

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL FIRST APPEAL NO. 2 OF 2024
WITH
INTERIM APPLICATION NO. 11228 OF 2024

FIT (earlier known as M/s. France International Trade)...Appellant

Vs.

Parag Milk Foods Pvt. Ltd.

...Respondents

Mr. Shon Gadgil with Mr. Shivraj Patne, Mr. Krunal Thakkar for Appellant/
Applicant.

Mr. Sangram Parab i/b. Mr. Kayval Shah for Respondent No.1.

CORAM: G. S. KULKARNI &
Dr. NEELA GOKHALE, JJ.
DATE: 10 SEPTEMBER 2026.

P.C.

1. By consent of the parties, we have heard learned counsel for the parties finally on this appeal. The present appeal is directed against the judgment and order dated 15 March 2022 passed by the learned District Judge-2, Pune, in Special Civil Suit No. 73 of 2016 (Original Spl. C. S. No. 692/2012), whereby the appellant/plaintiff's suit for recovery of the amounts, subject matter of the Credit Note dated 09 March 2009, has been dismissed.

2. At the outset, the reliefs as prayed for by the appellant/plaintiff in the suit in question are required to be noted, which read thus:-

a. It be declared that the Defendant is liable to pay an amount of Rs.5,03,03,036/- to the Plaintiff as per Credit Note dt. 9-3-2009.

b. The Defendant be directed to pay the suit claim of Rs. 5,03,03,036/- as given in the particulars of claim..

c. The Defendant be directed to pay future interest at 18% p.a. on the

amount of Rs. 5,03,03,036/- from the date of filing of the suit till its realization.

d. Leave be granted to claim further relief on the same cause of action at a later stage.

e. Any other just and equitable order in the interest of justice may kindly be passed.”

3. Thus, the appellant/plaintiff instituted the suit in question contending that the Court has jurisdiction to try and entertain the suit, as the cause of action had arisen within the jurisdiction of the Court at Pune. This notwithstanding, Clause 19 contained in the agreement entered between the parties providing that the Courts at Genova (sic Geneva) would have jurisdiction to entertain, try, determine and decide any suit or legal proceedings arising out of or relating to the said agreement. The contention of the appellant was to the effect that such jurisdiction clause did not provide that the Court at Geneva “would be the only Court” having jurisdiction, and more particularly, when in a manner as the law would recognize, no cause of action had arisen within the jurisdiction of the Court at Geneva. It was contended that, for such reason also, the parties, even by consent, could not have conferred jurisdiction on the Courts at Geneva.

4. Such contention of the appellant/plaintiff, as also on merits the suit was contested by the respondent/defendant by filing a written statement. The parties also led oral evidence. In the cross-examination, we find that the plaintiff's witness no.1 was posed a question on behalf of the respondent/defendant in regard to the institution of a prior suit by the appellant/plaintiff against the respondent/defendant before the Courts in France, more particularly whether the

institution and adjudication of the said suit before the French Court created a bar against the appellant/plaintiff in instituting the suit in question. To this extent, we have perused the cross-examination. The relevant extract of the cross-examination of PW-1 which reads thus:-

“16- I have copies of all the documents filed in the court. The first document is draft agreement of marketing collaboration (Exh. 31A) It is not true to say that it is the draft agreement for marketing collaboration in future. It is true that it is not a final document. Witness says it is a draft. It is true that as per clause 19 of draft agreement the court at Geneva shall have jurisdiction. As per clause 17 of the draft, there is arbitration clause. The draft is executed at chambers of commerce at Paris. It is true that as per clause 18 of the draft litigation is to be governed in accordance with the international laws. It is true that before filing the present suit the plaintiff has instituted writ of summons before commercial court at Rennes. I do not remember when it was filed. I can not say whether it was filed in the year 2009. The said claim was filed for 1140082.60 USD. Witness says it was reduced to 675000 USD by mutual discussion.

17 It is true that the said claim was in respect of the same transaction which is included in the present suit. It is not true to say that defendant Parag Milk Food Product has never given any consent for Rs. 675000/- USD or any amount. The Writ of summons case was filed in court at Rennes.

Question: What is the outcome of the case instituted at Rennes ?

Answer: The said court had asked us to initiate the proceeding in India.

18- It is true to say that court at Rennes has rejected our claim. I can file the copy of order of that case.

Question: Why you have not filed the copy of order of court at Rennes ?

Answer: There is no relation between court at Rennes and India, hence I have not filed it on record.

