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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 8 OF 2021

Lohia Corp Limited

....Applicant

V/s.

Dalpat Singh Kalyan Singh
Chouhan Proprietor of M/s.
Navaratan Steel (India) and others

.....Respondents

Ms. Aneesa Cheema i/b Kkshitij Shah for the Applicant
Mr. Manish Jain i/b S. M. Jain Associates for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 8, 2021.

P.C.:

1] Notice of Motion No. 2769 of 2016, taken out by Petitioner who is Defendant No. 1 in Suit No. 2682 of 2015, came to be rejected vide order impugned dated 03/12/2018, whereby prayer for stay of the Suit under Section 10 of the Code of Civil Procedure, 1908 [Hereinafter referred to as 'CPC' for the sake of brevity] came to be rejected. As such, this Petition.

2] By inviting attention of this court to Plaint in Suit No. 2682 of 2015 which was initiated against the present Petitioner by Respondent and also prayer in the Suit being Original Suit No. 2151 of 2015 which is initiated between same parties for the similar reliefs, submissions are, principle of Section 10 of the CPC needs to be appreciated and order impugned thereby rejecting prayer for staying the Suit is liable to be quashed and set aside by ordering stay of later Suit.

3] Learned counsel for Respondent would support the order and urge that order impugned is quite clear as it cannot be said that dispute between the parties to the Suit i.e. issue in the matter is similar to each other. According to him, order impugned is just and proper and petition is liable to be dismissed.

4] It is no doubt true that Suit being Original Suit No. 2151 of 2015 for declaration and injunction initiated by the Petitioner is prior in point of time. Prayers in the said Suit reads thus:

“RELIEFS

The plaintiffs, therefore, claim for the following reliefs:

(1) A Decree of Declaration be passed declaring that the notice dated 08/08/2015 is nonest, unenforceable, illegal and untenable and no amount is due and payable to the defendants by the plaintiff.

(2) By a decree of Permanent injunction the defendants, their servants, agents and assigns etc. be restrained from enforcing the said illegal notice dated 8/8/2015 against the Plaintiff and/or be further restrained from initiating any action against the plaintiff on the basis of the said illegal notice dated 8/8/2015.”

5] As far as the Suit initiated by Respondent which is pending on the file of City Civil Court, Bombay being Suit No. 2682 of 2015 is concerned, same is initiated later in point of time, however, parties in both these Suits are same but for interchanged position in cause title.

6] As far as Suit initiated by the Petitioner is concerned, same is based on cause of action i.e. when the Petitioner received notice issued by the Respondent on 08/08/2015 seeking outstanding

payment and also when the same was replied. As far as notice dated 08/08/2015 issued by the Respondent is concerned, it is the case of the Petitioner that by way of counter attack, Respondent had issued notice for seeking payment of Rs. 21,31,678/-. According to Petitioner, said dues are not payable in view of default committed by their own employee Anand Gupta, Senior Purchase Engineer.

7] As far as Suit No. 2682 of 2015 initiated by Respondent is concerned, it is claimed that in course of business, between 03/01/2012 to 25/05/2015 he has supplied various types of industrial raw material. Based on invoices, legal demand vide notice dated 08/08/2015 was raised. Tax invoice, ledger entries were relied on for demonstrating the transaction. Respondent acknowledged receipt of part payment of Rs. 1,69,051/- on 12/05/2015.

8] Prayer in the said Suit reads thus:

"i. That the Hon'ble Court may be pleased to Order and Decree against the Defendants jointly and severally to pay the Plaintiff a sum of Rs. 23,54,536/- as per the Plaintiff's Particulars of Claim.

ii. That the Defendants jointly and severally be further Ordered and Decreed to pay to thee Plaintiff future interest at the rate of 24% per annum on principal balance sum of Rs. 21,31,674/- from the date of filing of the Suit till payment andor realization in full.

iii. That the costs of the Suit be provided for

iv. Such other reliefs deemed fit and proper by the Hon'ble Court, be granted."

9] As such, Suit by Respondent is for recovery of amount whereas Suit by the Petitioner is for declaring that the notice dated 08/08/2015 is non-est, unenforceable, illegal and untenable. A declaration is sought that no dues are payable.

10] While dealing with the said prayer, Trial Court has held that allegation of fraud by the Petitioner against its own employee are interse between the Petitioner and such employee which has no effect whatsoever on the Suit claim of Respondent.

11] The underlying object of Section 10 of CPC is to prevent Courts

of concurrent jurisdiction from simultaneously trying different Suit proceedings in respect of same matter in issue. As such, with an intention to avoid two parallel proceedings on the same issue, provisions of Section 10 of CPC are enacted. Another object is to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted Suit. Said words employed in Section Viz. “directly and substantially in issue” are in contradiction to the words “incidentally or collaterally in issue”. As such, same can be applied where there is an identity of the matter in the issue in both Suits. As far as aforesaid observations are concerned, support can be drawn from the Judgment of the Apex Court in the matter of **National Institute of Mental Health and Neuro Sciences V. C. Parameshwara**¹.

12] Apex Court in the matter of **Pukhraj D. Jain and Others Appellants V. G. Gopalakrishna**² has held that aforesaid Section merely a Rule of procedure and decree passed in contravention thereof is not a nullity. Apex Court further held that it is not open for the litigant to dictate the Court as to how proceedings should be

¹ AIR 2005 SUPREME COURT 242

² AIR 2004 SUPREME COURT 3504

conducted as it is for the Court to decide what will be best course to be adopted for expeditious disposal of the case.

13] As far as the case in hand is concerned, Petitioner has wisely initiated the Suit based on the notice dated 08/08/2015, clearly with an intention to frustrate the Suit claim of the Respondent that too in a calculated manner. In any case, provisions of Section 10 are rightly not invoked by the Court below in staying the trial in the Suit of the Respondent initiated at Bombay being Suit No. 2682 of 2015. Prayer clause in both Suits are distinct and the subject matter cannot be termed to be identical.

14] As such, in the aforesaid background, order impugned is very much justified. No case for interference is made out. Civil Revision Application fails, stands dismissed.

[NITIN W. SAMBRE, J.]