

\$~19.

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

+ CS(OS) No.969/2008

JANAK POSITIONING & SURVEYING
SYSTEMS PVT. LTD.

..... Plaintiff

Through: Mr. V.K. Malik and Mr. Rahul Raj
Malik, Advs.

versus

SOUTH PRECISION INSTRUMENT PVT.
LTD. & OTHERS

..... Defendants

Through: Mr. Vinay Rathi, Adv. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

11.01.2017

IA No.109/2015 (of the plaintiff for restoration of the suit dismissed in default on 17th January, 2012) & IA No.110/2015 (for condonation of 1055 days delay in applying therefor).

1. This order is in continuation of yesterday's order.
2. The counsel for the plaintiff states that his "clients are in deep financial crises and need further time".
3. I have enquired from the counsel for the plaintiff whether the plaintiff is agreeable to pay the court fees and wants time therefor or is seeking time to consider whether to pay the court fees or not.
4. The counsel for the plaintiff states that he "cannot say".
5. I have yet further enquired from the counsel for the plaintiff whether he has to make any legal submissions with respect to the issue/s recorded in yesterday's order.
6. The counsel for the plaintiff states that he does not have anything else to state.

7. I may also record that even if the plaintiff were to pay the court fees, the plaintiff would still not have any claim for damages. Opportunity has been given to the counsel for the plaintiff to address on the said aspect but he has not been able to make any arguments thereon.

8. The counsel for the plaintiff fairly states that he cannot claim damages without amending the plaint.

9. It is quite obvious that the entire suit is misconceived, was being flogged unnecessarily and even if the long delay of 1055 days in applying for restoration of this suit dismissed in default on 17th January, 2012 was to be condoned and the suit restored, it has to suffer the same fate, of dismissal.

10. In this view of the matter, rather than dismissing these applications for which no ground is found, it is deemed appropriate to allow these applications and to dismiss the suit on merits.

11. Accordingly the delay in applying for restoration is condoned and the suit is restored to its original position.

CS(OS) No.969/2008.

12. It is the case of the plaintiff (i) that the plaintiff had entered into an Agreement with the defendant no.1 M/s. South Surveying & Mapping Instrument Co. Ltd. incorporated under the laws of China, to distribute the goods of the defendant no.1 in India on exclusive non-transferable basis; (ii) this Agreement was initially for 24 months and the parties agreed that upon expiration, the Agreement shall automatically extend unless terminated by either of the parties by 90 days written notice to the other party; (iii) that the Agreement subsists and continues; (iv) that the relationship between the

plaintiff and the defendant no.1 is of vendor and vendee; (v) the plaintiff purchased goods from the defendant no.1 at its listed price and sold the said goods in the market, usually at a premium of 40% or above the price purchased by it; (vi) that the purchases effected by the plaintiff from the defendant no.1 w.e.f. 2002-03 went down during the year 2007-08 after the defendant no.1 started contacting the customers of the plaintiff and effecting sales to them directly; and, (vii) that the defendant no.1 has set-up defendants no.2 to 4 namely Guangdone Kolida Instrument Co. Ltd., Sanding Optic-Electric Instruments Co. Ltd. and Ruide Surveying Instruments Co. Ltd. as its nominee companies and all the defendants have started effecting the sales directly in India.

On the basis of the aforesaid pleas, the reliefs, as recorded in yesterday's order, of permanent injunction restraining the defendants from doing so and for rendition of accounts were claimed in the suit.

13. A perusal of the Agreement dated 28th June, 2002 between M/s. South Surveying & Mapping Instrument Co. Ltd. and the plaintiff, on which the suit is based, also shows the Agreement to be terminable.

14. The said M/s. South Surveying & Mapping Instrument Co. Ltd. though in the suit as originally filed was impleaded as defendant no.1 but has since, in the amended Memo of Parties filed by the plaintiff, been substituted with South Precision Instrument Pvt. Ltd. It is therefrom quite clear that the plaintiff itself is now not pursuing its suit against M/s. South Surveying & Mapping Instrument Co. Ltd.

15. I may in this regard also record that though the said M/s. South Surveying & Mapping Instrument Co. Ltd. as per the Agreement dated 28th June, 2002 was a company incorporated in accordance with the laws of China, from the amended Memo of Parties showing South Precision Instrument Pvt. Ltd. as defendant no.1, the same appears to be a company incorporated in India.

16. The counsel for the said defendant no.1 also states that the defendant no.1 South Precision Instrument Pvt. Ltd. is incorporated in India and has no privity with the plaintiff.

17. Therefrom also the fact that the entire proceedings are misconceived is apparent.

18. Be that as it may, the plaintiff having pleaded that the Agreement was terminable, under Section 14(1)(c) read with Section 41(e) of the Specific Relief Act, 1963 the relief of injunction is not maintainable. Though the counsel for the plaintiff has contended that no notice of termination was given, but the plaintiff, even if it be so, though could have claimed damages for the notice period but has not made any such claim. Reference in this regard can be made to (i) ***Kashyap's Vs. Bata India Ltd.*** 2013 (137) DRJ 39; (ii) ***Rajasthan Breweries Ltd. Vs. The Stroh Brewery Company*** AIR 2000 Delhi 450 (DB); and, (iii) ***MIC Electronics Ltd. Vs. Municipal Corporation of Delhi*** MANU/DE/0354/2011.

19. The plaintiff, on the pleadings, has not made out any case for the defendant no.1 as originally impleaded or now or any of the other defendants being liable to render accounts to the plaintiff. The plaintiff, has pleaded a vendor-vendee relationship with the defendant no.1 and a

terminable agreement. The plaintiff, even if the notice of termination of 90 days was not given, could only claim damages for said period and cannot claim accounts from the sales to others effected by defendant no.1 or other defendants. Once the relationship is pleaded to be of vendor and vendee as distinct from principal and agent, there can be no right of the plaintiff to accounts from the defendants. Supreme Court in ***KC Skaria Vs. Government of State of Kerala*** (2006) 2 SCC 285 has held that the right to claim rendition of accounts is an unusual form of relief granted only in certain special cases and when the relationship between the parties is such that rendition of account is the only relief which will enable the plaintiff to satisfactorily assert his legal right. It was held that such a right can either be (a) created or recognized under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. It was further held that such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, as that will open the floodgates for converting several types of money claims into suits for accounts, to avoid payment of court fee at the time of institution.

20. The suit claim is thus found to be barred by law and the plaint not found to be disclosing a cause of action.

21. The suit is dismissed.

22. If the plaintiff indulges in any further misconceived action, the plaintiff in that eventuality shall also as a pre-condition therefor pay costs of Rs.25,000/- to the defendant no.1 of this proceeding.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JANUARY 11, 2017
'pp' ..