the plaintiff denied the claim of the defendants and reiterated the averments of the plaint. It is claimed, that for the first time in the suit, the liability is denied by the defendants, that too, without any documentary evidence and without substantiating the claims of the defendants. The suit is claimed to be within the limitation.

4.1. The plaintiff claims that all the deliverables as promised were duly rendered, including the two-minute audio-visual slot during the event and the web banner with two lakh impressions dedicated to PKL, although the plaintiff does not maintain any such record of the audio-visual slot beyond 3 months after the successful delivery of the same.

4.2. So far as the full-page advertisement and half-page advertisement are concerned, it is claimed that the plaintiff requested the defendants time and again for the advertisement creation and publication dates for printing in the newspaper, but the defendants never provided it.

4.3. It is claimed by the plaintiff that the defendants never raised any issue as to dissatisfaction with the services rendered by the plaintiff, and only in the present suit, such a claim has been raised, which is nothing but an afterthought. It is also claimed that after the 1st event, when the defendants continued to request the plaintiff for further services without raising any dissatisfaction as to services, the claim of the defendants is false. The plaintiff also claims that the defendants never communicated to the plaintiff that PKL was canceled. The invoices are claimed to be genuine.

4.4. Along with the WS, the defendant relied upon various e-mails exchanged between the parties starting from 17.08.2018, which exist at page no. 38 to 51 forming part of the WS. The last email is dated 26.09.2018. While filing the affidavit of admission/denial of the documents of defendants along with the Replication, the plaintiff merely admitted two e-mails dated 17.08.2018 and 24.09.2018, and the plaintiff chose to remain silent about other e-mails relied upon by the defendant. Anyhow, during the final arguments, the counsel for the plaintiff stated that all the e-mails exchanged between the parties and relied on by the defendant are admitted.

5. From the pleadings of the parties, the **following issues** were framed:-

> *"1. Whether the suit is barred by limitation? **OP Plaintiff***
>
> *2. Whether the invoices dated 28.09.2018 & 30.09.2018 are forged/fabricated? **OP Defendant***
>
> *3. Whether the plaintiff is entitled to decree of Rs. 19,29,000/- as the principal amount? **OP Plaintiff***
>
> *4. Whether the plaintiff is entitled to interest to the tune of Rs. 22,76,220/-? **OP Plaintiff***
>
> *5. If the answer to the last two mentioned issues are in affirmative, whether the plaintiff is entitled to any interest? If yes, at what rate and for which period? **OP Plaintiff***
>
> *6. Relief."*

6. To achieve expeditious disposal of the matter, a Court Commissioner was appointed, and both sides examined one witness each in their favour as PW1 and DW1, respectively.

7. In support of its case, the plaintiff examined **PW1, namely, Neeraj Soni,** who tendered his evidence by way of affidavit ***Ext.* X**, while relying upon documents ***Ext.PW1/1 to Ext.PW1/20***. The deposition of PW1 is in line with the averments contained in the plaint and the replication. In his evidence, the plaintiff's witness exhibited the following documents: *the authorization in favour of PW1 is* ***Ext.****PW1/1; E-mail dated 17.08.2018* ***Ext.****PW1/2; E-mail dated 21.08.2018* ***Ext.****PW1/3; various issues of published material* ***Ext.****PW1/4 to 11; Invoice dated 28.09.2018 for ₹ 3.54 lakhs* ***Ext.****PW1/12; Release order dated 20.09.2018* ***Ext.****PW1/13; e-mail dated 24.09.2018* ***Ext.****PW1/14; Issue dated 29.10.2018 of published material* ***Ext.****PW1/15; Invoice dated 30.09.2018* ***Ext.****PW1/16; Legal notice dated 23.08.2019, Mark C and its postal receipt and tracking reports* ***Ext.****PW1/17 & 18; Non-starter Report* ***Ext.****PW1/19; and Certificate under Section 65B of the Evidence Act in support of the electronic evidence* ***Ext.****PW1/20.*

7.1. It may be mentioned here that when the defendants admitted receipt of the legal notice dated 23.08.2019 in its affidavit of admission/denial, the same ought to have been exhibited.

8. On the other hand, the defendants examined defendant no. 2 as DW1, who also tendered his evidence by way of affidavit, ***Ext.***DW1/A, while reiterating the averments of the WS. DW1 relied upon a bunch of e-mails between 17.08.2018 and 24.09.2018 as ***Ext.***DW1/1 collectively, which also includes e-mails already exhibited by the plaintiff as ***Ext.***PW1/2, 3 & 14.

