

HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.436 OF 2016

Dated 19-8-2016

Between:

M/s.Indian School of Business, a company incorporated under the Companies Act, 1956 having its registered office at ISB Campus, Gachibowli, Hyderabad-500 033 represented by its Authorised Signatory Prof.Sridhar Seshadri.

..Appellant.

And:

M/s.Akshaya Marketing (India) Private Limited a company incorporated under the Companies Act, 1956 having its registered office at 1-2-269, 101, 1st Floor, Maruti Estate, S.D.Road Secunderabad-500 003 represented by its CEO and former Managing Director, Mr.P.Anil Kumar and others.

..Respondents.



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JUDGMENT:

This appeal is preferred against order dated 23-5-2016 in I.A.No.457 of 2016 in O.S.No.48 of 2016 on the file of Vacation Civil Judge, Hyderabad.

Appellant herein is first defendant and 1st respondent herein is plaintiff and respondents 2 to 4 are defendants 2 to 4 in the above referred suit.

Parties are herein after referred to as plaintiff and defendants for the sake of convenience.

Plaintiff filed above referred suit for declaration that letter of termination by E-Mail dated 1-4-2016 as illegal, void, abenitio, null and void and not binding upon the plaintiff as long as letter of indent dated 13-4-2013 is in force together with Request for Proposal (herein after referred to as 'RFP' for convenience) till 14-4-2018. In the suit, plaintiff filed the above I.A.seeking temporary injunction restraining defendants or anybody claiming through them from causing interference with day to day conduct of plaintiff and its service within the premises of first defendant.

Brief facts that are necessary and relevant for the purpose of this appeal are as follows:

Defendants issued 'RFP' for printing and documentation services to be provided for its campus situated at Gachibowli, Hyderabad. Plaintiff offered for providing its service and based on

the representations and negotiations and discussions between the parties, first defendant agreed to engage the services of plaintiff in its campus at Hyderabad and accordingly, D.1 issued a letter of intent dated 13-4-2013 for printing and documentation services. According to defendants, the contract period is only for three years and the period is commenced from 15th April, 2013 and it expired on 14th April, 2016. According to the plaintiff, this period of three years is with a condition of extension of another two years as per conditions of RFP and that he installed about 40 high end photo carrying multi function device machines and deployed 15 persons employed to the said work and the services rendered by plaintiff are to the utmost satisfaction of one and all in the establishment of first defendant and there was no dissatisfaction with regard to services rendered by plaintiff. According to plaintiff, the defendants have assured plaintiff that the contract will be in force upto 14-4-2018 and fresh agreement was entered into on 5-8-2015 and the plaintiff has assured that defendants would execute similar agreement every year but contrary to that the defendants have addressed E-Mail dated 1-4-2016 asking plaintiff to remove machinery and therefore, plaintiff is constrained to file this suit.

No documents are marked on behalf of both parties and Vacation Civil Judge on a consideration of submissions of both sides allowed interim injunction application and restrained the defendants from interfering with day to day conduct of plaintiff services within the premises of first defendant pending disposal of the suit.

Heard both sides.

Both side advocates argued the matter at length touching merits and demerits of the case.

Both sides referred to many documents in support of their respective contentions.

Now the point that would arise for my consideration in this appeal is whether the order of the Court below is proper, legal and correct?

POINT:

Plaintiff filed the suit seeking declaration that E-mail letter dated 1-4-2016 is illegal, void, abenitio and not binding upon the plaintiff as long as letter of intent dated 13-4-2013 is in force. Plaintiff also claimed consequential injunction, firstly not to determine the contract to any other person, secondly to restrain the defendants from interfering with the services rendered by the plaintiff.

According to plaintiff, the suit document is letter dated 1-4-2016. Defendants raised several objections in their counter touching maintainability of the suit in view of the Arbitration Clause, principle of resjudicata, territorial jurisdiction of the court where the suit is filed in view of specific agreement between the parties besides contending that plaintiff came to court with unclean hands, failed to make out prima facie case, balance of convenience and irreparable loss. They also contended that the relief of injunction claimed are contra to the provisions of Specific Relief Act and disputed some

letters relied on by plaintiff as forged one. Defendants also contended that the agreed period of contract is only three years and R.F.P. specifically stipulates contract period and in view of that earlier proposal and offer will have no bearing. They also contended that parties have entered into an agreement on 5-8-2015 specifically stipulating the commencement of period and completion of contract period providing Arbitration Clause, by superseding of prior offers, agreements, statements, E-mails, letters or representations written or oral between the parties.

The learned Vacation Civil Judge, without examining and discussing all these aspects recorded a finding that the contract period is five years relying on the proposals and the correspondence prior to execution of RFP and agreement dated 5-8-2015 and granted temporary injunction. When the parties have referred to certain documents and the clauses therein, it is incumbent on the trial court to examine them and decide the prima facie case on the basis of such documents. Here, admittedly, the court below has not even marked any documents and granted temporary injunction only on the basis of submissions without looking into the correctness of those submissions with reference to the documents relied on by both parties. Though both parties advanced arguments before this court, referring to recitals of those documents, I feel it is not appropriate to consider those documents at appellate stage when they were not at all marked by the trial court.

On a consideration of material, I am of the considered view that it is a fit case where the impugned order dated 23-5-2016 is liable to be set aside and the matter has to be remitted back to the trial court for fresh consideration to decide the same with reference to the contentions and rival contentions of both parties by marking documents relied on by both parties. Though advocate for plaintiff contended that the impugned order has to be continued till the disposal of the application, I am not inclined to accept such request as impugned order is not based on prima facie material and it is based on presumptions and surmises.

For these reasons, the impugned order dated 23-5-2016 is set aside and the matter is remitted back to trial court for disposal in accordance with law and the trial court shall decide the matter within a period of 30 days from the date of receipt of copy of this order.

This appeal is allowed accordingly. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 19-8-2016.

Dvs.

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