IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7846 of 2016 (O&M)
Date of Order: 31.10.2017

Nestle India Limited

..Petitioner

Versus

Rana Ravinder Singh Behal **..Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumeet Mahajan, Sr. Advocate, with
Mr. Rohit Khanna, Advocate and
Mr. Saurabh Gautam, Advocate,
for the petitioner.

Mr. S.P.S.Aulakh, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

Defendant-petitioner is in revision petition against the order dismissing application filed under Order 7 Rule 10 & 11 read with Section 151 CPC for rejection and return of the plaint.

Plaintiff had filed a suit with the following reliefs:-

> *"Suit for Declaration that the said Termination Notice dated 29.11.2013 received by the plaintiff on 03.12.2013 as well as Termination/Cancellation of the distributorship of the plaintiff regarding Nestle India Ltd. Products, is illegal, null, void, ineffective, inoperative, arbitrary, malafide and is liable to be set aside.*
>
> *AND*
>
> *For the grant of permanent injunction restraining the*

defendant himself through agents or servants from appointing any other person as distributor of Nestle India Ltd., regarding area concerned under Khanna and further restraining the defendant from interfering or cause to interfere in the distributorship of the plaintiff and to do all other acts and deeds in respect to the distributorship and further restraining the defendant from stopping the supply of the Nestle India Ltd. products to the plaintiff.

AND

For Rendition of accounts between the plaintiff and the defendant, and for recovery of amount as adjudged by this Hon'ble Court on account of damages suffered by the plaintiff."

Plaintiff has made following assertions in the plaint:-

"4. *That the plaintiff with their hard labour developed the area, appointed re-distributors and cash distributors, appointed two salesmen, one Stingman, Tempo Driver and started SDS System and spent lacs of rupees, though the SDS System is of the company but the entire expenses are borne by the plaintiff and the same is used by the company but the plaintiff had been paying the expenses of the operator, though it was to be paid by the defendant. The company supplied material to plaintiff on cash but the plaintiff is to sell the material on credit basis further to the redistributes and the company used* *to supply the material in bulk against the norms and due to excess supply as well as over load the material got damaged. The sales tax was increased by the Govt. from 8.5% to 12% and the difference was agreed to be paid by the defendant but the same has not been paid so far and then it was increased from 12% to 14.30% which has also not been paid/credited to the plaintiff by the defendant company but even then the plaintiff purchased material from the defendant more than the target fixed by the company on order to boost the business of the company but even then the employes of the company started pressurizing the plaintiff to purchase more material because they got incentive from the company and in case the plaintiff fails to purchase more material, his distributorship will be cancelled by them. The said threat was advanced by Sh. Rajneesh Mathen RSM, Sh. Vijay Shirkut ASM and Sh. Ishan Kalra SO of the company and apprised the plaintiff that in case the plaintiff will not purchase the material as per their wish, they will ruin the plaintiff and shall got cancelled the distributorship of the plaintiff. The plaintiff told them that the plaintiff has already purchased material more than the target fixed as per the norms and on refusal they succeeded in their illegal designs in getting cancelled the distributorship of the plaintiff intentionally and malafidely on vague grounds which is illegal, null,* *void, ineffective, inoperative, arbitrary, malafide and is liable to be set aside. It is pertinent to mention here that the defendant used to sell the material on less price in the market than supplied to the plaintiff. The defendant failed to life the damaged material and the fresh material lying with the plaintiff is going to be damaged because the plaintiff is debarred from selling the material which is worth of lacs of rupees.*

5. That the defendant has not settled the accounts with the plaintiff and has not paid the due amounts and has not lifted the material lying with the plaintiff and as such the plaintiff is entitled to rendition of accounts.

7. That the plaintiff have got a reputation in the area and with the malafide, intentional, unilateral act of cancellation of the distributorship agreement without any just and reasonable cause, the defendant defamed the plaintiff in the estimate of other including friends, business circle, general public at large and also in the eyes of society for which the plaintiff is entitled to damages also. The amount of damages/defamation runs into lacs which will be determined by the Hon'ble Court after evidence.

