IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.02.2020	Pronounced on: 19.02.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

Application No.6610 of 2019
in O.A.No.1085 of 2018
C.S.(Comm)No.786 of 2018

M/s.Techbio Solutions,
Represented by its Partner Mr.Vishnu,
No.2, South Avenue, A-1, Deju Plaza,
Srinagar Colony, Saidapet,
Chennai – 600 015. ... Applicant/Plaintiff

/versus/

1. Raja Mehra,
   Mehra Enterprises,
   1st Floor, Chopra Building,
   NH-22, Kalka-Shimla Building,
   Sector-6, Parwanoo Dist, Solan,
   H.P – 172 322.

2. Vijay Mehra,
   Director,
   Agmera Private Limited,
   Plot No.19(1), Sector 1, Parwanoo,
   Solan, Himachal Pradesh – 173 220, India.

3. Agmehra Private Limited,
   Plot No.19(1), Sector-1, Parwanoo,
   Solan, Himachal Pradesh – 173 220 India.

4. AGMA Limited,
   Gemini Works, Haltwhistle,
   Northumberland, NE49,
   9HA, United Kingdom. ... Respondents/Defendants

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***Prayer*:-**

Judges summon under Order XIV Rule 8 of Original Side Rules read with order XIII-A of C.P.C., 1908.

(i). To pass necessary orders and directions thereby issuing the summary judgment in the suit in terms of Order 13-A of the Code of Civil Procedure 1908.

For Applicant : Mr.Nithyaesh

For D1 & D2 : Mr.Rahul Balaji

For D4 : Mr.M.Velmurugan

For D3 : No appearance

ORDER

This application is filed to pass summary judgment invoking the power under Order XIII-A of C.P.C., read with Commercial Dispute Act.

2. The plaintiff was appointed as the authorised distributor of the 4th defendant's product in India vide Non Disclosure Agreement dated 04.04.2018. The agreement is valid for a period of six months from 26.04.2018 subject to further renewal. While so, the defendants 1 and 2 at the instigation of the 3rd defendant causing impediments to the plaintiff and thereby restraining the plaintiff from effectively carrying out the distributorship business provided by the 4th defendant for the distribution of the Health Care Products. The dispute between the 4th defendant

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and the defendants 1 & 2, have let to disturbing the plaintiff's peaceful business. Therefore, after exchange of notice, the suit is filed for permanent injunction restraining the defendants 1 to 3 from in any manner disturbing the peaceful conduct of the plaintiff's business and directed the defendants 1 to 3 to pay the costs.

3. Before filing the suit, the 2nd defendant has filed criminal complaint against the 4th defendant and two of its Directors. Pursuant to that, the plaintiff was also enquired by the Parwanoo Police Station, Himachal Pradesh.

4. In short, it is contended in the plaint that, the defendants 1 to 4 are shareholders in M/s.Agmerha Private Limited along with one Mr.Saurav Bharadwaj. They have some internal dispute which has let to causing disturbance to the plaintiff, who was appointed as Distributor for the 4th defendant's product in India.

5. The defendants have filed the written statement denying the averments made in the plaint. In the said circumstances, the present application is taken out by the plaintiff to pass summary judgment stating that, the dealership agreement dated 09.04.2019 signed by the 4th defendant, appointing the plaintiff's as its distributor for the range of Health Care products throughout India cannot be disturbed by any contrary claim by the defendants 1 to 3. The original agreement was renewed for the period of 12 months from 26th April 2018 and there is no prospect of defendants 1 to 3 for succeeding in the suit.

6. Heard the Learned Counsels for the plaintiff/applicant and the respondents/defendants.

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7. The sequence of events as narrated in the pleadings and the documents relied by the parties discloses that the 4th defendant which is a foreign based Company, initially had distributor agreement with M/s.Mehra Enterprises owned by the 1st defendant. The said agreement has been terminated by the 4th defendant vide letter dated 28.03.2018. Subsequently the 4th defendant has entered into the distribution agreement with the plaintiff from 26.04.2018. In the said circumstances, the 3rd defendant/Agmehra Private Limited has issued notice to the plaintiff, 4th defendant and few others alleging that, the 4th defendant entered into Share Subscription Agreement with the 3rd defendant dated 07.04.2017 for the purpose of setting up new industrial unit in India in the name of M/s.Agmera Private Limited and same was incorporated in the Companies Act. While so, appointing the plaintiff for the sale of the products is contrary to non competing clause of the agreement entered between them.

8. The 4th Defendant has replied to the said notice by denying the allegations and the notice is illegal and void. In the said reply, the 4th defendant has specifically stated that the plaintiff M/s.Techbio Solutions, has nothing to do with the dispute and the allegations mentioned in the notice of the 2nd defendant. The lengthy reply of the 4th defendant to the 2nd defendant notice indicates that, the 4th defendant's tradename and trademark has been infringed by the 2nd defendant by making minor alteration in the name and logo and trying to interfere with the business of the plaintiff by causing malicious notice. However, in the written statement of the

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defendants 1 to 3, it is contended that the reply notice sent by the 4th defendant is incorrect and do not represent the correct legal or factual position. The defendants 1 to 3 alleged that, the plaintiff has no right to act as distributor for the products of the 4th defendant. The 4th defendant, has entered into a Share Subscription Agreement with the 1st and 2nd defendants for the purpose of setting up the 3rd defendant's company. There is a Non Disclosure Agreement between them. Despite the Share Subscription Agreement and Non Disclosure Agreement, in the breach of agreement, the 4th defendant has illegally appointed the plaintiff as its distributor.

9. The Learned Counsel appearing for the plaintiff/applicant in support of his application for passing summary judgment would submit that, the contract between the 4th defendant and other defendants was terminated as early as 28.03.2018 and thereafter, the plaintiff was appointed as distributor by the 4th defendant and the agreement has been further renewed for a period of 12 months from 20.04.2019. In the suit for injunction, the defendants have no prospect of succeeding and therefore, summary judgment has to be passed without recording oral evidence.

10. The nature of the dispute and the contentious issues involved in this case does not appears to be a fit case for passing the summary judgment. The 4th defendant, who has appointed the plaintiff as its distributor, in its reply to the legal notice issued by the 2nd defendant, admits about the existence of the Share

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Subscription Agreement and also existence of Non Disclosure Agreement. Without deciding the validity of termination of the agreement between the 4th defendant and the other defendants, the agreement between the plaintiff and the 4th defendant cannot be tested.

11. Any relief, the plaintiff entitled is based, not only on the agreement between the plaintiff and the 4th defendant dated 26.04.2018 and subsequent renewal but also based on the validity of the termination of agreement between the 4th defendant and the defendants 1 and 2 therefore, it is not a fit case for passing summary judgment, without recording the evidence. Hence, Application No.6610 of 2019 is ***dismissed***.

Sd./-G.J.J
19.02.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 26/02/2020 COURT OFFICER(O.S.)

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