IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2018

Delivered on : 21.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

A.No.4092 of 2013
in
C.S.No.587 of 2012

Malaspina s.r.l
Regd. Office at Monte Urano
Viale Primo I Maggio
43 C.F & P.I II 01842480442
Italy, Rep by its Chairman and Legal
representative Mr.Iuigi Sbrolla ..Applicant

Vs.

1.M/s.Suoligicio Chennai
37 Old No.50 Raja Muthaiah Road
Periamet, Chennai – 600 003
Re. by its Partners

2.Yavar Dhala
3.Ahamed Ali Dhalia
4.Aager Ali Dhala ..Respondents

These application filed under Order XIV and Rule 8 of Original Sides Rules read with Order XII Rule 6 CPC to direct the respondent/defendant to pay the admitted liability of Euro 2,80,741 [Equivalent Rs.1,91,20,146.55 (Rupees One Crore Ninety One Lakhs Twenty Thousand one Hundred and Forty Six and paise Fifty Five only) to the applicant / plaintiff.

For Applicant : Mr.Uttam Joseph Cherryan

For Respondents : Mr.C.Seethapathy

ORDER

There is a sole plaintiff and there are four defendants in the main suit. Sole plaintiff in the main suit is the lone applicant herein. Defendants 1 to 4 in the main suit are Respondents 1 to 4 respectively in the instant application.

2.Parties in this application, shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity. To be noted, first defendant is a partnership firm, Defendants 2, 3 and 4 are partners in first defendant partnership firm. Plaintiff is an entity incorporated in Italy.

3.Instant application has been filed *inter alia* under Order XII Rule 6 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) with a prayer for a judgment/decree for the suit claim on the basis of, what according to plaintiff, is admission of liability by the defendants. In other words, plaintiff has filed the instant application seeking a judgment on admission under Order XII Rule 6 of CPC.

4.Before dealing with the instant application for judgment on admission, it is necessary to have a broad overview of the factual matrix in the suit as it unfurls from the pleadings. The same is set out under the caption 'Factual Matrix in a Nutshell' infra.

5.**FACTUAL MATRIX IN A NUTSHELL**

5(a) Plaintiff is a company, which is engaged in the production and sales of footwear soles in leather, Polyvinyl Chloride (PVC) and Thermoplastic Rubber (TPR) having a business presence in multiple countries across the world including Italy, countries in Europe, Middle East and United States of America. Plaintiff is owner of a trademark 'Malaspina'. Plaintiff possesses technical know-how for production of footwear as well as PVC and TPR soles.

5(b) Fulcrum of the entire lis is an agreement between plaintiff and first defendant, which has been styled as a 'Collaboration Agreement' and has been filed as Plaint Document No.18. As it unfurls from the pleadings, this Collaboration Agreement, which is the nucleus of this lis, supersedes all agreements / arrangement between the parties.

5(c) In very simple terms, under the Collaboration Agreement, plaintiff has supplied certain machinery to the first defendant and plaintiff is also entitled to royalty. To be noted, plaintiff is entitled to two types of royalties, one is a fixed sum per month and the other is a variable depending on turnover. Alleging breach of Collaboration Agreement, same was terminated by plaintiff *inter-alia* stating that the first defendant had failed to rectify material breach in spite of being put on notice. Thereafter, instant suit has been filed claiming monies towards fixed royalty, variable royalty (outstanding/overdue royalty) and overdue/outstanding payment for machinery styled 'SINT55'. Suit has been filed claiming 2,80,741 Euros (Euros Two Lacs Eighty Thousand Seven Hundred and Forty one only). According to plaintiff, in Indian currency (INR), it is Rs.1,91,20,146.55 (Rupees One Crore Ninety One Lakhs Twenty Thousand One Hundred and Forty Six and Fifty Five paise only). There is also a prayer for permanent injunction with regard to use of goodwill and trademark of plaintiff by the defendant. There is a prayer limb for costs and usual residuary limb of prayer also.