Draft agreement for marketing Exh. 31A was executed at Parag Factory at Manchar, Pune.

5. In the aforesaid context, the findings recorded in this regard in the impugned judgment read thus:-

“25. It is pertinent to note here that while giving dictation of the Judgment is going on, the plaintiff has filed application exh. 109 and produced before the Court xerox copy of order of the Rennes Court, France

and its translation into English. However, it is pertinent to note here that an affidavit of the person who has translated the Judgment from French language into English is not filed on record. Further, certified copy of the Judgment of Rennes Court is also not filed before this Court. Under such circumstances, translation of the Judgment of the Rennes Court cannot be read into evidence. It is not properly proved by the plaintiff.

30. PW 1 has deposed in his cross-examination that he has copies of all the documents filed in the Court. The first document is draft agreement of marketing collaboration (exh.31). He has denied that it is draft agreement for marketing collaboration in the future. However, it is admitted that said document is not final document. PW 1 has volunteered that it is a draft. He has admitted that as per Clause No.19 of draft agreement, the Court at Genova shall have the jurisdiction. PW 1 deposed that as per Clause No.17 of the draft agreement, there is arbitration clause. He has further deposed that said draft agreement is executed at Chambers of Commerce at Paris. He has admitted that as per Clause No.18 of the draft agreement, litigation is to be governed in accordance with the international laws and he has further admitted that before filing the present before suit, the plaintiff has instituted Writ of Summons Commercial Court at Rennes. As deposed by PW 1, he does not remember that when said Writ of Summons was filed, he is unable to depose that whether it was filed in the year 2009. He has deposed that the said claim was filed for USD 1140082.60. PW 1 has deposed that said claim was reduced to USD 6,75,000 by mutual discussion. PW 11 has further admitted that said claim was in respect of the same transaction which is included in the present suit.

31. From para Nos. 17, 18 and 19 of the draft agreement exh.31 and from oral evidence of PW 1, it becomes clear that the parties to the suit had agreed that dispute between them related to the terms and conditions of exh.31 or dispute between them related to the terms and conditions of the transaction between them or agreement between them should be governed by Genova Court. Thus, it becomes clear that the parties to the suit have conferred the jurisdiction in respect of the agreement between them to Genova Court situated in France. Further, interesting fact is that the parties had agreed to decide the suit as per International Law. They had conferred the jurisdiction to Genova Court, France and further interesting fact is that plaintiff has filed Writ of Summons before the Commercial Court at Rennes, France. Thus, from the contents of exh.31 and from the conduct of the plaintiff itself, it becomes clear that the parties to the suit had conferred the jurisdiction to the Court from France and not to this Court.

32. It is admitted fact that disputed transaction is international commercial transaction. Therefore, it is but natural that the parties would have decided to get the dispute resolved in accordance with the International Laws. It is also admitted fact that draft agreement exh.31 was executed at Chambers of Commerce at Paris and the plaintiff has contended that as the defendant-company has its office at Pune, this court has jurisdiction to entertain this suit. **The interesting fact is that the plaintiff has included claim of this suit in the dispute which was filed by the plaintiff before Rennes Court, France by instituting Writ of Summons before the said Commercial Court. Thus, the plaintiff has filed dispute in relation to the transaction referred in this suit before Rennes Commercial Court, France. Under such circumstances, I find that merely because of the fact that the defendant-company has its office at Pune, this Court cannot have the jurisdiction to try,**

entertain and decide this suit.

33. The plaintiff already had filed dispute in relation to the transaction referred in this suit before Commercial Court at Rennes, France and it seems that after the said Court has refused to grant any relief in favour of the plaintiff, it is decided by the plaintiff cleverly to knock the doors of this Court. However, as the plaintiff himself has instituted Writ of Summons before Rennes Commercial Court, France, it becomes clear that the plaintiff knows that this Court has no jurisdiction to try and entertain this suit, in spite of it the plaintiff has filed this suit contending that the office of the defendant-company is situated at Pune and the defendant-company has its office at Pune, therefore, this Court has jurisdiction to try and entertain this suit. However, for all above reasons I am unable to accept the said contention raised by the plaintiff. Hence, I find that this Court has no jurisdiction to decide this Suit. Hence, I have recorded my finding against Issue No.4 in the Negative."

