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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 08.07.2009

Pronounced on : 18.08.2009

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CS (OS) No.964/2005

GLAXOSMITHKLINE PHARMACEUTICALS LTD.

..... Plaintiff

Through: Mr. Sanjay Bajaj, Advocate.

versus

R.S.TRADERS ANDS ORS CA+

..... Defendants

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

S.RAVINDRA BHAT, J.

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1. The plaintiff, a public company, is engaged in manufacture and trade of various products. Its Qualigens Fine Chemicals division deals with sale of chemicals, diagnostics, Instruments, disposable labware, disinfectants, culture media, filter paper, etc. The plaintiff sues for mandatory injunction to direct the defendants to furnish 'C' forms and 'ST' forms which are to be filed with the sales tax authorities; in addition, a decree for Rs. 36,38,280/- is sought against the defendants.

2. According to the suit averments, the first defendant is a partnership (hereafter "the firm") of which the second to fourth defendants are partners. The firm had acted as the plaintiff's stockists. According to the arrangement between the parties, the firm used to place orders on the plaintiff; after receiving supplies for stocks, in accordance with the

agreed terms, the defendant used to make payments. The plaintiff relies upon the Stockist Agreement entered into with the firm (of which the other defendants were partners) on 1-5-2002 (marked as Ex. PW-1/1). Clause 2 of the agreement stipulated that the stockist was to be supplied goods every quarter, of the values indicated and mutually agreed upon. Clause 3 said that the stockist was entitled to compensation by way of supply of goods at 15% of the price less than the consumer price of the goods. Goods were to be supplied, FOR Delhi (clause 5); the parties agreed to abide by a trade price list, which was to govern the price at which the goods were to be sold by the stockist, in the course of trade. The stipulation as to payment, contained in Para 8, required that remittances were to be through the bank; in case of delayed payments, the stockist was liable to pay 21% p.a. interest on the outstanding amount, to the plaintiff. Clause 20 clarified that nothing in the agreement, constituted the stockist as the plaintiff's agent. Clause 21 entitled the plaintiff to terminate the arrangement.

3. The plaintiff alludes to the defendants having made payments on account of their liabilities through cheques; reference to these, is made in the suit averments. In addition, the plaintiff relies on Ex. PW-1/207 which are the defendants' letters, referring to payments for supplies made till various dates; the last of these appears to have been made on 27-3-2002. It is contended that the defendants started defaulting in making payments; the plaintiff has detailed the amounts in Para 13; it is alleged that the outstanding amount was Rs. 36, 38, 280/- of which the principal amount was Rs. 29,30,279/- and interest was Rs. 7,04,700/75; Rs. 3300/- was payable for the legal notice issued by the plaintiff.

4. The plaintiff also refers to the defendants' obligation to furnish 'C' and 'ST' forms which are required to be filed with the central and state sales tax authorities. Details of these forms, in regard to the extent of amounts for which such documents had to be given, are set out in Para 8 of the suit. For the period April 2002, to March, 2003, the plaintiff alleges that in respect of Delhi 'ST' forms, the amounts of transaction involved were Rs. 32,70,078/-; for Mumbai 'C' forms, the amounts were Rs. 15,38, 685/-; Ambala 'C' forms were in respect of transactions for Rs. 1,24,046/- and for Ghaziabad, the amount of 'C' form was Rs. 18,741/-. It is alleged that for the period April, 2003 to March, 2004, the amounts for Delhi 'ST' forms were Rs. 7,56,247/- and the Mumbai 'C' forms which had to be supplied by the defendants were of the value of Rs. 3,25, 500/-. The plaintiff refers to letters written

to the defendants, as well as a registered A/D letter written to the defendants, demanding the amounts from them, but without success. In these circumstances, the plaintiff claims the reliefs sought.

5. Summons were issued in the suit, upon the defendants. The order of 16th May, 2006, records that in terms of the order of the Registrar dated 3-2-2006, the court was satisfied that the defendants were aware of the present suit, since they refused to accept service of summons, when sought to be served. The court therefore, deemed service of summons upon the defendants, and directed them to be set down *ex-parte*. The plaintiff was permitted to lead its evidence in support of the suit. It filed the affidavit of Shri Vinay Sharma, its Area Business Manager, (PW-1); he filed affidavit evidence, which was exhibited as Ex. PX, on 28th July, 2006.

6. PW-1's affidavit generally supports the suit averments. It more importantly, marks the relevant documents. PW-1/1 is the stockist agreement; PW-1/2 to PW-1/205 are invoices issued by the plaintiff, in respect of the goods supplied to the defendants, on various dates; the last one is dated 11th June 2003 (Ex. PW-1/203). Ex. PW-1/206 is a C form issued by the defendant favouring the plaintiff; it encloses Ex. PW-1/207, which is a list of the goods, their value, and date of payment. This covers the period 11-9-2001 to 27-3-2002. Ex. PW-1/212 is a letter written by two partners of the firm (the third and fourth defendant) alleging that they were not involved with the firm, and that the second defendant was responsible for making all payments, in respect of the goods received. Ex. PW-1/213 is a letter from the plaintiff, to the fourth defendant, clearly stating that he, as partner, and the firm were jointly responsible for the firm's liabilities, in terms of the stockist agreement; the notice called upon the defendants to make payment of Rs. 30,02,743/48 or face the consequences. Ex. PW-1/215 is the carbon copy of a legal notice, issued to the defendants, on behalf of the plaintiff, claiming the outstanding amounts, and also for supply of the C and 'ST' forms.

7. The previous discussion would reveal that the defendants, at the relevant time, in 2001 and 2002, entered into stockists agreement, with the plaintiff. The terms of contract, Ex. PW-1/1 show that the schedule for supply of goods was agreed upon; the terms of payment by the defendants, for the goods, and its margin were also expressly agreed. The

plaintiff has been able to prove, through the various invoices placed on the record, that it despatched goods; the defendant, in its enclosures to C form (Ex.PW-1/207) also admit that payments were made for such goods received. The plaintiff has been able to establish that demands were made by it upon the defendant, for payment of outstanding dues. Ex. PW-1/119 is the statement of account, maintained by the plaintiff, for the period ending 30th September, 2003, disclosing the defendants' liabilities for the relevant period.

8. The letter, Ex. PW-1/212 is a letter written by the third and fourth defendant, who are partners of the firm does not dispute the liabilities, whatsoever in any manner, but alleges that the other partner (second defendant) is to pay all the entire outstanding dues. The letter does not indicate that the plaintiff was aware of this; in fact, the stockist agreement was signed by all the defendants, including the third and fourth defendants, as partners.

9. In view of the above discussion, the court is of opinion that the plaintiff has been able to establish that the amount due from the defendant is Rs. 29,30,279/-. Since the amounts are in the nature of commercial liability, the plaintiff is held entitled to 18% *pendent lite* and future interest, on it. The plaintiff has also proved its claim for injunctive relief. In the circumstances, the money claim has to succeed to the extent of Rs. 29,30,279/- ; let a decree be drawn, in favour of the plaintiff, and against the defendants, jointly and severally (as claimed) for the said sum, with interest @ 18% p.a. from the date of institution of the suit, till realization. The suit for injunction, in terms of Para 17 (c) of the plaint, is entitled to succeed; a decree to that effect shall be drawn, against the defendants, jointly and severally. The plaintiff is entitled to costs; counsel fee is quantified at Rs. 50,000/-.

August 18, 2009

(S. RAVINDRABHAT)
JUDGE