9. Here it may be mentioned that during the cross-examination of witnesses before the Ld. Court Commissioner, the Ld. CC has recorded certain objections to some of the questions put to the witnesses by the opposite side, mentioning those questions to be hit by Section 141 of the Evidence Act on the ground that the question/suggestion was leading in nature. It is mentioned that the objection was that a leading question can be asked only once there is something on record to suggest that a witness has turned hostile, referring to Section 141 of the Indian Evidence Act.

9.1. I am afraid the objection is erroneous and cannot be sustained. First of all, on the date of the cross-examination of PW1 and others, the Indian Evidence Act was no longer in force, and instead, the Bharatiya Sakshya Adhiniyam, 2023 (BSA) was in force. Under Section 146 (1) of BSA read with 146(2)(3), which is pari materia to Section 141 of the Evidence Act, read with Section 142, all that is provided is that a leading question cannot be put to a witness in examination in chief except when it remains un-objected from the opposite side. Thus, during the examination in chief of a witness, the leading questions are impermissible, and wherever such leading questions are asked, the opposite side can always object to the asking of such leading questions. However, leading questions are indeed permissible during cross-examination of a witness, and the law nowhere provides that leading questions cannot be asked of a witness during cross-examination, unless the witness has turned hostile. The act of declaring a witness hostile occurs during examination-in-chief, whenever a witness resiles from his earlier statement or does not support the party which is examining that witness and thereafter the party which is examining the witness can request the Court to declare the witness hostile and then that party also can cross-examine the hostile witness by asking leading questions. This is so provided under Section 157 of BSA, which aligns with Section 154 of the Evidence Act. This does not preclude asking leading questions to a witness under cross-examination by the opposite side. Under Section 149 of BSA, which is pari materia to Section 146 of the Evidence Act, the questions that are lawful in cross-examination are described. Thus, the objections recorded during the cross-examination of witnesses at various places on the same erroneous interpretation of legal provisions are unsustainable and are rejected.

10. I have heard Ld. Counsels for the plaintiff and defendants, and their respective arguments, are discussed hereinafter at the appropriate stage to avoid repetition.

11. Issue-wise findings are as follows:

12. **Issue no.1**

"Whether the suit is barred by limitation? ***OP Plaintiff****"*

12.1. During the final arguments, the defendant gave up this plea and admitted the fact that the suit is within limitation, yet it may be discussed as the question of limitation is fundamental.

12.2. The two invoices in question are dated 28.09.2018 & 30.09.2018. The suit was filed on 22.11.2023. The period between 15.03.2020 and 28.02.2022 stood excluded from the counting of limitation under the judgment of the Hon'ble Supreme Court *In Re: Cognizance for Extension of Limitation* (2022) 3 SCC 117.

12.3. It is the case of the plaintiff that the defendants were to make payments within 60 days of the date of invoices, which respectively expired on 28.11.208 and 30.11.2018. In the plaint, the plaintiff also mentioned at one place that the complete payment was to be made by the defendants during the event, and the second event occurred on 27.09.2018.

12.4. Even if the limitation is counted from the date of the two invoices or 60 days from the date of the two invoices, the plaintiff had a period of 19 months and 15 days available as of 15.03.2020. Therefore, as of 01.03.2022, the plaintiff had 19 months and 15 days available to file the suit upon the limitation recommencing after the suspension period.

12.5. Besides it, the plaintiff also underwent Pre-Institution Mediation between 23.02.2021 and 30.07.2021, i.e., for 4 months and 4 days, and the plaintiff has to get the benefit of even that period.

12.6. By granting the benefit of the period during which the limitation remained suspended and the Pre-Institution Mediation undertaken by the plaintiff, the suit is indeed within limitation.

12.7. **Issue no. 1 is accordingly decided in favour of the plaintiff and against the defendants.**

13. **<u>Issues no. 2 & 3</u>**

> *"2. Whether the invoices dated 28.09.2018 & 30.09.2018 are forged/fabricated?* ***OP Defendant***
>
> *3. Whether the plaintiff is entitled to decree of ₹19,29,000/- as the principal amount?* ***OP Plaintiff****"*

13.1. Both issues are addressed together as they are interconnected and require joint discussion.

13.2. The defendant asserts that the two invoices, dated September 28, 2018, and September 30, 2018, ***Ext.***PW1/12 & 16 were allegedly issued within two days, without fulfilling the required deliveries; hence, they are forged.

