

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.332 of 2017

Rahul N.Rijhwani .. Appellant

Vs

1.M/s.Zeta Laboratories (P) Ltd.,
rep. by its Managing Director

2.Prahaladkumar M.Jain

3.M/s.Mc Medibio Life Science
Pvt. Ltd., rep. by its
Managing Director

4.Shashidhar

5.M/s.Yogini Health Solutions
rep. by its Partner Pravin P.Kubera

6.Sunil Lalwani ... Respondents

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w
Clause 15 of Letters Patent against the judgment and decree
dated 22.08.2017 in Application No.2064 of 2017 in C.S.No.787 of
2016.

Application praying that this court be pleased to revoke the
leave granted by this court in A.No. 4962/2016 vide order dated
28.09.2016.

Praying this court for grant of "Leave to sue" the
defendants 1,2,4,5,6 as their registered addresses are outside
the Jurisdiction of this Hon'ble Court in C.S.No.787 of 2016
praying this Court to pass a Judgment and decree against the 1st
defendant.

a) Directing the 1st defendant to pay a sum or Rs.
46,18,483/- to the plaintiff along with interest at 15% per
annum on Rs. 46,18,483/- from the date of the suit fix the date
of payment is full.,

b) directing the 1st defendant to pay costs of the suit.

For Appellant .. Mr.G.Kalyan Jhabakh
For Respondents.. Mr.Mohammed Fayaz Ali for R1

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is directed against the order dated 22.08.2017 made in Application No.2064 of 2017 in C.S.No.787 of 2016.

2.The appellant is the plaintiff in the suit. The suit is filed for recovery of money. On 22.07.2015, an agreement was entered into between the appellant and the first respondent. The agreement was made at Solan, Himachal Pradesh. By the aforesaid agreement, the appellant became the distributor of the pharmaceutical products manufactured by the first respondent. This agreement was followed by another annexure dated 27.08.2015. This document also shows that this has been executed pursuant to the earlier agreement dated 22.07.2015 made at Solan.

3.Thereafter, the appellant sent series of letters to the first respondent seeking to refund the deposit made interalia contending that the first respondent has neglected to honour the commitment made for minimum sale guarantee resulting in substantial loss. The appellant terminated the agreement. Thereafter, the present suit has been filed.

4.It is stated at the bar that the first respondent, pursuant to the termination order, has also instituted a suit at Himachal Pradesh. The first respondent filed an application to revoke the leave granted to the appellant to sue the other respondents situated outside the territorial jurisdiction of this Court. The learned single Judge allowed the application filed by the first respondent by rejecting the leave granted. Challenging the same, the present appeal has been filed.

5.Learned counsel appearing for the appellant would submit that the sum and substance of the appellant's case is that the first respondent did not honour their commitment which it ought to have been done within the jurisdiction of this Court. The agreement was signed by the appellant at Chennai. Similarly, it was also witnessed at Chennai. What is required is the existence of a cause of action within the territorial jurisdiction of this Court. Thus the order of the learned single Judge requires to be interfered.

6.Learned counsel appearing for the first respondent would submit that the agreement followed by annexure were signed and executed at Himachal Pradesh. The jurisdiction of the Court is only at Himachal Pradesh, as seen from the invoices. The invoices are not in dispute. The subsequent suit has also been filed by the first respondent for recovery of money. The

principle governing forum non conveniens also would apply. Hence the order passed by the learned single Judge will have to be confirmed.

7. We do not find any merit in this appeal. The existence and the execution of the agreement dated 22.07.2015 followed by annexure dated 27.08.2015 are not in dispute. These two documents speak for themselves. Secondly, the invoices make it clear that all disputes are subjected to the jurisdiction of the Court at Solan, Himachal Pradesh only. The real cause of action has arisen pursuant to the termination of agreement by the appellant. The first respondent has also filed a suit within the territorial jurisdiction of Himachal Pradesh. We are concerned with the material facts. Even assuming that the appellant has signed his part of the contract at Chennai, the same alone will not give jurisdiction. The doctrine of forum non conveniens also would apply.

8. In such view of the matter, we do not find any error in the order passed by the learned single Judge. Accordingly, the Original Side Appeal is dismissed. No costs. Registry is directed to return the papers to the learned counsel appearing for the appellant for presenting the same in the Court of competent jurisdiction as observed by the learned single Judge.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

mmi

To

1. The Sub Assistant Registrar,
Original Side, High Court, Madras.

2. The Section officer
ER Section, High Court, Madras 104.

+1 CC to M/s. Md. Fayas Ali, Advocate sr 68864.

+2 Ccs to M/s. Surena and Surena, Advocate sr 48888.

O.S.A.No.332 of 2017

PPA (CO)
SP(10/08/2018)