

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 27th September, 2019
Decided on: 16th March, 2020

+ **CS(COMM) 732/2017 & I.A.6858/2019 (under Order XIII-A CPC by Defendant), I.A. 12365/2017 (u/O 39 R 1&2 CPC)**

M/S. PAUL SALES PVT. LTD. Plaintiff
Represented by: Mr.Sunil K. Mittal, Mr.Anshul Mittal
and Mr.Harshit Vashisht, Advocates.

versus

M/S. HARI DARSHAN SEVASHRAM PVT. LTD..... Defendant
Represented by: Mr.Sanjeev Mahajan, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Plaintiff has filed the present suit with the following relief:
 - a) *Decree of permanent injunction in favour of the plaintiff company and against the Defendant Company, its officers, representatives, agents, servants, attorneys etc. restraining them from contacting, making supplies or collecting payments from any third party other than the Plaintiff in respect of supply, distribution and/or marketing of products manufactured under the name & style of the Hari Darshan Brand;*
 - b) *Pass a decree of mandatory injunction in favour of the plaintiff company and against the Defendant Company, its officers, representatives, agents, servants, attorneys etc. directing the Defendant Company to restore and continue the supply of products of Hari Darshan Brand including Aggarbattis, Dhoops and other allied Pooja items as per the*

purchase orders placed on record in favour of the plaintiff company.

c) Costs of the suit be awarded in favour of the plaintiff company.

2. Pleadings of the plaintiff in respect of his claims seeking the reliefs as mentioned in para 4, 5 and 10 of the plaint are:

“4. It is submitted that since the year 2006, the plaintiff company is the sole in-charge of the supply network of the products manufactured by Hari Darshan brand on an all India basis. The plaintiff company has established a network of distributors and agents to whom varied quantities of Aggarbatti and Dhoop products of Hari Darshan Brand are supplied.

5. It is submitted that the modus of operations is as follows:

- i) A particular distributor books a quantity of Aggarbatti and Dhoop products etc., with the plaintiff company, and in turn, the latter calls for the said quantity from the Defendant Company usually by email. The plaintiff company raises an invoice on the distributor.*
- ii) The said quantity is delivered directly to the said distributor by the Defendant Company on the strength of the purchase orders and instructions given by the plaintiff company. For the quantity delivered, the Defendant Company raise an invoice on the plaintiff company.*
- iii) It is submitted that the distributor make the payments against the quantity delivered directly to the plaintiff company.*
- iv) It is submitted that accounts were settled usually on a monthly basis between the plaintiff company and the Defendant Company and the payments released by the plaintiff company to the defendant on a weekly basis on*

the strength of the invoices raised by the Defendant Company to the plaintiff company.

6. ...

7.

10. *That from the aforesaid factual matrix, it is clear that the plaintiff has been working on behalf of the defendant on the following terms and conditions:*

- a. *That the plaintiff exclusively deals with the Hari Darshan Group for the purposes of Sales and Marketing of the products of Hari Darshan Brand;*
- b. *That the plaintiff has the sole prerogative of appointment of the distributors for the sale of products of Hari Darshan Brand throughout India without any interference in this regard by the defendant company herein or anyone else;*
- c. *That the plaintiff would procure orders from the various distributors so appointed by it. Thereafter the plaintiff would pass on necessary details to the defendant company for making necessary supplies in terms of the orders procured by the plaintiff;*
- d. *That the plaintiff would be exclusively entitled to receive payments from the distributors against the supplies so received by them.*
- e. *That the plaintiff would be making payment to the defendant company for those supplies. The agreement between the plaintiff and defendant was that a discount of 20% to 25% would be offered to the plaintiff. It is submitted that the margin of commission for the plaintiff company comes out of the said discount margin given by the defendant.*

It is submitted that this agreement has been acted upon by the parties since 2006 and the plaintiff company has continued to exclusively work for the defendant under the same scheme and arrangement.”

3. Defendant filed I.A. No.6858/2019 under Order XIII-A stating that in view of Section 14 of the Specific Relief Act no injunction can be granted against the defendant for enforcing the contract and the plaintiff cannot seek an injunction that it would be the exclusive dealer of the defendant. Learned counsel for the defendant relies upon the decisions reported as 2015 (5) Arb. LR 427 (Delhi) SICPA India Private Ltd. vs. Kapil Kumar & Ors., Swift Initiative Pvt. Ltd. vs. Dilip Chhabria Design Pvt. Ltd. in O.M.P. (I) No.454/2015 dated 19th October, 2015 and 163 (2009) DLT 482 Sunil Chopra & Anr. vs. Zamil New Delhi Infrastructure Pvt. Ltd.

4. Section 14 of the Specific Relief Act, 1963 reads as under:

“14. Contracts not specifically enforceable.—(1) The following contracts cannot be specifically enforced, namely:—

- (a) a contract for the non-performance of which compensation in money is an adequate relief;*
- (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;*
- (c) a contract which is in its nature determinable;*
- (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.*

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has

contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—

(a) where the suit is for the enforcement of a contract,—

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for,—

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm;

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land: Provided that the following conditions are fulfilled, namely:—

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of

the land on which the building is to be constructed or other work is to be executed”.

5. Thus a contract which is dependent on the personal qualification or volition of the parties the material terms whereof cannot be specifically enforced by the Court. The legal position in this regard is well settled.

