

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.254 of 2003

M/s.Philips Speech Processing Aachen.
Zweigniederlassung der Philips GmbH,
Kackertstrasse 10,
D - 52072 Aachen, Germany.
Rep. By its Power of Attorney Mr.Ashok Nambissan ...Plaintiff

Vs.

M/s.Antarix e Applications Ltd.,
(Formerly Known as DSQ World.Com Ltd.)
40, Bazullah Road,
T.Nagar
Chennai - 600 017.
Rep by its Managing Director .. Defendant

This Civil Suit is preferred, under Order VII Rule - 1 of Civil Procedure Code, 1908 Read with Order IV Rule 1 of O.S Rules; Praying for

a) A sum of Euro 760,950 (Indian currency = Rs.3,69,06,075/-) together with the interest @ 24% per annum from the date of the suit, till the date of realization ;

b) The costs of the suit; and

c) Any such further or other orders as this Court may deems fit and proper in the circumstances of the case.

For Plaintiff : Mr.Karthik Ram Mohan

For Defendants : Ex-parte

JUDGMENT

There is a sole plaintiff and a lone defendant in this suit.

2. Mr.Karthik Ram Mohan, learned counsel of M/s.Ramasubramaniam & Associates (Law Firm) is before this Commercial Division on behalf of sole plaintiff.

3. Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 30.11.2018.

4. Paragraphs 6 and 7 of earlier proceedings of this Commercial Division dated 30.11.2018 are of utmost relevant and the said paragraphs read as follows:

'6.Learned Additional Master II is requested to record ex-parte evidence preferably on the same day i.e., 03.01.2019 and in any event on or before 08.01.2019.

7. To be noted, instant proceedings are peremptory. If the plaintiff does not let-in evidence between 03.01.2019 and 08.01.2019, this suit will be dismissed for default in the next listing before this Court.'

5. Thereafter, the matter was listed before learned Additional Master II on 05.10.2018, 09.10.2018, 12.10.2018 and finally on 04.01.2019. The

proceedings/orders of learned Additional Master II on the said four dates/listings read as follows:

'05.10.2018

Plaintiff junior counsel present request time (since senior Advocate is sick) for plaintiff ex-parte evidence by 09.10.2018.

09.10.2018

Plaintiff junior counsel present, informed that plaintiff witness has to come from Germany, hence request time for filing ex-parte evidence by 12.10.2018.

12.10.2018

Plaintiff counsel present. Request time, since plaintiff company representative held up at Germany and not able to come to India due important work. But the time frame fixed by Hon'ble High Court expired today. Submit case records before Hon'ble High Court for further proceedings.

04.01.2019

Suit of the year 2003. Plaintiff's counsel states that though ex-parte, he is unable to contact his client.

Post before the Hon'ble Court. '

6. Prior to earlier proceedings dated 30.11.2018, this suit was first listed before this Commercial Division on 29.06.2018 and various proceedings dated 29.06.2018, 24.07.2018, 11.08.2018, 24.08.2018 and 07.09.2018 (5 listings, all prior to 30.11.2018 proceedings) read as follows:

' Proceedings on 29.06.2018:

Post the matter under the caption 'For Dismissal' on 24.07.2018.

The plaintiff is directed to file an affidavit

whether the cause of action still survive.

Office is directed to put up a note whether the suit summons had been taken by the plaintiff and whether the defendant has been served.'

' Proceedings on 24.07.2018

Post the matter again under the caption 'For Dismissal' on 09.08.2018.'

' Proceedings on 09.08.2018

Mr.Karthik Rammohan, of M/s.S.Ramasubramaniam & Associates (Law Firm) is before this Court on behalf of the sole plaintiff.

Learned counsel expresses regret for not having been able to apprise the Court about whether the plaintiff is still interested in pursuing the suit, which led to the matter being listed under the caption 'for dismissal' today. However, learned counsel submits today that they have written to the plaintiff and they are awaiting a response.

Learned counsel undertakes to report to this Court one way or the other within a fortnight from today.

Registry to remove the caption 'for dismissal' in the next listing in the light of the narrative supra.

List this matter on 24.08.2018.'

' Proceedings on 24.08.2018

Read this in conjunction with and in continuation of earlier proceedings of this Court dated 11.08.2018. Learned counsel seeks further time. List this matter on 07.09.2018 for reporting one way or the other regarding instructions from the plaintiff.'