13.3. The first invoice, dated 28.09.2018 for ₹3,54,000/-, pertains to the first event held on 25.08.2018, the "Femail Summit 2018" at Shangri-La Hotel. Relevant emails for this invoice are dated 17.08.2018 and 21.08.2018, ***Ext.***PW1/2 and ***Ext.***PW1/3.

13.4. The email dated 17.08.2018 from the plaintiff to the defendant mentions 11 deliverables for a total sum of ₹3.5 lakhs plus service tax without specifying the amount charged for each deliverable. This is important as the discussion in the following part of the judgment will indicate that various deliverables were not fulfilled and that there is no proof available to the plaintiff; only some of the deliverables claimed to be fulfilled by the plaintiff are supported by proof and evidence.

13.5. Admittedly, in the second email dated 21.08.2018, the deal between the parties was rephrased, and an additional deliverable was included: the 'Media Interview regarding PKL', which was added to the earlier 11 deliverables. The new agreed cost in this email is ₹3,54,000/-, all-inclusive, and it is noted that payment should be made in two equal parts—in mid-September 2018 and at the end of September 2018. This email also states that features and coverage can be utilized within six months until February 2019. The list of these 12 deliverables has been mentioned previously in this judgment and is not repeated here.

13.6. The second invoice, ***Ext.***PW1/16, dated 30.09.2018 for ₹15.75 lakhs, pertains to the second event dated 27.09.2018 at The Oberoi, named the 'Mail Today Education and Skill Summit 2018'. This invoice contains a consolidated amount without a breakdown of the deliverables, mentioning only that some publication occurred in Mail Today on

30.09.2018, on page 7, covering a total space of 16 sq. cms with an advertisement size of 4x4 cms for a cost of ₹15 lakhs plus IGST of ₹75,000/-.

13.7. The email regarding this event is dated 24.09.2018, ***Ext.***PW1/14, written by the defendant to the plaintiff, alongside the release order/registration cum order form for business promotion dated 20.09.2018, ***Ext.***PW1/13. Both these documents are also admitted documents.

13.8. For the following reasons, the plaintiff's suit cannot succeed. Firstly, the individual who testified on behalf of the plaintiff is an incompetent witness, and secondly, the plaintiff has failed to prove that it rendered all the services required under the agreement between the parties.

13.9. So far as the competence of PW1 is concerned, various answers given by PW1 in his evidence clearly indicate that he was not personally acquainted with all the facts and circumstances of this case, and besides the testimony of this witness which is based on documents, the oral testimony of other facts is not direct.

13.10. The current suit is signed, verified, and instituted by PW1, Mr. Neeraj Soni. ***Ext.***PW1/1 is a Certificate in favor of PW1 issued by the plaintiff company through Mr. M N Nasser Kabir, Group General Counsel. This document states that Mr. Kabir authorizes PW1, the Assistant General Manager working with the plaintiff company, to represent the company before the Trial Court and conduct all necessary legal actions regarding the case. This document bears the signatures of both Mr. Kabir and PW1, dated 01.11.2023.

13.11. However, the Resolution passed by the company on 22.10.2019 was marked as A during evidence but is not favorable to PW1. It names Mr. M N Nasser Kabir and Mr. Dinesh Bhatia, and has not been proven in accordance with the law. The Minutes Book supporting this Resolution remains unproven. Although this resolution authorizes delegation to other employees.

13.12. Even in the absence of proof of a resolution in favor of Neeraj Soni, the suit can still be treated as properly instituted since it has continued for nearly one and a half years. The law generally holds that a suit's continuation over an extended period can imply a company's approval of its institution.

13.13. However, this does not negate the essential requirement for any suit to succeed: the competence of the witness for the plaintiff. For a witness to be valid, the law mandates knowledge of the case's facts through personal observation, not hearsay.

13.14. Referring to ocular testimonies, Section 55 of BSA, which aligns with Section 60 of the Indian Evidence Act, indicates that oral evidence must be direct, derived from a person's own senses.

