

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 2120/1999

WINSOME BREWERIES LTD. Plaintiff
Through Mr. Ajay Veer Singh Jain, Advocate

versus

CITY DISTRIBUTORS Defendants
Through Mr. D.S. Narula with
Mr. A.S. Narula, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. Whether reporters of the local news papers
be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not ? | Yes |
| 3. Whether the judgment should be reported in the
Digest ? | Yes |

ORDER
22.07.2009

1. This is a suit for recovery of money in the sum of Rs.20,26,369.40 from the Defendant together *pendente lite* and future interest @ 24% per annum on the decretal amount from the date of institution till realization.

2. According to the Plaintiff it is a leading manufacturer of several brands of beer like Henninger, German Thunder, Winsberg, Torando and Limo etc. It is stated that the Defendant is the distributor/agent of the Plaintiff having its office at Andheri (East), Mumbai. It is stated that pursuant to discussions and negotiations, the Defendant wrote a letter dated 30th August 1996 to the Plaintiff at New Delhi enclosing an application form for the grant of

registration from the commissioner of state excise and requesting the plaintiff to bring the completed form to Mumbai. According to the Plaintiff pursuant to the above letter the Defendant was in September 1996 appointed as distributor of the Plaintiff.

3. In the written statement filed a preliminary objection is taken as to the territorial jurisdiction of this Court to entertain the suit. It is contended that no part of cause of action arose in Delhi. On merits it is contended by the Defendant that it was the Plaintiff who wanted to take advantage of the Defendant's distributor network, resources and ability to market products in Mumbai. It was the Plaintiff who made an offer to the Defendant that the latter should represent the Plaintiff and market its products in Mumbai. It is the case of the Defendant that it accepted the offer of the Plaintiff and on the basis of the said understanding, in the presence of Mr. Subodh Despande, the Assistant Regional Manager of the Plaintiff in Mumbai they entered into an oral agreement whereby the Defendant would distribute the Plaintiff's products in Maharashtra.

4. It is not in dispute that the Defendant placed on the Plaintiff four orders for beer on 17th, 18th March, 11th and 15th April 1997 aggregating to twenty-two permits involving a total of 15,400 cases @ 700 cases per truck to a permit. What is in dispute however is that according to the Defendant some of the consignments supplied by the Plaintiff were found to be of sub-standard quality. The grievance of the Defendant also was that the supply of beer by

the Plaintiff was erratic leading to the permits having to be renewed. The grievance of the Plaintiff on the other hand is that despite raising bills on the Defendant for the supply of beer as ordered by it, the Defendant did not make the full payment. As against the total outstanding of Rs.22,46,956/- the Defendant paid the Plaintiff only Rs.9,57,170/-.

5. According to the Plaintiff, the Defendant had requested the Plaintiff permission to dispose of the pending stocks by transferring them to some other territory within Maharashtra. By letter dated 28th October 1997 the Plaintiff gave its consent to the Defendant to transfer the stocks of beer to Pune, Maharashtra. It is stated by the Plaintiff that the Defendant persisted with its allegation that the quality of the consignment was below the standard. Further the outstanding bills remained. In the circumstances, the present suit was filed.

6. On 4th January 2006 this Court considered it appropriate to record the statement of Mr. R.K. Bagrodia, Managing Director of the Plaintiff under Order X Rule 1 CPC as under:

“Statement of Mr. R.K. Bagrodia son of Mr. M.P. Bagrodia, aged 61 years r/o S-521, Greater Kailash, Part-II, New Delhi on SA.

