

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27 / 06 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.915 OF 2010

V.F.John Yesudhas

.. Plaintiff

Versus

1.B.Uttam Chand

2.Mahaveer Communications (P) Ltd.,
Represented by its Director Mr.B.Uttam Chand
No.76/5, T.R.B. Complex, 1st Avenue,
Ashok Nagar, Chennai - 600 083.
and also at
No.116, Lakshmanan Swamy Salai,
K.K.Nagar, Chennai - 600 078.

3.Mahaveer Communications
Represented by Mr.B.Uttam Chand
No.116, Lakshmanan Swamy Salai,
K.K.Nagar, Chennai - 600 078.

4.M/s.Hellocell Infratel Pvt. Ltd.,
No.116, Lakshmanan Swamy Salai,
K.K.Nagar,
Chennai - 600 078.

5.C.J. Marketing Pvt. Ltd.,
No.116, Lakshmanan Swamy Salai,
K.K.Nagar,
Chennai - 600 078.

.. Defendants

PRAYER: Plaintiff filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendants.

a) Declaration that the plaintiff is not due and owing to the defendants, their companies and concerns in whatever name and composition they may be styled, any sum under the transactions between the plaintiff and the defendants, except the sum of Rs.11,00,000/- (Rupees Eleven Lakhs only) agreed to be paid as goodwill;

b) To render true and faithful account of all transactions between the plaintiff and the defendants in respect of supply of mobile phones to WAVETEL, the plaintiffs erstwhile enterprise and concurrently to furnish all sums received from the plaintiff;

c) A mandatory injunction directing the defendants to surrender all cheques and pro-notes obtained from the plaintiff and Wave Communications (P) Ltd., into this Court for destruction.

d) For costs of this suit.

For Plaintiff : Mr.Perumbulavil Radhakrishnan

J U D G M E N T

The suit is filed for declaration that the plaintiff is not due and owing to the defendants, their companies and concerns in whatever name and composition they may be styled, any sum under the transactions between the plaintiff and the defendants, except the sum of Rs.11,00,000/- (Rupees Eleven Lakhs only) agreed to be paid as goodwill and to render true and faithful account of all transactions between the plaintiff and the defendants in respect of supply

of mobile phones to WAVETEL, the plaintiff's erstwhile enterprise and for a mandatory injunction directing the defendants to surrender all cheques and promissory notes obtained from the plaintiff and Wave Communications (P) Ltd.

2. The plaintiff was a Proprietary concern in January 2003, named as Wave Communication, engaged in competitive retail sale of Mobile phones of various manufacturers under the name and style of "WAVETEL". The plaintiff was managing the affairs of the concern and was pioneer in the retail mobile business in Chennai with 21 outlets in Tamil Nadu. The plaintiff had also developed his business and gained enormous goodwill. The plaintiff would place orders with the manufacturers of various mobile phones for the supply of defined models and the suppliers would direct the plaintiff to receive them from the distributors such as the defendants and other concerns.

3. The first defendant was running several concerns in various names, like M/s. Mahaveer Communications (P) Ltd., M/s. Mahaveer Communications, M/s. Hellocell Infratel Pvt. Ltd., M/s. C.J. Marketing Pvt. Ltd., who are shown as defendants 2 to 5 in the suit.

4. The plaintiff was carrying on business with the above concerns by

placing purchase orders and getting the goods delivered and the payments were made at the end of the week or against post dated cheques or even pro-notes. As the plaintiff decided to enter into the manufacturing industry, as the retail business was very competitive, decided to raise the capital for the new business by selling the WAVETEL brand and its businesses in Tamil Nadu. One Mr.L.Subhash Chandra, Director of Sangeetha Mobiles (P) Ltd., a chain of popular mobile retail stores in Andhra Pradesh and Karnataka offered to purchase the plaintiff's business for valuable consideration. The plaintiff also handed over all the retail stores with goodwill, accounts, furnitures, fixtures and fittings etc., to the said Sangeetha Mobiles (P) Ltd., with the stocks available in the stores. Thereafter, the said L.Subhash Chandra was running the stores under the name and style of WAVETEL for a short time and then changed the name and style as "Sangeetha Mobiles". Much of the stocks of the defendants that were in the stores of the plaintiff at the time of take over were returned as stock transfer to the defendants and the stocks were transferred to the said Sangeetha Mobiles for retail sale.

5.For the completion of the transaction there were two conditions that have to be complied with, namely, the plaintiff to draw the consideration maintained in escrow by the purchaser, firstly, by publication within seven days

of execution of the agreement and in the event of any claim, the same can be made within sixty days from the date of such publication. The second condition was that the plaintiff had to obtain “No due certificates” from the secured and unsecured business creditors to satisfy the due diligence procedure prescribed. Accordingly, the plaintiff also effected publication in Dinamalar on 31.03.2010.

6.The matters were thus conciliated upon and all such claims were resolved and closed by obtaining such “No due certificates” from the respective parties. The plaintiff states that one such party was the defendant and his concerns represented by the first defendant himself. In the process of reconciliation of accounts between the plaintiff and the defendants, it was found that a sum of Rs.45,00,000/- was outstanding to the defendants. Accordingly, the plaintiff issued instructions to the Escrow Agent to release the said sum to the account of the first defendant. It is also stated that the said sum was transferred by a Banker's Cheque dated 25.02.2010 drawn on Deutsche Bank favouring the first defendant. Thereafter, it is stated that the first defendant also issued “No due certificate” to the plaintiff on 27.02.2010. On completion of the said transaction, the said Sangeetha Mobiles Private Limited entered into the asset purchase agreement.

