

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (STAMP) NO.27688 OF 2017
IN
APPEAL FROM ORDER NO.339 OF 2014
IN
S.C. SUIT NO.1143 OF 2012

NEDIS B.V., Netherland Petitioner
V/s.
Savoy Electronics Pvt. Ltd., Mumbai & Ors. Respondents

Mr. Mayur Khandeparkar, with Mr. Mohit Advani, i/by Mr. Cyril A. Mangaldas, for the Petitioner.

Mr. Ashish Kamat, a/w. Mr. Aditya Shiralkar, i/by M/s. Ranjit & Co., for Respondent Nos.1 to 3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 16TH APRIL, 2018.

P.C. :

1. Heard Mr. Khandeparkar, learned counsel for the Petitioner, and Mr. Kamat, learned counsel for Respondent Nos.1 to 3.

2. By this Petition, the Petitioner is seeking review of the order passed by this Court on 26th October 2016 in Appeal From Order No.339 of 2014.

3. It is the submission of learned counsel for the Petitioner that, the

Trial Court has framed the preliminary issue regarding jurisdiction of the Court to entertain the Suit, on the basis of the two applications, viz. “Exhibit-7” and “Exhibit-8”, tendered by Original Defendant Nos.2 and 3. The Trial Court has answered the said issue in negative by holding that, it has no jurisdiction to entertain the Suit.

4. When the said order was challenged before this Court by the Respondents-Plaintiffs, this Court has also considered and held in Para 5 and 6 as follows :-

“5. In this respect, the averments made in paragraph No.20 of the plaint, which are to be taken at this stage for considering the issue of jurisdiction, clearly reveals that the cause of action against Defendant Nos.2 and 3 had arisen in Mumbai. Learned counsel for Appellant has also brought to the notice of this Court the consent of Defendant No.1 for allowing Appellant to file claim by this Suit.

[Emphasis Supplied]

6. In view thereof, looked at it from any angle, at-least, on behalf of Defendant Nos.2 and 3, plea relating to the bar of the jurisdiction of the Civil Court at Mumbai cannot be raised. As the Trial Court has lost sight of this important aspect, the impugned order passed by the Trial Court cannot survive and hence, quashed and set aside”

5. The submission of learned counsel for the Petitioner is that, this

concession, which is recorded by this Court in paragraph No.5 of its order by holding that Defendant No.1 has also consented for allowing the Appellant to file claim by this Suit, is not correctly recorded.

6. In this respect, it must be stated that, at the time of deciding the Appeal from Order, the learned counsel for the Respondents, i.e. the Appellants therein, have brought to the notice of this Court the e-mail/letter dated 23rd December 2011, which was produced at page No.130 of the Appeal from Order. The said e-mail/letter reads as follows :-

“After examining your claim carefully, we come to the conclusion that, you can file your claim by the Trustee of Bandridge Europe N.V. The contact details are : Mrs. J. Regeling (Lawyer).”

7. Therefore, this Court has, on the basis of this e-mail/letter at page No.130, which was pointed out by learned counsel for the Appellants therein, i.e. learned counsel for the Respondents-Plaintiffs, recorded that Respondent No.1 has given consent for allowing the Appellants to file the claim by this Suit. However, as rightly submitted by learned counsel for the Petitioner herein, the perusal of this letter at page No.130 of the Appeal from Order does not show that the consent was for filing of the Suit before the Trial Court, but the consent was for filing of the claim before the Liquidator of Bandridge Europe N.V.

8. As a matter of fact, the impugned order was passed by the Trial Court, only on the applications filed by Defendant Nos.2 and 3, there was no question of considering the maintainability of the Suit or the jurisdiction of the Trial Court to entertain such Suit against Defendant No.1. Only because this alleged concession made on behalf of Defendant No.1 was shown to this Court, this Court has recorded it. This Court has confined its order against Defendant Nos.2 and 3 only, as it is evident from the observations made in the order that, *“at-least, on behalf of Defendant Nos.2 and 3, plea relating to the bar of the jurisdiction of the Civil Court at Mumbai, cannot be raised”*.

9. It has to be re-emphasized that, the issue relating to jurisdiction of the Trial Court was raised before the Trial Court by Defendant Nos.2 and 3 only and whatever order was passed by the Trial Court was only on the plea raised by Defendant Nos.2 and 3 and that was the matter in issue before this Court. While doing so, the passing reference was made to whatever letter was brought to the notice of this Court by learned counsel for the Appellants therein, showing that Defendant No.1 has consented for allowing the Appellant to file claim by this Suit. However, perusal of the e-mail/letter dated 23rd December 2011, which is produced at page No.130 of the Appeal From Order, does not show such concession as such.

10. In view thereof, it has to be held that, there was no such concession and the observations to that effect are not recorded correctly. To that extent, the order passed by this Court is modified and it is made clear that, there was no question of Defendant No.1 consenting for allowing the Appellants to file claim by this Suit. The relevant observations to that effect made in Para 5 of the order stand deleted.

11. The issue of jurisdiction as regards Defendant No.1, which he has raised in his reply to the Notice of Motion and written statement to the Suit, is expressly kept open, to be decided by the Trial Court at its appropriate stage, in accordance with law.

12. All the rights and contentions of the parties are expressly kept open.

13. Review Petition is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]