It is correct that City Distributor/defendant is having its office in Mumbai. There is no branch office or any outlet in Delhi. **The plaintiff had appointed the defendant as its distributor for sale of beer manufactured by the plaintiff for the city of**

Mumbai. There was no written contract executed between the parties for this purpose. The plaintiff has its beer manufacturing plant in Rajasthan. The supplies were made from the said manufacturing unit to Mumbai. The defendant was making payment through demand drafts which used to be sent by the defendant to the plaintiff at its Delhi office. When the defendant was appointed as the distributor the plaintiff was having its branch office in Mumbai. It was in the year 1996-97. Last supply made by the plaintiff to the defendant was in April 1997. Till that time, the plaintiff was maintaining its office in Mumbai which was closed sometime in the year 1998. The goods were supplied to the defendant on furnishing the permits issued by the Excise Department. These permits used to be sent by the defendant to the plaintiff at the plaintiff's Delhi office. Bills were raised by the plaintiff on defendant from Delhi. **During the period plaintiff was having branch office in Mumbai, it was maintaining bank account in a bank in Mumbai. The payments were used to be made by the defendant by means of bank drafts or cheques. Cheques used to be deposited in the bank account maintained by the plaintiff in Mumbai and bank drafts used to be deposited in the bank account maintained in Delhi.** I have denied letter dated 20th October 1997 as I do not think that this letter was ever received by the plaintiff or by me.”

7. An affidavit dated 8th May 2006 of Mr. Rakesh Jalan the Defendant's representative was filed enclosing four documents dated 24th April, 25th

April, 5th June and 22nd September 1997 under the cover of which payments by way of cheques were made for the consignments by the Defendant to the Plaintiff in Mumbai. According to the Defendant, the payments made to the Plaintiff were deposited in the Plaintiff's Mumbai account. It is therefore contended that the contract was concluded in Mumbai, the consignments were delivered in Mumbai and the payments therefor also were made in Mumbai. Consequently, the cause of action for the present suit arose only in Mumbai.

8. On 8th August 2006 this Court noted that the parties agreed that the first issue framed by this Court by its order dated 13th July 2004 viz., "whether this Court has jurisdiction to try this suit?" should be decided as a preliminary issue and that evidence should be led for that purpose. Pursuant to the directions issued by this Court, the evidence by way of affidavit of the Plaintiff sworn to by Mr.R.K.Bagrodia, its Managing Director, was filed on 31st January 2007. In the said affidavit Mr. R.K. Bagrodia maintained that the letter written to the Plaintiff in New Delhi by the Defendant on 30th August 1996 connoted the appointment of the Defendant as distributor of the Plaintiff. A reference is also made to the letteres dated 18th March and 15th April 1997 addressed by the Defendant to the Plaintiff at Delhi. The above affidavit on behalf of the Plaintiff enclosed copies of the bills for the consignments raised by the Plaintiff at New Delhi. A letter dated 5th May 1997 written by the Defendant for returning the beer to the brewery was also addressed to the Plaintiff at New Delhi. This was further followed by letters

dated 24th June 1997 and 21st June 1999 also addressed to the Plaintiff at New Delhi.

9. Mr. R.K. Bagrodia, the Managing Director of the Plaintiff was cross-examined by learned counsel for the Defendant on 19th February 2009. In his cross-examination he stated: “ Plaintiff company deals in the manufacturing (of) beer in Rajasthan and its plant is in District Alwar, Rajasthan. It is correct that we send the consignment directly to the State from where the permit have (*sic*) received to manufacture Beer. It is correct that the contract in question was for supply of beer to the Defendant to consume and sell in Maharashtra only. Excise duty on the same was payable in Rajasthan and Maharashtra. Defendant does not have any office in Delhi. It is correct that plaintiff was receiving the import permit for liquor for the consumption in Maharashtra only. It is correct that plaintiff was dealing with the defendant at their office in Mumbai only. Defendant does not reside in Delhi.”

10. Interestingly Mr. Bagrodia admitted that the contract by which the Defendant was purportedly appointed as the Plaintiff's Distributor was unable to be placed on record. Mr. Bagrodia stated that “I do not have the copy of contract but the same must be in the file as I have entered into the agreement I have must have seen it. I do not recollect the exact date of contract but it must be in the year 1996. I do not have any specific reason for not filing the contract on record probably the same may not be in the office record.”

