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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : February 24, 2016*

+ **FAO(OS) 153/2015**

CITY PALACE ELECTRONICS (P) LTD Appellant

Represented by: Ms.Richa Kapoor, Advocate with
Ms.Mallika Parmar, Advocate

versus

M/S SONY INDIA (P) LTD Respondent

Represented by: Mr.Rahul Malhotra, Advocate with
Ms.Kriti Chopra, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. *Sun Tzu* said : *Strategy without tactics is the slowest route to victory. Tactics without strategy is the noise before defeat.* The facts which we notice hereinafter are a reminder that in Courts, tactics without strategy is the noise to confuse the Court and it is useless to create a noise because nobody pays a dime to hear noise. It is melodious signing which fetches an earning.

2. City Palace Electronics Pvt. Ltd. (hereinafter referred to as City Palace) is the defendant. M/s.Sony India Pvt. Ltd. (hereinafter referred to as the Sony) is the plaintiff.

3. Sony instituted a suit for recovery of ₹31,09,100/- (Rupees Thirty One Lacs Nine Thousand and One Hundred only) against City Palace invoking

the summary jurisdiction under Order 37 of the Code of Civil Procedure, 1908. Sony pleaded that it was marketing electronic goods under the brand name 'SONY' and 'AIWA'. It pleaded that City Palace was appointed as its authorized dealer, albeit without a formal dealership agreement executed. On purchase orders placed by City Palace, raising invoices, goods were supplied by Sony to City Palace and suit amount was liable to be paid as outstanding payment. Cheque No.608977 dated October 14, 2004 issued by City Palace in the name of Sony in sum of ₹27,75,092/- (Rupees Twenty Seven Lacs Seventy Five Thousand and Ninety Two only) was dishonoured. This was towards SONY Brand Products sold. ₹3,34,011/- (Rupees Three Lacs Thirty Four Thousand and Eleven only) was payable for AIWA Brand Products.

4. Along with the plaint IA No.8214/2004 was filed by Sony under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, with a prayer that Sony be restrained from selling SONY and AIWA branded products from its outlet at 19, Vikas Marg, Laxmi Nagar, Delhi and J-54, Sector-18, Noida, UP, in paragraph 2 whereof it was pleaded :-

“It is stated that SONY and AIWA branded products of the plaintiff company which are lying at the defendant No.1 shop/establishment legally belong to the plaintiff company.”

5. Another application registered as IA No.8215/2004 was filed by Sony under Order 26 Rule 9 of the Code of Civil Procedure, 1908 in which prayer made was to appoint a local commissioner to visit the shops at addresses aforementioned in paragraph 4 above and make an inventory of the goods lying in the shops, in para 2 whereof identical pleadings were made as in IA

No.8214/2004.

6. On the first date of hearing in the suit which was December 07, 2004, summons were served upon City Palace as per the provisions of Order 37 of the Code of Civil Procedure, 1908. A local commissioner was appointed, who visited the shops of City Palace and prepared an inventory of SONY and AIWA branded goods.

7. A meaningful reading of the plaint and the documents filed therewith; and it being settled law that a vague pleading in a plaint can be given meaning with reference to documents relied upon, would show that City Palace and Sony were having dealings on principal to principal basis. City Palace was not entrusted with any goods by Sony as an agent. The invoices raised on City Palace included not only the price of the goods but even taxes payable.

8. To mitigate the amount payable to Sony, City Palace filed IA No.4161/2005 praying that Sony should be directed to take possession of its goods as per inventory prepared by the local commissioner. On May 24, 2015 the stand of Sony was noted that goods sold were on principal to principal basis and taxes had been paid by Sony and thus the transaction of sale could not be reversed.

9. Now, we fail to understand as to why did Sony adopted a tactic, without any strategy, by asking for appointment of a local commissioner and seeking a restraint order against City Palace from selling SONY and AIWA branded products by pleading falsely that *SONY and AIWA branded products of the plaintiff company which are lying at the defendant No.1 shop/establishment legally belong to the plaintiff company.*

10. The noise continued. Leave to defend was granted to City Palace.

Issues were settled as late as on August 11, 2014.

11. IA No.4161/2005 continued to languish in the file of CS (OS) No.1394/2004. It was disposed of vide order dated February 06, 2015 as under:-

“I.A. 4161/2005 (under Section 151 CPC)

This application seeks a direction to the plaintiff or the Local Commissioner for taking into custody all such goods sold by the plaintiff to the defendant, the inventory of which has already been made by the Local Commissioner, the disposal of the present suit.

This application was filed on 18.05.2005. On the first date, when the case was taken up, it was clearly recorded that the plaintiff would not reverse the transactions between the parties because of implementation of VAT. Hence, the goods could not be taken back which has already been sold to the defendant on principal to principal basis. It was subsequently stated on behalf of the plaintiff that all back up facilities by way of warranties and services could be provided in respect of the goods which are to be sold by the defendant. The learned counsel for the applicant/defendant submits that the goods could not be sold because the defendant's status as an authorised dealer of the plaintiff had been discontinued by the plaintiff, and such discontinuance would affect the sale of the goods. The matter has been pending for a decade. Although, time was sought on 29.11.2011 to file a reply, the learned counsel for the plaintiff now submits that he does not wish to file a reply to the application and the same may be disposed off on merits.