11. That lacs of rupees is outstanding of the plaintiff against the defendant which is yet to be determined by this Hon'ble Court and as such a fixed court fee of Rs.100/- is being paid on the value of rendition of

> *accounts and damages on account of defamation and the plaintiff undertakes to make good the deficiency of court fee as assessed by the Hon'ble Court and the court fee for the relief of declaration and permanent injunction is Rs.500/- each upon which a court fee of Rs.100/- is payable and as such a total court fee of Rs.200/- has been affixed on the plaint."*

Plaintiff filed an application under Order 7 Rule 10 & 11 read with Section 151 CPC stating that (i) the plaint does not disclose any cause of action; (ii) the suit is barred under Section 41 of the Specific Relief Act, 1963; (iii) the suit for rendition of accounts is not maintainable against the defendant as there was no relationship of employer and distributor i.e. fiduciary relationship; (iv) proper court fee has not been affixed. Learned Court after examining various aspects of the matter, dismissed the application.

Learned counsel for the petitioner has vehemently argued that the suit for declaration shall not be maintainable as per Section 41 of the Specific Relief Act as it was not a statutory contract. He submitted that the contract was between two private individuals/company and, therefore, the suit for declaration would not be maintainable. He has further submitted that the plaint does not disclose any cause of action against the defendant-petitioner. He has further submitted that in this case the plaintiff has claimed rendition of accounts, although the plaintiff has himself admitted that the entire purchase have been made by the plaintiff on cash. The plaintiff has not further disclosed as to what is the tentative amount which has to be recovered by the plaintiff and no Court fee has been affixed and, therefore, the suit is under value.

On the other hand, learned counsel for the respondent-plaintiff has submitted that the plaintiff has claimed various relief in the suit including relief of damages, declaration, injunction, rendition of accounts and recovery of the amount on account of damages by the plaintiff on various counts.

A reading of the plaint would show that the plaintiff had claimed that he has suffered damages on account of illegal termination of the distributorship. Plaintiff has further claimed recovery on account of increase in the rate of sales tax, which is agreed to be reimbursed by the defendant. Plaintiff has further asserted that he had spent large/ample amount of money on developing a system for increasing the sale of the products of the company.

Still further the plaintiff had also asserted that the account has not been settled and the material lying with the plaintiff has not been taken back. Plaintiff has further asserted that the amount is yet to be determined and the plaintiff is paying a fixed Court fee of Rs.100/- and the remaining amount shall be paid by the plaintiff as and when assessed by the Court.

Taking into consideration the aforesaid facts, the Court found that the plaint cannot be rejected at the threshold.

I have heard counsel for the parties and with their able assistance gone through the documents available in the paper book.

The contentions raised by the petitioner have already been dealt with by the learned trial Court. A bare look at the various prayers made in the suit, it is clear that the suit is not only for declaration but has prayed for permanent injunction, rendition of accounts and consequent recovery of the amount.

Still further, it is to be noticed that in paragraph 11 of the plaint, plaintiff has stated that amount is due against the defendant-petitioner. In paragraph 7 of the plaint, the plaintiff has claimed that the cancellation of the distributorship agreement is malafide, intentional and unilateral act and, therefore, liable to be set aside.

Taking into consideration the aforesaid facts, it cannot be said that the suit is not maintainable under Section 41 of the Specific Relief Act.

Plaintiff has already disclosed cause of action for filing suit in paragraph 8 of the plaint.

Hence, in the considered opinion of this Court, the plaint cannot be rejected outrightly. Defendant-petitioner would be entitled to take all defences as permissible under the law while filing its written statement.

For the reasons recorded hereinabove, this Court does not find any good ground to interfere with the order passed by the learned trial Court. The revision petition is dismissed.

October 31, 2017 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No