13.15. Admittedly, no written agreement exists between the parties; communications occurred solely through verbal discussions and emails. Both parties admit that negotiations occurred primarily via emails, personal meetings, and telephone calls. Additionally, other officials of the plaintiff, such as Mr. Manu Sahni, Mr. Saurabh Mehta, and others, were involved in the negotiations. None of the emails presented in evidence from the defendant to the plaintiff indicate that any email was sent to or copied to PW1. Similarly, the emails from officials of the plaintiff to the defendant were neither authored by PW1, nor were any copies sent to him.

13.16. During cross-examination, the defendant specifically questioned PW1 about his familiarity with the case's facts. When asked whether he participated in discussions regarding the transaction, PW1 stated he was involved in a telephone discussion where Mr. Vipin Kapoor (D2) assured him that payment would follow after consulting Mr. Manu Sahni. This statement from D2 does not reveal any essential facts about the negotiations until the deal was settled, merely mentioning an assurance regarding payments subsequently.

13.17. **PW1 admitted that it was Mr. Manu Sahni who engaged directly with the defendant,** stating that it was **Mr. Manu Sahni, on behalf of the plaintiff, who personally communicated** with the defendant.

13.18. In answer to another question, **PW1 admitted that the verbal communications and e-mails occurred between Mr. Manu Sahni, D2, and Mr. Saurabh Mehta.** He conceded that discussions occurred primarily between Mr. Manu Sahni and D2, along with Mr. Saurabh Mehta. This answer was given by PW1 to the last question put to PW1 on 04.07.2024, and thereafter, the cross-examination was deferred. In the next cross-examination on 20.07.2024 the answer given by PW1 to the first question reflects that PW1 tried to cover the answer given in the previous cross-examination, which seems to be based on legal advice, as the first question asked to PW1 on 20.07.2024 was something else whereas his answer was on the dotted lines claiming that he was personally involved in all the communications between the parties. The question asked to him was whether the discussions between the parties occurred through e-mail only. Instead of answering that question straightaway, PW1 claimed that he was personally involved in all the communications that occurred between the defendant, Mr. Manu Sahni, Mr. Amit Gupta, and others.

13.19. When asked about any meetings with the defendant, PW1 admitted he only had telephonic communication with him, with no personal meeting occurring between him and the defendant; all personal interactions were conducted by Mr. Manu Sahni and Mr. Saurabh Mehta. The witness answered that he only had telephonic communication with the defendant and that there was no personal meeting of PW1 with the defendant, and **the personal meetings were conducted between the defendant, Manu Sahni, and Saurabh Mehta.**

13.20. Notably, PW1 does not work in the same department as Mr. Manu Sahni; the former is in the Finance and Sales Support Department while the latter works in Sales.

13.21. When queried about his presence during discussions of deliverables, PW1 answered negatively, implying he was not present during any discussions.

13.22. Thereby meaning that **PW1 was not present at the time when deliverables were discussed between the parties through any medium**. **PW1 himself stated that he was not present in any meeting between the parties till the time the proposal was finalised**. But then he did not even care to clarify as to whether he was present at the time of finalisation of the deal, and as to when that finalisation took place. Thus, he was not present during meetings until the proposal was finalized; however, he also significantly failed to clarify his involvement during the finalization.

13.23. PW1 acknowledged that none of the exchanged emails were addressed to him, although he suggested Mr. Manu Sahni might have communicated some information to him. He further stated that when the plaintiff company organized an event, the entire team convened to discuss its details, with participation from Mr. Manu Sahni, Ms. Monika, and the entire Sales Team regarding advertisements, brochures, banners, etc.

13.24. When questioned about the first email between the plaintiff and defendant, which occurred on 17.08.2018, PW1 claimed he could not recall and suggested it might have been around 21.08.2018. This discrepancy raises suspicion regarding his knowledge of the case. It is the plaintiff's own case that the first email was indeed exchanged on 17.08.2018, a fact supported by this witness in his affidavit as ***Ext.***PW1/2. Yet, PW1 could not recall the email's date.

13.25. On whether the agreement in the email dated 17.08.2018 was rephrased in the email dated 21.08.2018, he ambiguously indicated a possibility of rephrasing instead of confirming as outlined in the plaintiff's own deposition. The witness gave an unclear answer stating that there was such a possibility of rephrasing under the second e-mail, whereas it is the plaintiff's own case that the deal was rephrased vide e-mail dated 21.08.2018 ***Ext.***PW1/3. Furthermore, PW1 confirmed he was not part of the rephrased email dated 21.08.2018, admitting he became involved only after the deal was finalized, but did not clarify when this occurred, despite the email indicating the deal's finalization. His failure to remember these crucial emails that he introduced as evidence further raises doubts about his familiarity with the case's facts.