11. This Court finds that the categorical case of the Defendant in written statement was that negotiations pursuant to which the appointment of Defendant as Distributor/Agent of the Plaintiff came about, took place in Mumbai in the presence of Mr. Subodh Despande, the Assistant Regional Manager of the Plaintiff. In the rejoinder this is simply denied by the Plaintiff and it is asserted that “the offer to the defendant to work as distributor for the plaintiff company has been made from Delhi and the contract between the parties also concluded in Delhi.” However Mr. Bagrodia failed to produce any document to substantiate this averment. In fact he went on record to say: “I do not remember whether there was any formal contract or not. It may be possible that plaintiff had accepted the offer made by the defendant through its letter. It is correct that there is no formal agreement in writing which is signed by both the parties in Delhi. Volunteered. However I had accepted the offer by sending the letter from Delhi.”

12. Despite the statement of Mr. Bagrodia he had sent the Defendant a letter from Delhi appointing the former as a distributor, no copy of such letter is produced on record. Learned counsel for the Plaintiff sought to rely on the letter dated 30th August 1996 written by the Defendant to state that with the said letter, the distributorship commenced. Having perused the said letter this Court is unable to agree with the submission. The said letter simply encloses an application form for grant of registration from the Commissioner of State Excise and requests the Plaintiff to bring the completed form to Mumbai.

13. The above affidavits and evidence coupled with the fact that payment for made consignment was made to the Plaintiff in Mumbai, and the consignments were sent to Mumbai from Rajasthan, this Court is persuaded to agree with the submissions made on behalf of learned counsel for the Defendant that this Court lacks territorial jurisdiction to entertain the suit. The preliminary issue is, therefore, answered against the Plaintiff and in favour of the Defendant.

14. The question that arises next is the consequential order that has to be passed by this Court. Order VII Rule 10 CPC states that subject to the provisions of Rule 10A the plaint is to be returned to be presented to the Court “in which the suit should have been instituted.” Under Order VII Rule 10A when the court is of the opinion that the plaint should be returned, it shall intimate its decision to the Plaintiff and upon such intimation, the Plaintiff can make an application to the Court specifying the Court in which the Plaintiff proposes to present the plaint after its return and praying that the Court may fix a date and intimate the date so fixed to him and the Defendant.

15. At the hearing on 20th July 2009 this Court intimated its decision to the learned counsel for the Plaintiff who then sought time to seek instructions in terms of Order VII Rule 10 A CPC about making an application to this Court in terms of sub-rule (2) thereof. The case was then adjourned to this day. Learned counsel for the Plaintiff states that as per instructions, in the event of

the Plaint being returned to the Plaintiff, the Plaintiff would file the present suit in Alwar since according to the Plaintiff that was where its factory from where the consignments were dispatched was located.

16. Learned counsel for the Defendant however points out that in para 9 of the plaint it has been stated that “these import permits were also sent to the Plaintiff at New Delhi and the goods were dispatched from New Delhi.” It is pointed out that the statement now made is contrary what is stated in the plaint and therefore the plaint could not possibly be presented to the Court at Alwar. In any event since no application in terms of Order VII Rule 10 A CPC has been made by the Plaintiff, this Court is not inclined to pass any order in terms thereof.

17. The statements of the Plaintiff and the documents on record reveal that the court in New Delhi has no jurisdiction to try the suit. Although the consignments may have been dispatched from Alwar, they were admittedly received in Mumbai. Suffice it to say, the evidence recorded shows that the High Court of Delhi has no territorial jurisdiction to try the suit.

18. For the aforementioned reasons this Court holds that this Court lacks territorial jurisdiction to entertain the suit and further directs that in terms of Order VII Rule 10 that the plaint be returned to the Plaintiff. An endorsement in terms of Order VII Rule 10 (2) shall be made and the plaint returned to the

Plaintiff for being presented to the Court in which the suit should be instituted along with a certified copy of this order.

19. The suit is disposed of.

S. MURALIDHAR, J.

JULY 22, 2009

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