Insofar as the plaintiff had assured the Court and the defendant that warranties and services would be provided in respect of the goods to be sold by the defendant, it was

always open to the latter to sell the goods in the normal course of business. Even if the status of an authorised dealer was taken away by the plaintiff, it did not prevent the defendant from selling the goods as a legitimate seller of the goods, i.e., as a retailer.

Once the goods have been sold to the defendant, there can be no occasion of the same being cancelled or reverted without the consent of the plaintiff. The occasion for directing the Local Commissioner or the plaintiff, as prayed for would not arise. There is no merit in the application and is accordingly dismissed.

At this stage, Mr. Gupta, the learned counsel for the defendants seeks a direction for selling the goods and also for an extension of warranty of such goods. He seeks two months' time to sell the goods and six months warranty on the goods.

The learned counsel for the plaintiff states, upon instructions, that warranty shall be made available on the goods to be sold by the defendant to the maximum extent possible from the date of sale but all such sale should be effected by 15th April, 2015.

Accordingly only for the goods sold by the defendant till 15th April, 2015, as the outer limit, the plaintiff shall provide warranty to the maximum extent possible, as the goods were manufactured quite some time ago, for a period of six months apropos them. No warranties would be available for the goods sold by the defendants after 15th April, 2015. This order is without prejudice to the respective rights of the parties."

12. City Palace is aggrieved by IA No.4161/2005 being dismissed and the contention urged is that Sony admitted in its pleadings in IA No.8214/2004 and IA No.8215/2004 that it is the legal owner of the goods and thus it is

urged that Sony is obliged to take back the goods and the price thereof to be adjusted from the claim of Sony.

13. Learned counsel for Sony says that pleadings in the two interim applications by Sony are contrary to the stand of Sony. As per him the goods were sold on principal to principal basis. When questioned why did Sony trouble the Court by asking for a commission to be executed to prepare an inventory of the goods, learned counsel for Sony expresses regret for wasting time of the Court. When asked why did Sony seek an interim injunction to restrain City Palace from selling the goods, when as per Sony it had no title to the goods which had passed on to City Palace, learned counsel for Sony expresses regrets.

14. It is obviously a case of tactics without strategy deployed by Sony. On the one hand, on the strength of title to the goods, Sony got a local commissioner appointed, but when City Palace turned back and said : Take back your goods. Sony replied : Oh! Sorry. These are not my goods.

15. Useless and frivolous pleadings, vacillating stands and perhaps, as in the instant case, mutually contradictory, are being adopted by some parties and we must blame their lawyer for the ill-advise given. The aim is to somehow or the other obtain an order. These random applications are filed to take advantage of time constraint in Courts, hoping that something may stick.

16. Such tactics have to be depreciated and heavy cost imposed, with money to flow to the coffers of the State or any other cause of justice. We shall be passing suitable directions against Sony in this regard.

17. As regards the merits, there is no infirmity in the view taken by the learned Single Judge that the goods cannot be returned because the sale is on

principal to principal basis.

18. However, the directions in the last three paragraphs of the order dated February 06, 2015, need to be set aside because they have introduced something by way of an interim order which is wholly outside the scope of the suit. As noted above, the suit filed by Sony against City Palace is for recovery of a sum certain. The basis of the suit is price payable for goods sold by Sony to City Palace. There is no counter claim by City Palace. The suit does not embrace mutual relationship between Sony and City Palace concerning Sony's obligations within the warranty period when the goods are sold in the market, nor does the suit embrace an issue of there being an expiry date for the goods or warranties restricted to a particular point of time. Thus, the question of City Palace seeking and the Court granting two months' time to sell the goods, with Sony standing guarantee for the warranty period and not beyond, is wholly outside the suit and thus, a question not embracing in the suit was not to be answered for purposes of interim orders.

19. The last three paragraphs of the impugned order are set aside. If City Palace has any issue of Sony not abiding by its obligations for the warranty period of the goods, it would be free to raise the issue in an appropriate proceeding.

20. Remembering that we had to impose cost upon Sony for wasting time of the Court by pleading incorrect legal stand in IA No.8214/2004 and IA No.8215/2004, which has resulted in the impugned order being passed, albeit in IA No.4161/2005 filed by City Palace, for the reason if Sony was not to take back the goods it had no business to waste judicial time in seeking appointment of a local commissioner and having the goods

inventorized. It obtained an order for local commissioner to be appointed on the plea that title in the goods was its. A plea in the interim application which was contrary to the invoices. The plaint was innocently drafted by not disclosing that the goods were sold on principal to principal basis.

21. The impugned order is a result of said noise created by Sony and for which we impose cost on Sony in sum of ₹25,000/- (Rupees Twenty Five Thousand only), to be paid to the Delhi High Court Legal Services Committee within six weeks from today. As regards the appeal, we dispose it of quashing the last three paragraphs of the impugned order, which shall rest with the immediately preceded para wherein the learned Single Judge has held : *‘There is no merit in the application and is accordingly dismissed’*.

22. Copy of this order shall be sent to the Secretary of the Delhi High Court Legal Service Committee for his knowledge and to take steps that the cost imposed upon Sony is realized.

CM No.5895/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 24, 2016
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