13.26. The same applies to the second Summit, where negotiations are not claimed to have included PW1's presence. Thus, it is evident that the events and negotiations transpired between other officials of the plaintiff other than PW1, and PW1's testimony is obscured by hearsay since any knowledge about those dealings came secondhand.

13.27. Neither Mr. Manu Sahni, Ms. Monika, nor any other official of PW1 who directly interacted with the defendant has been examined.

13.28. Consequently, aside from the documentary evidence, PW1's deposition is affected by hearsay principles and is thus inadmissible. Despite the availability of key witnesses like Mr. Manu Sahni and Ms. Monika, or any other official of PW1 who directly dealt with the defendant, the plaintiff chose not to present them, leading to an adverse inference against the plaintiff for withholding significant evidence.

14. Taking up the proof of fulfilment of deliverables qua the 1st invoice.

14.1. Concerning the proof of deliverables for the first invoice, twelve deliverables required by the plaintiff were neither itemized in the emails nor in the invoice, which only states a consolidated amount. The contract does not specify the consequences for any unmet or poorly rendered deliverables.

14.2. As mentioned above, there are a total of 12 deliverables that were required to be fulfilled by the plaintiff. Neither in the e-mails dated 17.08.2018 and 21.08.2018, nor in the invoice, is the breakup of the charges qua the 12 deliverables mentioned. It is not even mentioned anywhere in the suit. Rather, a consolidated sum was agreed upon between the parties for all 12 deliverables, and the agreement between the parties does not even specify what the result would be if any particular deliverables are not fulfilled or are rendered unsatisfactorily.

14.3. Among the twelve agreed deliverables, the plaintiff admits having no evidence supporting the playing of a two-minute audio-visual clip during the event and claims it was played. However, there is no proof available. It is the plaintiff's own case, as admitted in the replication, that the plaintiff does not have any proof regarding the playing of the 2-minute audio-visual clip during the event.

14.4. Similarly, the plaintiff notes that one full-page ad in India Today Magazine, two half-page ads in Zest Mail Today, and two half-page ads in Mail Today were not published due to the defendant's failure to provide the creative materials and publication dates despite repeated requests.

14.5. Regarding the playing of the two-minute AV, PW1 indicated it would be challenging to verify its existence but would check records and produce it if found; however, this was never submitted.

14.6. When asked about the web banner with two lakh impressions dedicated to PKL, PW1 stated that while it was published, he had no records and found verification difficult due to the time elapsed; he claimed it would be brought to court if found, but it never was.

14.7. Therefore, there is no evidence from the plaintiff regarding either the playing of the two-minute AV or the web banner with two lakh impressions.

14.8. PW1 also claimed that so far as he recollects, only 1 full page or half page of advertisement could not be delivered, out of the 12 deliverables, that too since the plaintiff was not provided the material/ content for those advertisements. He claimed that the defendant was requested to provide the same. But he also admitted that there is no e-mail or documentary evidence available in which the defendant was asked to provide any such material.

14.9. When specifically asked if the plaintiff published one full-page advertisement in India Today Magazine, PW1 explained that the plaintiff typically publishes a double-split page ad and rarely a full-page ad. He conceded that no full-page ad was published for the defendant. Regarding whether the defendant was informed of the publications being done in a double-split format instead of a full page, PW1 stated that such decisions were commonly made without client consultation, indicating that the full-page ad due was not published as part of the twelve deliverables.

14.10. Concerning the two half-page ads in Zest Mail Today and Mail Today, PW1 confirmed they were not published, meaning two additional deliverables weren't fulfilled by the plaintiff.

14.11. Similarly, when PW1 was questioned whether there was any display of PKL Players Friendly Fight during the first event, he claimed that he does not remember. Thus, there is **no proof available** to the plaintiff even qua this deliverable being fulfilled.

14.12. Likewise, there's no proof provided regarding the logo on invitation cards, at the registration desk backdrop, or for the six entry passes required.

