

ARIES ADVERTISING BUREAU

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v.

C.T. DEVARAJ (DEAD) BY LRS.

FEBRUARY 22, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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*Indian Contract Act, 1872 : S. 70—Advertisement for circus—Charges not paid—Suit laid for recovery against circus owner and its financier—Ex-parte decree against circus owner—Decree against financier—Privity of contract and Benefit pursuant to the advertisement—Absence of—Hence S.70 not attracted.*

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The appellant-plaintiff had advertised for the Circus run by the second-defendant; it filed a suit for recovery of advertisement charges of Rs. 27,000 and odd against the respondent and the second-defendant. Ex-parte decree was passed against the second defendant and it had become final. The trial Court decreed the suit against the respondent-first defendant on finding that there was privity of contract between the appellant and respondent.

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On appeal, the High Court found that there was no privity of contract; since he was only a financier, he did not derive any benefit under the contract.

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In this appeal it was contended that in view of clause (4) of the agreement between the respondent and the first defendant, wherein the respondent undertook to pay the advertisement charges, he was bound to pay the same to the appellant, that since the proposal sent for advertisement by the appellant was admittedly approved by the respondent, there emerged a concluded oral contract between the appellant and the respondent; and that since the respondent agreed to receive the benefit of 30% of the profit from income derived by running of the circus, the respondent derived benefit pursuant to the advertisement, he is bound to reimburse the appellant by operation of S.70 of the Contract Act.

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Dismissing the appeal, this Court

**HELD :** 1. There is no privity of contract between the appellant and

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**A** the respondent. Though proposal sent for the advertisement by the appellant was approved by the respondent, he did it on behalf of the second defendant. The approval sought by the appellant was not given in writing so as to bind the respondent with the expenditure incurred from advertisement. The High Court had considered this aspect of the matter and concluded that in the absence of any approval in writing by the respondent,

**B** reliance upon self-serving statement made by the appellant in this regard, was not sufficient to fasten the liability on the respondent for the expenditure incurred by the second defendant for advertisement to run the circus. [253-E-F]

**C** 2. In the present case, the respondent was only a financier to run the circus and pursuant to the contract the respondent had suffered huge loss. In the absence of any benefit derived by the respondent pursuant to the advertisement made by the appellant, s. 70 of the Contract Act is not attracted. [254-C]

**D** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 907 (N) of 1976.

From the Judgment and Order dated 14.2.75 of the Madras High Court in A.S. No. 326 of 1971.

**E** A.T.M. Sampath for the Appellant.

The following Order of the Court was delivered :

**F** This appeal by special leave arises from the judgment of the Division Bench of the Madras High Court in A.S. No. 226/71 dated February 14, 1995. The facts lie in a short compass. The appellant-plaintiff had advertised for the circus run by the second defendant Balakrishnan. It laid a suit for recovery of a sum of Rs. 27,000 and odd towards the advertisement charges impleading the respondent, as first defendant, alongwith Balakrishnan as second defendant. Balakrishnan remained *ex-parte* and an *ex-parte* decree against him became final. We are concerned only with the liability of the first defendant- respondent, C.T. Devaraj. The trial court decreed the suit against him on finding that there was privity of contract between the appellant and the respondent. The High Court, on appeal, found that there is no privity of contract. Though the appellant, relying on s. 70 of the

**H** Indian Contract Act, 1872, (for short 'the Act') attempted to fasten the

liability on the respondent, it was found that the respondent did not derive any benefit under the contract between him and Balakrishnan. On the other hand, he was a financier to run the circus which had incurred a huge loss. Consequently, it was held that the benefit of s. 70 of the Act was inapplicable. The appeal was accordingly allowed and the suit against the respondent was dismissed. Thus this appeal.

Shri Sampath, learned counsel for the appellant has strenuously contended that in view of the agreement (Ex. A-3) executed by the respondent and Balakrishnan wherein Clause (4) states about the respondent undertaking to pay the advertisement charges, he is bound to pay the same to the appellant. Proposal sent for advertisement by the appellant was admittedly approved by the respondent. Thereby there emerged a concluded oral contract between appellant and the respondent. It is also contended that since the respondent agreed to receive the benefit of 30% of the profit from the income derived by running of the circus, he had derived benefit pursuant to the advertisement made by the appellant and, therefore, the respondent is bound to reimburse the appellant by operation of s.70 of the Act.

We find no force in the contentions. The agreement Ex. A-3 is bilateral between the respondent and Balakrishnan. The appellant is not a party to the agreement. So, there is no privity of contract between the appellant and Devaraj. It is also an admitted fact that though proposal sent for the advertisement by the appellant was approved by Devaraj, he did it on behalf of Balakrishnan. The approval sought by the appellant was not given in writing so as to bind Devaraj with the expenditure incurred for advertisement. The High Court had considered this aspect of the matter and concluded that in the absence of any approval in writing by the respondent, reliance upon self-serving statement made by the appellant in this regard, was not sufficient to fasten the liability on the respondent for the expenditure incurred by Balakrishnan for advertisement to run the circus.

Section 70 of the Act provides thus :

"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore,

A the thing so done or delivered."

Admittedly, the appellant had not done anything directly to the respondent. On the other hand, it had done the advertisement to benefit the second defendant Balakrishnan only, who had run the circus. The High Court found as a fact that the respondent did not derive any benefit out of the contract entered into between the respondent and Balakrishnan. The respondent was only a financier to run the circus and pursuant to the contract the respondent had suffered huge loss. In the absence of any benefit derived by the respondent pursuant to the advertisement made by the appellant, s. 70 is not attracted to the facts of this case.

C Therefore, the High Court was right in negating the relief to the appellant, either because of lack of the privity of the contract or due to non-applicability of s. 70 of the Act. The appeal is accordingly dismissed, but without costs.

G.T.

Appeal dismissed.