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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO.15665 OF 2017
WITH
CIVIL APPLICATION (ST) NO.15770 OF 2017
WITH
CIVIL APPLICATION (ST) NO.35159 OF 2017

Antrix Hygeine Ltd. .... Appellant
V/s.
Ecolab Exports GambH
and two others .... Respondents

Mr. Zal Andhyarujina, a/w Ms. Akanksha Agarwal , Ms. Sonali Kochar, for the Appellant

Mr. P.K. Dhakephalkar, Senior Advocate a/w Mr. Shailesh Shukla, Mr. Yohaan Limathwalla, i/by M/s J. Sagar Associates, for respondent Nos. 1 to 3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and learned Senior Counsel for the respondents.

2] This Appeal is directed against the order dated 20th April, 2017, passed by the City Civil Court, Mumbai thereby dismissing the Notice of Motion No.2770 of 2014 in S.C. Suit No.2779 of 2014.

3] The said Notice of Motion was taken out by the appellant herein seeking relief of interim injunction, restraining respondents from implementing the threat of intended discontinuation of the Exclusive Agency Agreement for distribution and sale of products in India and from distributing or selling the said products directly in Indian market.

4] The case of the appellant was that he is having relationship with the respondents on principal to principal basis and it is in perpetuity and exclusivity. Accordingly Agency Agreement was executed between the parties for marketing and distribution of products. Respondent, is however, intending to discontinue the said relationship. Hence, respondent should be restrained from doing so.

5] It is submitted that the trial Court has rejected the Notice of Motion on the ground that even if the relief of interim injunction is not granted, the inconvenience and loss caused to the appellant cannot be considered as irreparable loss, as it can be compensated in terms of money. According to learned counsel for the appellant, under the amended Section 10 and Section 14 of the Specific Relief Act w.e.f. 2018, this ground for rejection of Specific Performance is not available. Hence, even if the loss can be compensated in terms of money, the Specific Performance cannot be refused. Here in the case, it is urged that therefore, rejection of the interim relief on that ground by the trial Court was not legal and correct.

6] In my considered opinion, even if this legal position is accepted, the fact remains that in order to get the relief of interim injunction, prima facie the appellant has to establish that this Agency Agreement contained the clauses of perpetuity and exclusivity. For that purpose, Agency Agreement executed between the parties was required to be produced. However, said agreement or it's copy is not produced on record.

7] In absence thereof, the reliance is placed on the correspondence exchanged between the parties, namely, the first letter dated 19.9.1996 (Exhibit "A") wherein; in the reference, it is mentioned as, "Exclusively for manufacturing and distribution of our hic-tec disinfectants". It is submitted that this reference to the subject in this letter clearly indicates that the Agreement of Agency was containing the clause of exclusivity. Moreover, the fact that for this long period of years, the products were sold by the respondent to the appellant alone for distribution, is more than sufficient to infer both the clauses of perpetuity and exclusivity, to grant the relief of interim injunction at this stage.

8] However, in my considered opinion, unless the Agency Agreement contains such clause of exclusivity and perpetuity, merely because in the Reference of the letter dated 19.09.1996, there is mention of Exclusivity for manufacture and distribution of hi-tec disinfectants, such term and condition of Agency Agreement cannot be inferred. Moreover, from the mere fact that for a long period of 14 years, the products were supplied exclusively to the appellant, is also not sufficient to hold that the said Agreement of Agency is for perpetuity or for exclusivity. For proving such exclusivity or perpetuity in the Agency Agreement, the direct evidence was Agency Agreement, which was admittedly executed between the parties, which is not produced. In the absence thereof, the trial Court has rightly held that when respondent is denying that the agreement contains the clause of perpetuity or exclusivity, then at this prima facie stage, on the basis of material placed on record, that is the letter dated 19.09.1996, it is difficult to grant such relief of interim injunction thereby restraining respondent from selling its products to any other party. This order is bound to operate harshly upon the respondent. When equitable relief of interim injunction is to be granted, the Court has to consider the aspect of irreparable loss and greater hardship. After considering these aspects the trial Court has rightly rejected the Notice of Motion. In the Appeal from such discretionary order, this Court cannot interfere as the view taken by the trial Court is not only the possible view, but also the just and equitable view.

9] The Appeal, therefore, being without merit stands dismissed.

10] In view of dismissal of Appeal itself, pending Civil

Applications therein no more survive and they are disposed off accordingly.

11] At this stage learned counsel for appellant seeks extension of the order of ad-interim relief, passed by this Court, for a period of 10 days.

12] Learned counsel for respondent opposed the same.

13] However, considering that the said relief is running from the year 2014 till date, in order to enable the appellant to approach the Hon'ble Supreme Court, the said order of ad-interim relief is extended for a period of 10 days only.

[DR. SHALINI PHANSALKAR-JOSHI, J.]