14.13. Thereby meaning that most of the deliverables as required under the e-mail dated 21.08.2018 were either not fulfilled by the plaintiff or at least the plaintiff has no proof of having fulfilled those deliverables. Thus, indicating that most deliverables outlined in the email dated 21.08.2018 remained either unmet or lack corroborative evidence from the plaintiff of fulfillment.

14.14. While the defendant claims that even the media interview regarding PKL was unrendered, this part of the defense must be dismissed due to certain responses during the defendant's cross-examination. The defendant, as DW1, acknowledged that ***Ext.***PW1/11, the October 2018 edition of India Today, includes an interview on page 76 featuring the defendant, but claimed the interview published did not align with their agreement and that the interview was not approved by him before publication. He conceded that in the email dated 21.08.2018, ***Ext.***PW1/3 (also DW1/1 in the defendant's affidavit), only the Media Interview of PKL is mentioned. The defendant avoided responding to the question about receiving the plaintiff's request for approval of the first interview via email dated 12.09.2018, nor did he acknowledge that the contents of the interview were sent to him. The defendant admitted during questioning that the plaintiff conducted an interview with its core team, and a request for approval was made through an email dated 23.09.2018.

14.15. Therefore, the defendant's assertion that the interview lacked prior approval for publication or did not adhere to the agreement seems incorrect. Regarding the interview deliverable, it is established that the interview was published.

14.16. Though the defendant acknowledged that a half-page advertisement was published in Mail Today prior to and following the first event on 25.08.2018, he claimed that no invitation cards were received, signifying he was unaware of advertisements on the invitation cards.

14.17. Consequently, the plaintiff has failed to prove delivery of the majority of the required deliverables. When a plaintiff approaches a court requesting a decree based on contract performance, and the opposing party refutes this performance, the burden of proof lies heavily on the plaintiff.

14.18. Under Section 104 of BSA, which parallels Section 101 of the Indian Evidence Act, the burden is on the party asserting a fact to demonstrate its existence.

14.19. In this case, while the plaintiff asserts fulfillment of deliverables denied by the defendant, the absence of the defendant's admission necessitates that the plaintiff proves, through credible evidence, that all deliverables were indeed executed. This is especially pertinent given the agreement and invoice represent a consolidated amount, with no distinct charges for various service categories specified.

14.20. In such instances, even if the plaintiff partially rendered services, it cannot seek full recovery of the invoice amount. Without clear provisions regarding agreed rates for completed deliverables versus those unfulfilled, this court finds that the plaintiff is not entitled to any recovery under the first invoice.

14.21. Therefore, this Court is constrained to hold that the plaintiff is not entitled to recovery of any amount under the 1st invoice.

15. Regarding the second invoice, ***Ext.***PW1/16, dated 30.09.2018, for ₹15,75,000/-, it is acknowledged that the defendant issued a release order dated 20.09.2018, ***Ext.***PW1/13.

15.1. Both parties agreed via email on 24.09.2018 that 24 half-page ads would be published instead of 32 half-page ads for the second event on 27.09.2018 at The Oberoi in New Delhi. Before this, the plaintiff acknowledged in the email dated 20.09.2018 a consolidated amount of ₹20 lakhs plus 5% GST for the publication of 32-page ads. In the second email dated 24.09.2018, the defendant requested a revised invoice. The second invoice, ***Ext.***PW1/16 states a consolidated amount of ₹15,75,000/-.

15.2. Notably, the invoice mentions only a single charge of ₹15 lakhs for publication in Mail Today dated 30.09.2018, on page 7, for a total space of 16 sq. cms, with an advertisement size of 4x4 cms. PW1 confirmed during cross-examination that, according to the email dated 24.09.2018, 24 half-page ads were not published, ostensibly because the defendant failed to provide any material for publication.

15.3. There is no documentary support indicating that the defendant was requested to supply such materials. Invoice ***Ext.***PW1/16 does not address the 24 half-page ads; instead, it details one small advertisement.

15.4. Therefore, the plaintiff is not entitled to recover any amount referenced in the second invoice.

16. The defendant also contended that the PKL event was canceled and communicated this to the plaintiff. However, the defendant conceded that there was a lack of email communication, proving that they had notified the plaintiff of such a cancellation. Cancellation of the PKL event would have been significant; had it occurred, the defendant undoubtedly would have emailed the plaintiff. Thus, the defendant fails to substantiate the event's cancellation or confirm notification to the plaintiff.

