IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4192 of 2015
and
M.P. No.1 of 2015

1.Multi Tech Test House
a partnership firm represented by
Managing Partner – Ram Babu
No.18, S.R.Complex
Opp. CCMB, Habsiguda
Hyderabad-500 007.

2.Ram Babu
Managing Partner
Multi Tech Test House .. Petitioners/Defendants

Vs.

Ranga Paints
No.174/40, Thiruvottriyur High road
Tondiarpet, Chennai-81. .. Respondent/Plaintiff

Prayer:- This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 08.09.2015 in I.A.No.12701 of 2015 in O.S.No.3621 of 2014 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

For Petitioners :Mr.C.Seethapathy
For Respondent :Mr.S.Chandrabose

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 08.09.2015 in I.A.No.12701 of 2015 in O.S.No.3621 of 2014 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

2.The respondent herein as a plaintiff filed a suit in O.S.No.4409 of 2013 for directing the defendants to issue Form 'C' as mentioned in the Central Sales Tax Act in respect of the goods sold and delivered to them under the plaintiff's invoices. The defendants/revision petitioners herein filed written statement and contesting the suit.

3.During pendency of the suit, the respondent/plaintiff has received recovery proceedings from the Sales Tax Department and issued notice to the defendants/revision petitioners herein. Since the respondent/plaintiff has not received 'C' Form, he was forced to pay that amount and subsequently, he has filed another suit in O.S.No.3621 of 2014 for directing the defendants to pay the plaintiff a sum of Rs.3,50,282/- with interest on Rs.3,16,997/- at

21% per annum from the date of the plaint till realisation. The defendants/revision petitioners herein filed written statement and contesting the suit.

4.During pendency of both the suits, the revision petitioners/defendants have come forward with an application in I.A.No.12701 of 2015 in O.S.No.3621 of 2014 under Section 10 C.P.C. to stay all further proceedings in the suit viz., O.S.No.3621 of 2014 pending final disposal of the earlier suit viz., O.S.No.4409 of 2013 stating that the alleged invoices forming subject matter of the two suits are one and the same and the cause of action for both the suits are one and the same.

5.When the matter was posted for trial, the respondent/plaintiff in both the suits filed an application in I.A.No.11295 of 2015 in O.S.No.4409 of 2013 for joint trial.

6.The trial Court, after hearing both sides, dismissed the application in I.A.No.12701 of 2015 and allowed I.A.No.11295 of 2015 and ordered joint trial of O.S.Nos.4409 of 2013 and 3621 of 2014. Against the dismissal order passed in I.A.No.12701 of 2015, the present revision has been preferred by the defendants.

7.Learned counsel for the revision petitioners/defendants submits that the first suit in O.S.No.4409 of 2013 is filed for mandatory injunction directing the defendants to issue Form 'C'. If that suit is decreed, the plaintiff/respondent is entitled to Form 'C' and he can submit the same before the Sales Tax Department and can take back the amount, which has already been paid by him. But the second suit in O.S.No.3621 of 2014 is filed for recovery of amount. If this suit is decreed, he cannot obtain the decree by unjust enrichment. This factum has not been considered by the trial Court. He further submits that the issue involved in the earlier suit viz., O.S.No.4409 of 2013 is comprehensive in nature and till it attains finality, the proceedings in the second suit viz., O.S.No.3621 of 2014 should be stayed. For this reason, he has relied upon paragraphs 8 to 10 of the decision of this Court in 1992 (7) Civil CC (Madras) in (Application No.1192 of 1992 in C.S.No.539 of 1989, dated 20.04.1992) and prayed for allowing the revision petition.

8.Resisting the same, learned counsel for the respondent/plaintiff submits that the transaction is one and the same and the parties in both the suits are one and the same. Since it is an inter State transaction, the respondent/plaintiff is entitled to 'C' Form, so he was forced to file a suit for mandatory injunction. During pendency of the suit, the Sales Tax Department issued recovery proceedings. Therefore, the respondent/plaintiff was forced to pay the amount due to the Sales Tax Department because of non furnishing 'C' Form by the revision petitioners. He relied upon the decision reported in AIR 1960 Allahabad 184 (P.P.Gupta v. East Asiatic Co. Bombay) and submits that Section 10 C.P.C. do not apply to the simultaneous hearing of a later and an earlier suit, after consolidation of the two, if the matter in issue in both is directly and substantially the same. Therefore, he prayed for dismissal of the revision.

9.Considered the rival submissions made on both sides and perused the materials available on record.

10.The business transaction between both the parties are admitted one. It is also an admitted fact that 'C' Form was not issued by the revision petitioners to the respondent/plaintiff, due to which, the respondent/plaintiff is not entitled to get the tax benefit, so he has filed the suit for mandatory injunction for directing the revision petitioners/defendants to issue 'C' Form. During pendency of that suit, the Sales Tax Department has issued recovery proceedings and because of non filing of 'C' form, after issuing notice, he has paid the amount due to the Sales Tax Department. Therefore, the respondent/plaintiff was forced to file the suit for recovery of money already paid by him to the Sales Tax Department. It shows that transaction and invoices relating to both the suits are one and the same.

11.Now it is appropriate to extract Section 10 of C.P.C., which runs as follows:

> "**10. Stay of suit**— No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.
>
> Explanation—The pendency of a suit in a

> foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

12.At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the respondent/plaintiff reported in ***AIR 1960 Allahabad 184 (P.P.Gupta v. East Asiatic Co. Bombay)***, in para-19, 20, 25 and 26, it was held that Section 10 C.P.C. do not apply to the simultaneous hearing of a later and an earlier suit, after consolidation of the two, if the matter in issue in both is directly and substantially the same. Section 10 C.P.C. was not intended to take away the inherent power of the Court to consolidate in the interests of justice in appropriate cases different suits between the same parties in which matter in issue is substantially the same.

13.Learned counsel for the revision petitioners/defendants relied upon the decision of this Court in ***1992 (7) Civil CC (Madras) in (Application No.1192 of 1992 in C.S.No.539 of 1989, dated 20.04.1992)***. But the facts of the case on hand is entirely different from the facts of the above case.

14.Considering the aforestated circumstances of the case along with the above decision, in the case on hand, the parties in both the suits are one and the same and transaction in both the suits are one and the same. One suit is for issuance of 'C' Form and another suit is for recovery of money paid by him to the Sales Tax Department. Therefore, the trial Court has ordered joint trial of both the suits. Under such circumstances, I am of the view, there is no need to stay the subsequent suit in O.S.No.3621 of 2014. The trial Court has rightly dismissed the application filed under Section 10 C.P.C. and ordered for joint trial, since issues involved in both the suits are one and the same. So the trial Court has considered all the aspects in proper perspective manner and came to the correct conclusion, therefore the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed. The trial Court, uninfluenced by any of the observations made by this Court in this order, shall dispose of the suits on merits.

15.In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.11.2015

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Index:Yes/No
Internet:Yes/No

To

XI Assistant Judge, City Civil Court, Chennai.

R.MALA,J.

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