7.The first defendant on coming to know the completion of the transaction between the plaintiff and Sangeetha Mobiles Private Limited, raised certain issues relating to the accounting on 21.08.2010. The defendant also made a demand of an astronomical figure. The first defendant also had sent an e-mail on 24.08.2010 to the plaintiff, which was a skeletal account of the debits and credits, without any reference to the accounts sent by the plaintiff. The plaintiff also sent a reply stating that the accounts were incorrect and considering the fact that there were no dues, the plaintiff was willing to resolve all issues on payment of a sum of Rs.11,00,000/- only. However, the defendant again made a demand of Rs.1,10,00,000/- (Rupees One Crore and Ten Lakhs Only) and there were exchange of e-mails. As the defendants were attempting to gain unjust enrichment, the plaintiff has come up with the above suit.

8.The first defendant represents the defendants 2 to 5. Despite service of notice on all the defendants, there is no representation for them and they were set ex-parte.

9.The only question that has to be decided in the suit is whether the plaintiff is entitled to the relief as prayed for.

10.The plaintiff examined himself as P.W.1 and marked the following documents as Exs.P1 to P8 as documentary evidence, in order to prove the suit claim:-

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	Copy of the accounts	2009 & 2010
2	P-2	Xerox copy of the asset purchase agreement	03.02.2010
3	P-3	Xerox copy of the escrow agreement	04.02.2010
4	P-4	Final settlement and discharge receipt	-
5	P-5	Acknowledgment of the second defendant	25.02.2010
6	P-6	Xerox copy of public notice published in Dinamalar	31.03.2010
7	P-7	Copy of e-mail sent by the plaintiff to the defendants	16.08.2010
8	P-8	Copy of e-mail sent by the second defendant to the plaintiff	14.10.2010

11.Ex.P2 is the xerox copy of the asset purchase agreement and Ex.P3 is the xerox copy of the escrow agreement. In Ex.P4, which is a “no due certificate”, the first defendant has signed on behalf of the second defendant as a Director. The said final settlement and discharge receipt acknowledges receipt of Rs.45,00,000/-. The said amount was paid through Cheque No.150452 dated 25.02.2010 drawn on Deutsche Bank. The letter in Ex.P4 further reads as follows:

“The above mentioned amounts are paid in FULL

AND FINAL SETTLEMENT upto 01st Jan '2010 due from Wave Communications. We hereby declare that we have returned all the business transaction documents / Post dated cheques in lieu of the discharge of the said business transaction and we undertake that we have no other claim against either the said company (or) against its Proprietor Mr.V.F.John Yesudhas on any account / transactions as the entire accounts with us are fully and finally settled and discharged up to 01-01-2010. If any pronote / agreement / cheques / blank paper left and found later, the same becomes invalid.”

12.It is evident from the reading of Ex.P4, wherein it has been categorically signed and given under the seal of the second defendant that the entire outstanding amount has been finally settled by the plaintiff. The said receipt also specifically states that if any pro-note / agreement / cheques / blank paper left and found later, the same becomes invalid.

13.The above statement also categorically conveys that the entire dues from the plaintiff has been settled towards the defendants. The plaintiff has also marked Ex.P6, which is the public notice issued in Tamil Daily

“Dinamalar” dated 31.03.2010. As per the said public notice, the plaintiff had called upon any of the creditors having claim over the plaintiff to make the claim within sixty days from the date of the notice. Even after the said publication on 31.03.2010, no claim was raised by the defendants. However, a false demand under Ex.P8 was sent to the plaintiff by the defendants making a claim of Rs.1,10,75,197/-. When the defendants have already issued “no due certificate” as per Exs.P3 and P4, the demand under Ex.P8 is unsustainable and without any basis. As the demand of the defendants is unsustainable, the plaintiff has filed the above suit.

14.Even after the receipt of the summons in the suit, no action has been taken by the defendants either to defend the suit or file an independent claim to recover the amount from the plaintiff. Even assuming for a moment that there was a due from the plaintiff to the defendants as claimed in Ex.P8, the same would be barred by limitation, if no action is taken till today.

15.From the above facts, it is clear and evident that the claim of the defendants is not supported by any document. If at all the defendants had any claim, without getting them cleared, they could not have issued the “no due certificate”. Therefore, the claim of the defendants under Ex.P8 is baseless.

16.As discussed earlier, Ex.P4 specifically admits that there were several documents signed by the plaintiff, both filled up and blank papers, which are in possession of the defendants, which would lead to misuse of the same, if the defendants are not injuncted from doing so. As the balance of convenience is in favour of the plaintiff, the plaintiff would be entitled for a decree as prayed for.

17.In the result, the suit is decreed as prayed for by the plaintiff.

No costs.

27 / 06 / 2016

Index : Yes/No
Internet : Yes/No
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LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 - Mr.V.F.John Yesudhas

LIST OF EXHIBITS MARKED ON THE SIDE OF THE PLAINTIFF

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LIST OF EXHIBITS MARKED ON THE SIDE OF THE DEFENDANTS - NIL

PUSHPA SATHYANARAYANA, J.

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