16.1. The plaintiff’s counsel argued that the absence of communication regarding cancellation from the defendant entails an adverse inference against them, suggesting that the event took place. Nonetheless, this fact does not aid the plaintiff's case. Even assuming the event occurred, the plaintiff still fails to prove that it fulfilled all requisite services.

17. The plaintiff emphasized that after the first event on 25.08.2018, the defendant never expressed dissatisfaction with the plaintiff's services and issued a release order dated 20.09.2018 for the second event, and also ignored the notice dated 23.08.2019, which should weigh against the defendant.

17.1. Had the plaintiff established that all services were rendered, the defendant's failure to reply would have been a circumstance against the defendant and would have detracted from their credibility. However, in the absence of proof of its claims, the plaintiff cannot rely on flaws in the defendant's defense. A plaintiff bears the responsibility for demonstrating facts favoring its case; weaknesses in the defendant's argument can only supplement the plaintiff's initial burden of proof. A plaintiff unable to meet this burden cannot compel the court to draw inferences based on the defendant's weaknesses. After all, a plaintiff has to stand on its legs while discharging the initial burden of proving facts in its favour.

17.2. It is also argued by the plaintiff that a reading of the written statement would indicate that the receipt of invoices by the defendant was not specifically refuted and the defendant never took any step qua the invoices raised, therefore, also the defendant has failed to prove its defence and that for the first time in the suit the defendant claims non-satisfaction of rendering of services by the plaintiff. For the same above-mentioned reasons that it is the plaintiff who is required to prove its case, even this argument has to be rejected.

18. The Law is well settled that the plaintiff has to stand on his leg to claim relief and to prove his case. In ***State of M.P. V. Nomi Singh*** *(2015) 14 SCC 450,* it was held that it is a settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his legs by proving his case and for such a relief burden cannot be shifted on the defendant.

18.1. In the case of ***Sunil Sood V. Sh. Krishna Builders*** *2018 SCC OnLine Del 11204*, it is held that the plaintiff cannot seek to prove his case indirectly by urging that the defendant's case has a certain deficiency or that there has been non-compliance of a certain legal provision on the part of the defendant. It was held that the plaintiff cannot succeed based on failure on the part of a defendant to prove his case, and that the plaintiff's case must stand on its own legs. It was held that a plaintiff must succeed on the basis and on the strength of his case and not on the strength of deficiencies in the defendant's case, and that the plaintiff cannot raise the edifice of his case by highlighting the deficiencies/ loopholes in the defendant's case.

19. Though the plaintiff has exhibited certain issues of magazines as ***Ext.***PW1/4 to 1/11, regarding the publication of the logo and Ad, etc., but admittedly, all the deliverables were either not rendered or there is no proof with the plaintiff about rendering most of those services.

19.1. Hon'ble DB of Delhi High Court in the case of ***Harish Mansukhani vs. Ashok Jain*** *(19.11.2008 - DELHC): MANU/DE/1742/2008 held as follows;*

> *"14. ……. In this connection, it assumes importance that* ***there is no evidence acknowledging receipt of the bills by the defendant as also that there is no evidence to establish that the goods covered by the bills were at all delivered to the defendant or any third party to whom the defendant allegedly directed delivery to be made.*** *The* ***justification by the plaintiff of not having obtained any acknowledgment due to cordial relationship between the parties holds no water****, when, as per the evidence of PW-2 most of the goods were delivered to third parties. Obviously as per the case attempted to be proved (without being*

pleaded) the plaintiff had no commercial dealings with said third parties and obviously maintained no cordial relations with them. ***Thus, normal prudent business conduct of acknowledging delivery of goods ought to have been followed and there being no evidence of the same, the probability would be that no goods were supplied to any third party at the asking of the defendant****. As per the testimony of PW-2 the services of a transporter was engaged to deliver the goods to third parties outside Delhi.* ***The said transporter to whom freight must have been paid has not been examined****. …………*

15. ***Mere raising of a bill and reflecting the same in a statement of account is not good evidence without establishing delivery of the goods under the bills****. We may hasten to add that in the instant case there is* ***no evidence to even establish that the bills were raised upon the defendant, in that, were ever delivered to the defendant.*** *There is* ***no contemporaneous letter proved on record in which the plaintiff made a grievance upon the defendant that a huge outstanding amount was due from the defendant to the plaintiff****.*