5(d) To be noted, prayer in the plaint is for 2,80,741 Euros and prayer paragraph itself says that this is equivalent to Rs.1,91,20,146.55 INR. On this basis, according to plaintiff, the suit claim is based on exchange rate of 68.11 INR per Euro. This has been applied (throughout) in this order.

6. Having set out a broad overview of the factual matrix of this lis, this Commercial Division now moves on to deal with the instant application for judgment on admission.

7. Though there are elaborate pleadings and multiple typed-set of papers in the instant application, after hearing Mr.Joseph, learned counsel on behalf of counsel on record for plaintiff and Mr.Seethapathy, learned counsel on record for defendants, it comes to light that entire judgment on admission application turns on a simple and narrow compass. Prior to the filing of the suit, plaintiff had issued a legal notice dated 27.01.2012 to the first defendant and this legal notice has been filed as Plaint Document No.29. Reply to this legal notice from defendants is dated 10.02.2012 and the same has been filed as Plaint Document No.33. In the reply to legal notice (Plaint Document No.33) Paragraphs 7 and 9 read as follows:

> *'7.Our clients hence met Mr.Luigi Sbrolla of Malaspina S.r.l at Chennai twice on 31.01.2012 and a mutually agreeable settlement was also arrived at under which our client agreed to initially pay a sum of 28,741 Euro on or before 02nd February 2012. Our clients further offered to make monthly payments of 10,500 Euro for 24 months, which payments would settle Malaspina S.r.l fully. As stated earlier, this payment schedule was acceptable to Mr.Luigi Sbrolla.*
>
> *9. Even today our clients are willing to adhere to their aforesaid offer of settlement by initially paying a sum of 28,741 Euro immediately and making monthly payments of 10.500 Euro for 24 months, which payments would settle Malaspina S.r.l fully. Our clients would continue to act as per the Agreement of Collaboration dated 11.12.2010.'*

8. According to learned counsel for plaintiff, the aforesaid admissions are categoric and therefore, plaintiff is entitled to a judgment on admission.

9. Responding to the aforesaid plea, learned counsel for defendants made two broad submissions, which are as follows:

a) No doubt there is an admission in the reply legal notice (Plaint Document No.33), but that admission was incorrectly made as the third defendant had met with an accident, he was convalescing and he had made a mistake in giving instructions to the counsel for sending reply notice. Elaborating on the mistake, it was submitted that two payments of 40,000 Euros each made by the defendants to the plaintiff on 17.04.2006 and 25.04.2006 were missed out i.e., they were not taken into account. Besides this, a sum of 15,000 Euros has admittedly been paid by the defendant to the plaintiff in the course of mediation.

b) In the light of the aforesaid position, it cannot be construed that there is an admission of liability for the entire suit claim.

10. In response to the aforesaid submission, learned counsel for plaintiff submitted that defendants have filed statement of the first defendant's Current Account with Canara Bank, Park Town, Chennai Branch and the same, no doubt, shows withdrawals made on 13.04.2006 and 25.04.2006 to the tune of Rs.22,16,157.00 and Rs.22,39,448.00, which roughly equals 40,000 Euros each based on the exchange rate that

existed on the said date, but there is nothing on record to correlate and corroborate that such payments were made to the plaintiff. With regard to 15,000 Euros paid at the time of mediation, though no proceedings before the Mediation Centre can be looked into by the Court at the time of hearing a suit or interlocutory applications therein, learned counsel for plaintiff submits that he does not dispute the receipt of 15,000 Euros. Therefore, to that extent claim of the plaintiff stands satisfied.

11. From the aforesaid narrative, it becomes clear that admission to the tune of 1,85,741 Euros become indisputable, even if the two 40,000 Euros payments on 17.04.2006 and on 25.04.2006 shown as withdrawals in first defendant's account apart and 15,000 Euros paid in Mediation are given credit to (i.e., deducted from suit claim of 2,80,741 Euros).