'Proceedings on 07.09.2018

Mr.Karthik Rammohan, learned counsel of M/s.S.Ramasubramaniam and Associates (Law Firm), is before this Commercial Division on behalf of sole plaintiff.

2. Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 11.08.2018 and 24.08.2018.

3. Today, learned counsel submits that they have since written to the plaintiff, got instructions and the instructions are to the effect that they will be pursuing the suit and proceeding with the litigation. Learned counsel seeks some time to let-in evidence citing some administrative difficulty for the plaintiff company in this regard.

4. Be that as it may, it has become necessary to examine the jurisdiction of this Commercial Division qua this suit. I heard learned counsel on the same. Learned counsel for plaintiff submits that this suit will qualify as a 'Commercial Dispute' under Sub-Classes (ii), (ix) and (xviii) of Section 2(1)(c) of 'The Commercial Courts Acts, 2015,' ('Said Act' for brevity). Aforesaid sub-clauses reads as follows:

“(ii) export or import of merchandise or services;”

“(ix) distribution and licensing agreements”

“(xviii) agreements for sale of goods and provision of services;”

5. Learned counsel submits that the defendant has placed Purchase Orders on the plaintiff; that Purchase Orders were for supply of Voice Portals which includes certain licensing aspects also and that therefore, aforesaid clauses are attracted. It is also pointed out that the defendant is in

India, Tamil Nadu, Chennai, and the plaintiff is an entity incorporated in Germany and therefore imports and exports aspect is also attracted.

6. After hearing learned counsel for plaintiff, I perused the plaint and I find that the submissions of plaintiff's counsel merit acceptance.

7. I accept the aforesaid submissions.

8. To be noted, specified value aspect is also satisfied as the valuation paragraph, being paragraph No. 14 of the plaint, reveals that the suit has been valued at Rs.3,69,06,075/-. In other words, the suit has been valued at over Rs.3.69/- Crores.

9. Jurisdiction of this Commercial Division thus determined.

10. In the light of the request of plaintiff's counsel for time to let-in oral evidence, list this matter on 05.10.2018 before learned Additional Master II. Learned Additional Master II is requested to record ex-parte evidence preferably on the same day and in any event on or before 12.10.2018.

List this matter before this Commercial Division under the caption "For Arguments" immediately after Pooja Vacation i.e., on 22.10.2018.'

7. As mentioned supra, the aforesaid five listings and proceedings therein are prior to 30.11.2018 and five listings/proceedings before learned Additional Master II post 30.11.2018 are telltale qua trajectory of this suit after being listed before this Commercial Division. It has become necessary to remind oneself of the objective of 'The Commercial Courts Act, 2015'

('said Act' for brevity). No emphasis is required to reiterate that the objectives of the said Act include expediting Commercial Disputes, improving the faith of the Investor World in the Legal Culture of India, improving the International image of justice dispensation in India and ultimately accelerate the Economic Growth.

8. In the light of aforesaid four avowed objects of said Act, the telltale trajectory of this suit before this Commercial Division (extracted supra), makes it clear that this suit deserves to be dismissed for default/non-prosecution, particularly in the light of paragraphs 6 and 7 of earlier proceedings dated 30.11.2018, which has also been extracted and reproduced supra.

