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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA(OS) 26/2020

INOX LEISURE LIMITED Appellant

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Sachin Mandlik, Mr. Aditya Ganju,
Mr. Madhavam Sharma, Mr. Vinay
Tripathi, Mr. Ambar Bhushan and
Mr. Saksham Dhingra, Advocates

versus

PVR LIMITED

..... Respondent

Through: Mr. Ajit Warriar, Advocate with
Mr. Angad Kochhar and Mr. Devansh
Agarwal, Advocates for respondent.

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Date of Decision: 24th June, 2020**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE SANJEEV NARULA****J U D G M E N T****MANMOHAN, J:- (Oral)****CM APPLs.12957-12961/2020**

Allowed, subject to just exceptions

RFA(OS) 26/2020 & CM APPL. 12956/2020

1. The appeal has been heard by way of video conferencing.
2. Present appeal has been filed challenging the final judgment and order dated 18th May, 2020 passed by the learned Single Judge whereby the appellant-plaintiff's suit was dismissed at the pre-trial stage.

3. Mr. Amit Sibal, learned senior counsel for appellant-plaintiff states that in view of the current material adverse change in business environment, he has instructions not to press the present appeal on merits.

4. He, however, states that the learned Single Judge in the impugned order has erroneously imposed the cost of Rupees Five lacs upon the appellant-plaintiff, even when, the concept of tortious inducement/interference of binding agreements is known to constitute a cause of action to file a suit for damages/injunction. [See *Tata Sons Limited v. Mastech Corpn. & Ors.*, 1999 SCCOnline Mad 368, paras 9 and 11; *Balailal Mukherjee & Co. (P) Ltd. Vs. Sea Traders Private Ltd.*, 1990 SCC OnLine Cal 55, para 6 and 21; *Oravel Stays Pvt. Ltd. v. Hoteliers Welfare Association & Ors.*, Delhi High Court, CS (OS) No. 322/2019, order dated 19 July 2019, paras 6 and 7; *Ambience Space Sellers Ltd. vs. Asia Industrial Technology Pvt. Ltd.*, 1996 SCC OnLine Bom 586, paras 7, 11, 13, 16, 17, and 38; *Aasia Industrial Technologies Ltd. v. Ambience Space Sellers Ltd.*, 1997 SCC OnLine Bom 681, paras 15, 16, 18 and 32; and *Lindsay International Pvt. Ltd. v. Laxmi Niwas Mittal*, 2017 SCC Online Cal 14920, paras 70, 71 and 98.]

5. He further states that learned Single Judge has erroneously held that appellant-plaintiff has indulged in 'judicial adventurism' inasmuch as the said expression is used in respect of judicial overreach by a judicial authority and same cannot be attributed to a litigant. He contends that 'judicial adventurism' is not applicable to the present case as the judgment relied upon by the learned Single Judge in *Modicare Ltd. vs. Gautam Bali & Ors*, CS (COMM.) 763/2016, dated 23rd September, 2016 to hold that a suit for tortious inducement/interference was violative of Section 27 of the

Contract Act was pronounced by the same learned Single Judge on 23rd September, 2019 i.e. after the order had been reserved in the present suit on 13th May, 2019.

6. He lastly states that a coordinate Division Bench of this Court in *Amazon Seller Services Pvt. Ltd. Vs. Modicare Ltd. & Ors., FAO (OS) No. 135/2019* decided on **31st January, 2020** has held that an action for tortious interference is a matter of evidence.

7. *Per contra*, Mr. Ajit Warriar, learned counsel for respondent-defendant submits that the appellant-plaintiff having taken a chance by filing the present suit cannot seek waiver of cost as well as expunction of the ‘judicial adventurism’ remark.

8. He points out that it is not for the first time that the appellant had filed the present suit for tortious inducement/interference. He draws this Court’s attention to a suit filed with regard to Madurai property against the respondent-defendant in Patiala House Courts.

9. In rejoinder, Mr. Amit Sibal, learned senior counsel for appellant-plaintiff states that the suit filed before the Patiala House Courts pertained to Madurai property – which did not form subject matter of the present suit. He also points out that with regard to the Madurai property a proceeding was filed in the State of Tamil Nadu in view of the arbitration clause between the owner of the property and the appellant-plaintiff. He clarifies that as the respondent-defendant was not a party to the arbitration clause, a separate proceeding for damages and injunction was filed in the Patiala House Courts.

10. Having heard learned counsel for the parties, this Court is of the view that though the plea of tortious inducement/interference of binding

agreement is not made out in the present suit, yet the said concept is well-known in law to constitute a cause of action to file a suit for damages/injunction. In fact in '*Clerk & Lindsell On Torts*', *Eighteenth Edition* in the Chapter on 'Economic Torts', it is stated as under:-

“24-03 *Inducing breach of contract.* Liability ensues more immediately where some legal right of the plaintiff has been invaded, where “the defendant knows of the existence of the right but does an act which will impair or destroy the right.” Half a century before *Allen v. Flood*, the seminal decision in *Lumley v. Gye* in 1853, arising from a procurement to break a contract for services, established a general liability for intentionally inducing the breach of a contract between the plaintiff and a third party. Specific liabilities had existed more narrowly long before that case, relating to the master’s right to sue for interference with, or enticement of, the servant or *per quod servitium amisit*. The more generalised liability was imposed wherever a defendant induced the breach of a contract, first a contract for service or services, and later a contract of any kind, “maliciously”. The defendant’s liability, it was now said, arose wherever he procured “an actionable wrong or a breach of contract”. Later, the need for “malice” was dropped, and liability was defined as “knowingly and intentionally” procuring the breach of a contract without justification. The proximity of this developing liability to the other economic torts, themselves at an early stage of development, was reflected by the willingness of the judges even in 1853 to express the liability of such a defendant in alternative ways, as a “joint wrongdoer” for example, or even as a party to a “conspiracy at common law”. Since the general nature of the tort, however, rests upon a “direct invasion of legal rights”, it was inevitable that inducing breach of contract should come to be seen as only one species of it. In consequence, it has been “extended to inducing breach of statutory duty....and inducing breach of equitable

obligation, giving rise to liability in the third party who intentionally procures someone to break a statutory or equitable obligation where the plaintiff enjoys a right of action against the obligee for the breach. It has been said that the four “necessary ingredients” of such a tort are: existence of the legal right; knowledge of the right and intention to interfere with it’ direct and unjustifiable interference with the right (As “a necessary consequence of the defendant’s actions”); and finally damage.”

(emphasis supplied)

11. This Court also finds that in **Amazon Seller Services Pvt. Ltd. Vs. Modicare Ltd. & Ors.** in **FAO (OS) 135/2019** a coordinate Division Bench of this Court has held that an action for tortious interference is a matter of evidence.

12. Further, this Court is in agreement with the contention of learned senior counsel for the appellant-plaintiff that judgment in **Modicare Ltd. vs. Gautam Bali & Ors** (supra) has been pronounced by the same learned Single Judge after the order had been reserved in the present suit. Also, the learned Single Judge has not dismissed the present suit or rejected the plaint on the ground of suppression of material facts and/or on the ground that the appellant-plaintiff had filed parallel or multiple proceedings on the same cause of action. Consequently, neither the finding of ‘judicial adventurism’ nor the imposition of costs is warranted in the present case.

13. Accordingly, the cost of Rupees Five lacs imposed by the learned Single Judge as well as the finding of ‘judicial adventurism’ against the appellant-plaintiff are set aside.

14. With the aforesaid modification/direction, the present appeal and application stand disposed of. Registry is directed to draw up a modified

decree sheet.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

JUNE 24, 2020
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