(emphasis supplied)

6. It is the appellant/plaintiff's contention that a specific defence was never raised by the respondent/defendant in the written statement in regard to any prior proceedings instituted by the appellant/plaintiff before the Court in France. It is contended on behalf of the appellant/plaintiff that for the first time, questions in such context were put to PW-1 in the cross-examination, which were answered in the manner as noted by us hereinabove. An attempt was also made by the appellant/plaintiff to place on record the judgment of the Court in France to contend that the cause of action for the suit in France was totally distinct from the cause of action being pursued in the suit in question, however, the same was not accepted by the learned trial Judge, which is clear from the observations contained in paragraph 25 of the impugned judgment.

7. Having heard the learned counsel for the parties and having perused the record, it appears to us that the learned Trial Judge ought to have granted an opportunity to the appellant/plaintiff to place on record and establish its defence, namely, that the proceedings before the Court in France had no relevance to the

suit in question, which, according to the appellant/plaintiff, was based clearly on the suit credit note.

8. Perusal of the impugned judgment clearly shows that the issue in this regard was raised by the respondent/defendant for the first time in the cross-examination of PW-1 when admittedly no specific defence in that regard was raised in the written statement. Had such a specific defence been raised in the written statement, in that event, the appellant/plaintiff would not only have a notice of such defence of the respondent/defendant but also have an opportunity to meet the same by leading appropriate evidence in that regard.

9. Thus, in the absence of such opportunity being available and/or being deprived to the appellant/plaintiff as also in such situation the uncertainty and lack of clarity on the record of the suit, the learned trial Judge could not have proceeded with the suit and adjudicate the issue of jurisdiction, merely on the basis of the material elicited in the cross-examination. It is in these circumstances that the findings recorded by the learned Trial Judge on the issues framed in the suit, as set out in paragraph 19 of the impugned judgment, arise for consideration in the present proceedings.

10. In the aforesaid circumstances, an Interim application has been filed by the appellant/plaintiff under Order XLI Rule 27 of the Code of the Civil Procedure, whereby a prayer is made to permit the production of the certified true copy (Apostille) of the order dated 29 December 2009 (in French) passed by the Rennes Court, along with its official translation (in English) and to permit the

same to be read in evidence. A further prayer has also been made to permit the production of the certified true copy (Apostille) of the legal notice (in French) issued by the advocate for the applicants in July 2009, along with its official translation (in English), and to permit the same to be read in evidence.

11. Learned counsel for the parties have made their respective submissions on the appeal and the Interim Application filed by the appellant/plaintiff. However, during the course of hearing, there was a consensus arrived at, between the parties, inasmuch as considering the nature of the adjudication as reflected in the impugned judgment and order dated 15 March 2022 passed by the District Judge-2, Pune, learned counsel for the parties are in agreement, that by consent, the impugned judgment and decree may be set aside and the proceedings remanded to the learned trial Judge for fresh adjudication of the suit at the stage it stood before the impugned judgment and order could be passed by the learned trial Judge. It is agreed that the appellant/plaintiff may avail of an opportunity to lead additional evidence, subject to the defence and rights and contentions of the respondent/defendant in that regard.

12. Having considered the record as well as the impugned judgment and order passed by the Court, we are of the clear view that the stand taken by the parties is fair. In the interest of justice, and having regard to the facts and circumstances of the case, a *de novo* adjudication of the suit would be the appropriate course of action, as fairly agreed by the parties.

13. In this view of the matter, and by consent of the parties, we set aside the impugned judgment and order dated 15 March 2022 passed by the learned

District Judge-2 Pune, in Special Civil Suit No. 73 of 2016 (Original Spl. C. S. No. 692/2012). The suit stands restored to the file of the learned District Judge-2, Pune, for fresh adjudication in accordance with law from the stage it stood before the passing of the impugned judgment and order. The fresh adjudication shall be undertaken on the basis of the pleadings and evidence already led by the parties, with liberty to the appellant/ plaintiff to lead additional evidence, which shall be subject to the rights and contentions of the respondent/defendant in that regard.

14. As the suit was instituted in the year 2012, we are of the opinion that the suit be adjudicated as expeditiously as possible and, in any event, within a period of six months from today.

15. The parties are directed to appear before the learned District Judge-2, Pune, at the first instance on 28 September 2026.

16. All contentions of the parties on the suit are expressly kept open.

17. The Appeal as also the Interim Application stand disposed of in the aforesaid terms. Costs to follow the cause.

(Dr. NEELA GOKHALE, J.)

(G. S. KULKARNI, J.)