18. The totality of the evidence leans against the plaintiff, but what is most fatal is the variance between what was pleaded in the plaint and what was sought to be proved. ***No doubt, the defendant did not produce his statement of account but still, the plaintiff has to stand on his own legs to prove his case****.*

21. ***An adverse presumption can be drawn against a party who does not produce a document in his possession. Thus, before a presumption can be drawn against a party called upon to produce a document, it has to be proved that the document production whereof was sought was in the possession of the party concerned. The defendant had denied that any bill was raised on him. Thus, without proving that the plaintiff had raised the bills on the defendant, in that, without establishing that physical custody of the bills was with the***

> ***defendant, no adverse inference could be drawn against the defendant.***
>
> *22.* ***No doubt, not responding to a legal notice is a piece of evidence wherefrom an adverse inference can be drawn against the noticee. But, the said adverse inference is no more than presumptive evidence which by its very nature is weak evidence. Where the totality of the evidence weighs in favour of the person issuing the notice, non response to a notice by the noticee can be put in the scales to reassure the Court that contemporaneously the noticee kept silent evidencing a kind of acquiescence. But, the quality of evidence led to prove the case positively and its probative value has always to be kept in mind and given primacy****.*
>
> *23.* ***A plaintiff has to prove his case and stand on his own legs. No doubt, the defendant did not produce his books of account but that does not mean that the plaintiff must succeed on said account****."*

19.2. *While upholding the said decision of DHC, SC in the case of* **Ashok Jain vs. Harish Mansukhani** (03.09.2019 - SC Order): MANU/SCOR/27084/2019, held that when the facts were that the defendant did not deny business dealings with the plaintiff but his only defence was that goods had not been supplied. It was held by the Hon'ble SC that this fact had to be proved by the plaintiff. The plaintiff had only produced the ledger account of the defendant. This by itself cannot be proof of accounts.

20. On the other hand, the defendant claimed that because the two invoices were raised within a gap of 1 day, i.e., on 28.09.2018 and 30.09.2018, whereas the first event took place on 25.08.2018, both the invoices ought to be categorized as forged and fabricated.

20.1. Although the defendant maintains that the rapid issuance of two invoices on 28.09.2018 and 30.09.2018 renders them forged, merely submitting invoices within a day does not imply forgery or fabrication. In business, it is common for invoices to be submitted after some time; this in itself does not raise doubts regarding their legitimacy. It is another matter that the plaintiff is unsuccessful in proving its entitlement to recovery against those invoices, but they cannot be called forged. While the plaintiff may struggle to substantiate its claim for invoice amounts, it does not justify labeling the invoices as forged.

21. **Consequently, issues no. 2 & 3** are decided as follows:

21.1. a) While the plaintiff failed to substantiate the two invoices, they cannot be categorized as forged or fabricated. Although the plaintiff has not demonstrated fulfillment concerning those invoices, they cannot be considered forged or fabricated. **Issue no. 2 is resolved in favor of the plaintiff and against the defendant**.

21.2. b) Consequently, **issue no. 3 is determined against the plaintiff and in favor of the defendant,** as the plaintiff has failed to demonstrate any entitlement to a decree against the defendant.

22. **<u>Issues no. 4 & 5</u>**

> *"4. Whether the plaintiff is entitled to interest to the tune of ₹22,76,220/-? **OP Plaintiff***
>
> *5. If the answer to the last two mentioned issues are in affirmative, whether the plaintiff is entitled to any interest? If yes, at what rate and for which period? **OP Plaintiff**"*

22.1. Both these issues pertain to grant of interest, pre-suit, pendent lite, and future, and therefore, both are taken up together.

22.2. **Given the finding of the issue on. 3, both issues no. 4 & 5 are decided against the plaintiff and in favour of the defendant**.

23. **Issue no.6**

"Relief"

23.1. **Accordingly, the suit of the plaintiff is dismissed. No order as to cost.** The decree sheet be prepared accordingly.

23.2. A copy of the judgment be supplied to the plaintiff as well as the defendants through electronic modes in compliance with Order 20 Rule 1(1) of CPC. The file be consigned to the record room.

Announced in the open Court
*on **21st April 2025***

DIG VINAY SINGH

Digitally signed by DIG VINAY SINGH
Date: 2025.04.21 10:27:33 +0530

(DIG VINAY SINGH)
District Judge (Commercial Court)-03
West / Tis Hazari / Delhi (m)