12.This leaves us with the narrowed down question as to whether the first defendant will be entitled to have the aforesaid 80,000 Euros deducted from the suit claim or as to whether the plaintiff will be entitled to a judgment on admission for 80,000 Euros also on the basis that there is nothing to show that 80,000 Euros payment has been made to the plaintiff.

13. This Commercial Division very carefully examined the rival submissions as well as the short point that falls for consideration in this application for judgment on admission.

14. The short point, as can be formulated by this Commercial Division is, whether a party, after making an admission with regard to the suit claim, rescind the same and submit that the admission was wrongly made.

15. Under the normal circumstances, as a general rule, if such a course is permitted, in the considered opinion of this Commercial Division, provisions such as Order XII Rule 6 CPC as well as Order XIII-A of amended CPC as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity) will completely become toothless and will remain in the statute books only i.e., in theory alone.

16. Any defendant, after making an admission, when faced with an application for judgment on admission under Order XII Rule 6 or application for summary judgment under Order XIII-A of amended CPC as amended by said Act, can conveniently say that the admission was made incorrectly and this will tantamount to virtually removing the aforesaid two provisions and several other allied provisions from CPC and amended CPC.

17. However, in the instant case, there are two aspects which have to be looked into. One aspect is, the admission has been made in a reply notice sent through lawyer and reason for incorrect admission is that the partner of the first defendant firm, who was handling entire business and who was giving instructions to the first defendant firm's lawyer, had met with a major accident and was convalescing. After convalescing, when the partner concerned was, in a better position to apply his mind, it came to

light that the two specific payments that have been made by the first defendant firm have been made out. This Commercial Division is informed that the partner concerned is second defendant, third defendant being his son, who was a minor at that time and fourth defendant is his aged father.

18. As far as the admitted portion of the suit claim which becomes indisputable, as mentioned supra it is 1,85,741 Euros. The mandate under Order XII Rule 6 CPC is that, moment there is an admission, there shall be a judgment/decree without reference to any other question/issues. Therefore, this Commercial Division is of the view that it is inevitable that the prayer of plaintiff for a judgment on admission for 1,85,741 Euros is to be acceded to.

19. This takes us to the question as to whether the plaintiff will be entitled to a decree for 80,000 Euros also.

20. In the light of peculiar facts and circumstances of the instant case and in the light of the fact that admission has been made in a reply lawyer's notice and in the light of the fact that the partner concerned i.e., second defendant had met with a major accident is not disputed, this Commercial Division is of the view that this aspect has to necessarily be decided only in trial after letting-in of oral evidence and correlation of documents. More important question as to whether two withdrawals shown in the bank account of first defendant firm for 40,000 Euros each were actually monies that were paid to the plaintiff or some other entities is also a matter which can be established only in trial. This is a word of

caution as this shall not be cited as a precedent for rescinding admissions *inter alia* by saying that the same were wrongly made, while facing applications for judgment on admission or summary judgments are permissible.

21. In any event, besides the aforesaid word of caution this Commercial Division is of the considered view that the word of caution should be buttressed with a rider. The rider is, as far as 80,000 Euros, the same shall be deposited by the first defendant to the credit of the suit account subject to trial to show its bonafides. If such a clause is not made part of this order, it can become virtually a passport to make an admission and thereafter rescind the same by stating ever so many reasons that one can think of. This would also be a test of bonafides of the plea of the defendants with regard to incorrect admissions qua 80,000 Euros. To be noted, as mentioned supra, instant application for judgment on admission is under Order XII Rule 6 of CPC and the prayer as set out in the Judges Summons reads as follows:

> ' To direct the respondent/defendant to pay the admitted liability of Euro 2,80,741 [Equivalent Rs.1,91,20,146.55 (Rupees One Crore Ninety One Lakhs Twenty Thousand one Hundred and Forty Six and paise Fifty Five only) to the applicant / plaintiff.'