6. In the decision reported as 82 (1999) DLT 137 Marriott International Inc. & Ors. vs. Ansal Hotels & Anr. it was held:

“106. The main issue which arises for consideration is whether the respondents are guilty of breach of contract and if so, in the facts and circumstances of this case should the respondents be restrained by a court injunction or order of interim relief from carrying on their further arrangement with the ITC? Before deciding this issue, two questions which require urgent reply are: (1) Can the respondents be compelled to take the services from the petitioners particularly when they have lost faith, confidence and trust in each other? (2) The other question which also needs to be answered is can the petitioners be adequately compensated in terms of money when it is ultimately proved that the respondents are guilty of breach of contract?

107. I am of the view that it may not be possible to compel the respondents to discharge their obligation of the remaining contract with the petitioners. Distrust and loss of confidence has developed between the parties. In this view of the matter, it would hardly be proper now to compel them to work together”.

7. In Swift Initiative Pvt. Ltd. (supra) it was held:

“5. Legal Position

The law with respect to the grant of injunction in commercial contracts is well settled. Section 14 (1) (c) bars the specific performance of contracts in respect of which the compensation in money is an adequate relief for their non-

performance. Section 14 (1)(c) bars the specific performance of contracts which are determinable in nature. Section 41(e) of the Specific Relief Act provides that no injunction can be granted in respect of the contracts which cannot be specifically enforced”.

8. Case of the plaintiff is that the plaintiff is a distributor, pursuant to an oral agreement with one of the Directors of the defendant company. There is no written agreement between the parties providing for an exclusive right in the plaintiff to sell the products of the defendant. The oral agreement also being determinable, the same is also unenforceable under Section 14 (1) (c) of the Specific Relief Act, thus there is no likelihood of the suit succeeding and consequently is liable to be dismissed as provided under Order XIII A Rule 3 CPC wherein the Court may pass a summary judgment against the plaintiff on a claim if it considers that the plaintiff has no real prospect of succeeding on the claim.

9. Dealing with the enforceability of a contract which is determinable in the nature this Court in Sunil Chopra (supra) held:

24. Dealing with the next submission of the defendant, it is well settled law that when a contract is determinable by the parties, the same cannot be treated as a contract as is referred in Clause (c) to Sub-section 1 of Section 14 of the Specific Relief Act which is by its nature determinable. Clause (c) of Sub-section 1 of Section 14 states that a contract which is by its nature determinable cannot be specifically enforced. If it is found that a contract is by its very nature determinable, the same is not only unenforceable, but in addition, in respect of such a contract no injunction can be granted in view of Section 41(h) of the Specific Relief Act. This is a mandate of law.

25. In the case of Techno Construction and Anr. v. Kunj Vihar Co-operative Group Housing Society Ltd.

MANU/DE/0381/2005 : 2005 (81) DRJ 233 it was held as under:

9. ...The first question requiring consideration is, whether the contract for construction of building can be ordered to be specifically enforced? Section 14(1)(a) of the Specific Relief Act, 1963 provides that a contract for non-performance, of which compensation in money is adequate relief, cannot be specifically enforced. In a suit for enforcement of contract for construction of a building, the party seeking specific performance of the contract has to satisfy three conditions, contained in proviso to Clause (c) of Sub-section (3) of Section 14. These are (i) the building or other work is described in the contract in sufficiently precise terms to enable the court to determine the exact nature of the building or work. (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed. In short, before a construction contract can be ordered to be enforced, it has to be held that compensation in money is not the adequate relief. It cannot be disputed that where a contract which cannot be enforced by a decree for specific performance, the same cannot be negatively enforced by issue of an injunction.

26. In the case of Usha Sales Ltd. v. Aruna Gupta MANU/DE/0416/1987 : ILR (1988) 1 Del 103 it was held as under:

The right of the statutory tenant flows not from a contract but from a statute. The question is not whether an injunction can be granted to specifically perform a term of a contract or not and the provisions of Sections 14, 16

and 41 of the Specific Relief Act have therefore no relevance of application. The statutory tenant enforces his right under the statute and not under the contract. Sections 14 and 16 of the Specific Relief Act, 1963 pertain to the specific enforceability of a contract and not of a statutory right. Section 41(e) on which reliance has been placed by the defendants also talks of a contract. There is no bar with regard to the enforcement of such right to property and, particularly, such right flowing from a statute. (Paras 14 & 15)

27. *In the case of B.S.M. Contractors Pvt. Ltd. v. Rajasthan State Bridge & Construction Corporation Ltd. and Anr. MANU/DE/0372/1999 : AIR 1999 Delhi 117 it was held as under:*

“9. On a consideration of the facts and circumstances of the case, I am of the opinion that a building contract of the instant nature cannot be specifically enforced by granting interim relief under Section 9 of the Act. If there is a breach of such a contract, the appropriate remedy is to compensate the party damnified in damages. That apart, the granting of an injunction in favour of the petitioner will further delay the construction work considered very urgent by the respondent No. 3. Thus, the balance of convenience also swings against the grant of injunction sought by the petitioner.”

28. *From the above discussion, it becomes clear that where a contract is not specifically enforceable as per the Clauses stipulated under Section 14 of the Specific Relief Act, an interim order in the form of injunction qua such a contract cannot be passed enforcing negatively”.*

10. Considering the fact that the prayers in the suit are unenforceable, I.A.6858/2019 under Order XIII-A CPC filed by Defendant is allowed and the suit filed by the plaintiff is dismissed.

11. I.A. 12365/2017 (under Order XXXIX Rule 1 and 2 CPC) is also dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 16, 2020
‘vn’