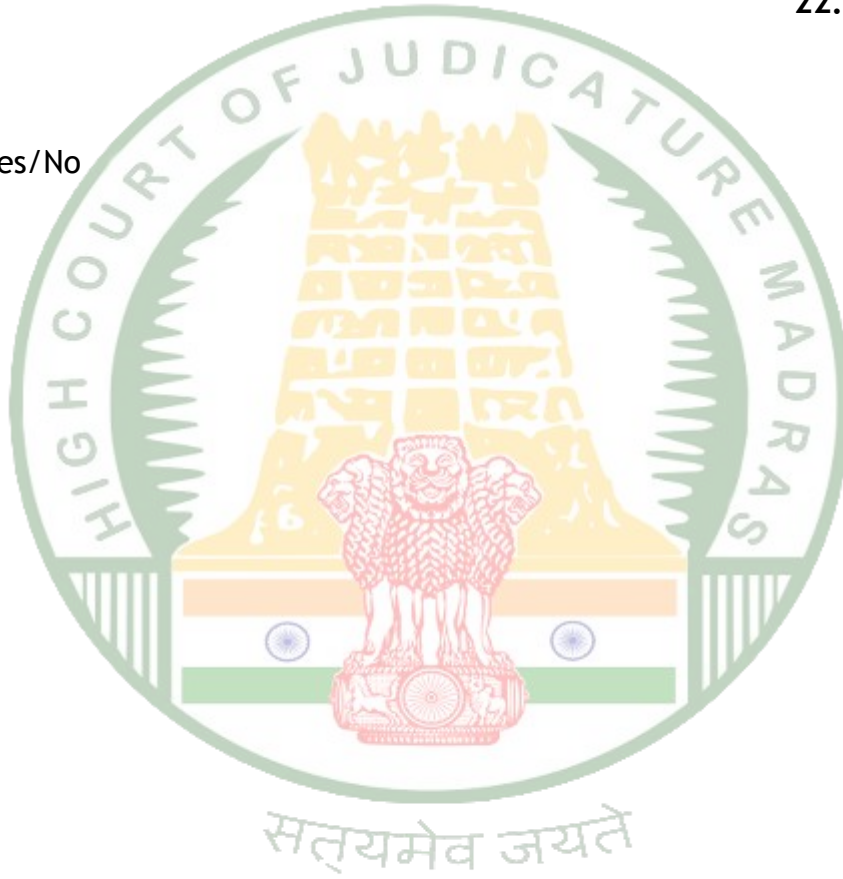
9. Learned counsel for plaintiff submitted that one more opportunity may please be given to plaintiff, but owing to all that have been set out supra, I am unable to accede to this request, more so as there is no explanation, much less tenable explanation for plaintiff's recalcitrant approach thus far. To be noted, this suit is more than one and half decades old and to be precise this suit will turn 16 years tomorrow as examination of suit file placed before me reveals that this suit was presented on 23.01.2003.

In the light of the narrative supra, this suit is dismissed for default/non-prosecution. There shall be no order as to costs.

22.01.2019

Index : Yes/No

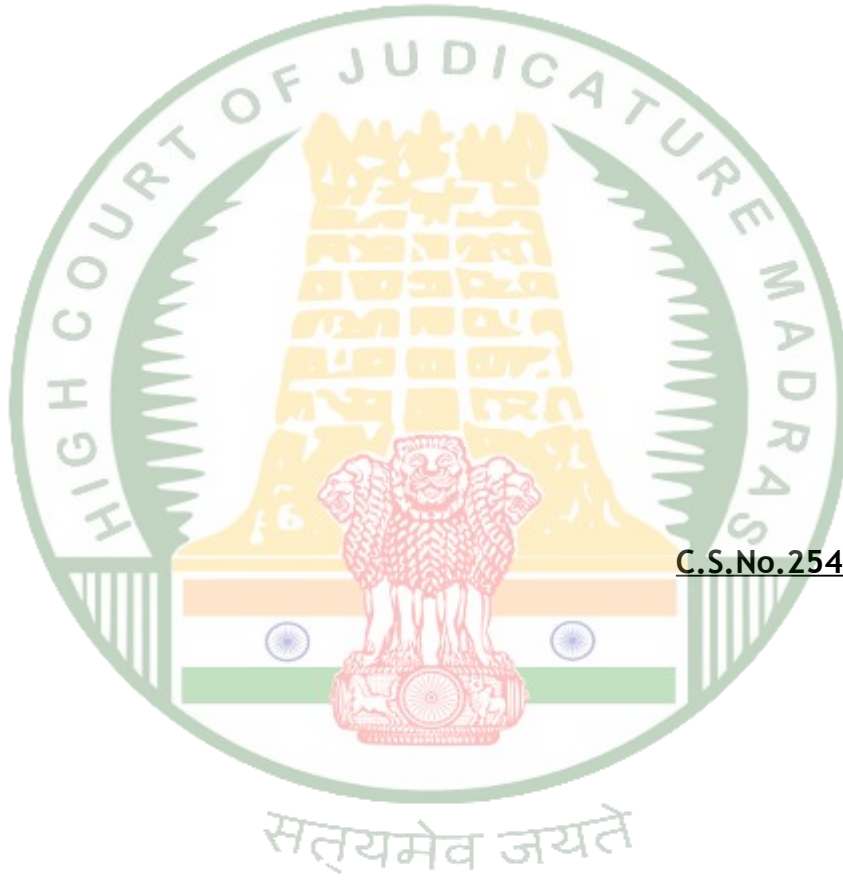
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M.SUNDAR, J.

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