22. A perusal of the prayer extracted and reproduced supra reveals that the usual residuary limb that this Court can pass any order that is

deemed fit and proper in the circumstances of the case is relied on for passing this part of the order wherein and whereby the defendants are directed to deposit 80,000 Euros [Rs.54,48,800.00 INR (Rupees fifty four lakhs forty eight thousand and eight hundred only)] to show their bonafides.

23. It was also brought to the notice of this Commercial Division by Mr. Seethapathy that third defendant Ahamed Alia Dhalia was a minor at the time of filing of the suit and subsequently he attained majority and has resigned from the first defendant partnership. Therefore, this Commercial Division deems it appropriate to pass orders and judgment against the first defendant firm and the defendants two and four. The question as to whether the third defendant is liable qua this suit claim is left open to be decided in trial as it turns on documents and other determinants which can be established only in trial. In other words, in decree on admission in instant interlocutory application alone, there shall be no decree against third defendant.

24. To be noted, as mentioned supra, first defendant is a firm and defendants 2 to 4 are partners of the first defendant firm besides defendants 2 to 4 are father and son and grandfather in that order.

25. Learned counsel for plaintiff in support of his submissions relied on two judgments. One is a judgment of the Hon'ble Supreme Court in ***Uttam Singh Dugal & Co. Ltd., Vs. Union Bank of India and ors***

reported in ***2000 (2) UJ1474***. Relevant paragraph is Paragraph No.12 and the same reads as follows:

'12.As to the object of the Order XII Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.

26. A perusal of paragraph 12 of Uttam Singh's case will reveal that Supreme Court has very pithily explained the object of Order XII Rule 6 CPC.

27. Another case law pressed into service by learned counsel for plaintiff is a judgment of a Division Bench of this Court in ***Dr.K.Padmanabhan and another Vs. W.S.Nisha*** reported in ***2002-3-LW-118***. To be noted, in this judgment a Division Bench of this Court, followed aforesaid Uttam Singh's case and the relevant paragraphs in Dr.K.Padmanabhan case are Paragraphs 6 and 7, which read as follows:

'6.It may be worthwhile to refer Order 12 Rule 6 C.P.C which reads as follows:

"6. Judgment on admissions.--(1)Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other questions between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2)Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

HIGH COURT AMENDMENT (MADRAS): Re-number the existing Rule 6 as sub-rule 6(1) and insert the following as sub-rules (2) and (3).

(2)The court may also of its own motion make such order or give such judgment as it may consider just, having due regard to the admissions made by the parties.

(3)Whenever an order or judgment is pronounced under the provisions of this rule, a decree may be drawn up in accordance with such order or judgment and bearing, the same date as the day on which the order of judgment was pronounced."

7.It may not be out of place to refer the judgment of the Apex Court UTTAM SINGH DUGGAL v. UNITED BANK OF INDIA wherein the learned Judges have held as follows:

"As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed."

From the above judgment, it is clear that the object of this provision is to enable the plaintiff to get a speedy judgment on the basis of the admission made by the defendant.'

28. In the light of the narrative, discussion and dispositive reasoning supra, this Commercial Division partly allows this application for judgment on admission in part by passing the following order:

There shall be a judgment and decree against Defendants 1, 2 and 4 for a sum of 1,85,741 Euros [Rs.1,26,50,819.51 INR (Rupees one crore twenty six lakhs fifty thousand eight hundred and nineteen and fifty one paise only)]. Registry shall make out/draw a decree for this sum under Order XII Rule 6(2) CPC. Defendants 1, 2 and 4 shall deposit a sum of 80,000 Euros [Rs.54,48,800.00 INR (Rupees fifty four lakhs forty eight thousand eight hundred only)] to the credit of the suit within eight weeks from this judgment being pronounced in open Court, failing which the plaintiff will be entitled to a further decree for this sum also without further reference to this Court.

21.12.2018

Speaking order: Yes

Index: yes

gpa

M.SUNDAR.J.,

gpa

Pre-delivery order
A.No.4092 of 2013 in
C.S.No.587 of 2012

21.12.2018