IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

A.S.No.419 of 2018

M/s.Nekkanti Agencies,
Kovelamudivari Street,
Near Swathi Office,
Surayraopet, Vijayawada-520002
rep. by its Sole proprietor
Nekkanti Surya Narayana Murthy ...Appellant/Defendant

Vs

Hindustan Unilever Limited,
Ponds House,
No.101, Santhome High Road,
Chennai 600 028
Rep by its Regional Legal Manager and
Authorised Signatory, Mr.Saif Jamali ...Respondent/Plaintiff

PRAYER Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and decree passed by the Hon'ble XVIIIth Additional City Civil Judge, Chennai on 21.12.2017 in O.S.No.4113 of 2017 and allow the appeal by dismissing the suit.

For Appellant: M/S.R.Sathish Kumar

For Respondents: Mr.Karthick Ram Mohan
for S.Ramasubramaniam & Associates.

JUDGMENT

The defendant has invoked the appellate jurisdiction of this Court Section 96 of the Code of Civil Procedure, challenging the Judgment and decree passed by the XVIII Additional City Civil Court, Chennai in OS.No.4113 of 2017.

2.The suit in OS.No.4113 of 2017 has been filed by the respondent/plaintiff for recovery of a sum of Rs.14,78,812/- together with interest @ 12% per annum from the date of the filing of the suit till the date of the payment. It is necessary to allude to the facts of the case which has ultimately resulted in filing of the appeal, so as to appreciate the grievance of the defendant to the Judgment and Decree under appeal. The parties for the ease of understanding are referred to the same ranking as before the Trial Court.

3.The plaintiff had filed the above suit as an 'Under Chapter suit'. It is the case of the plaintiff that they were supplying goods to the defendant, in respect of which, invoices have been raised on the plaintiff. The defendant had admitted their liability vide e-mail dated 22.10.2016 and the plaintiff would contend that this admission of liability by the defendant would constitute a written admission of liability entitling the plaintiff to file this summary suit. The plaintiff would contend that they are one of the largest Consumer goods industry in India, manufacturing different and distinct categories of soap, detergents, shampoos, water purifiers etc., The plaintiff's company market its product under different brands like a Lux, Lifebuoy, Surf Excel, Rin, Wheel, Vaseline, Fair & Lovely, Ponds, Lakme, Dove, Clinic Plus Knor, Kisan, Kwality Wall's etc., and the water purifier with the name of 'Pureit'.

4.The defendant had been appointed as Redistribution stockist at Vijayavada on 2009. The plaintiff had done the necessary background check of the defendant, prior to entering into the redistribution agreement dated 12.09.2013. The plaintiff had also been supplying goods from time to time based on the purchase orders being placed by the defendant. The plaintiff is facilitated with e-banking service called 'ACH Mechanism' (Automated Clearing House) as a mode of payments.

5.The plaintiff would submit that in the month of January 2016, the defendant had placed orders for supply of goods to the tune of Rs.14,78,811.68/-. The plaintiff had also supplied the said consignment of goods under seven invoices, all dated 18.06.2016. The goods were delivered to the defendant on the very same day and the defendant had also received the goods supplied to them. However, the payment for these invoices had not been transferred through the 'ACH Mechanism'.

6.The plaintiff would contend that they had received intimation that the transaction bearing reference No.443593 for a sum of Rs. Rs.14,78,811.68/- from HSBC Bank had been dishonoured with an endorsement 'Balance insufficient'. The plaintiff sent a written memo on 21.07.2016 and the plaintiff had also intimated the defendant about the dishonour of their payment. Despite receiving this letter from the plaintiff, the defendant did not come forward to regularize the amount. The plaintiff had made several requests and ultimately issued a legal notice dated 16.08.2016 calling upon the defendant to pay the above sum. The defendant had received the notice and sent a reply dated 03.09.2016 containing frivolous and untenable allegations.

7.The plaintiff despite receiving the reply contacted the defendant through its representative and requested them to either make the payment or return the goods supplied, which were kept in the godowns of the defendant as stated in the reply dated 03.09.2016. On 20.10.2016 the plaintiff had sent an e-mail informing the defendant about the transaction for Rs.14,78,811.68/- being dishonoured and requested the defendant to return the outstanding stock or transfer Rs.5,00,000/- worth stock to the depot on or before 21.10.2016. In response to this request, the defendant agreed to transfer the stock worth Rs.5,00,000/- . However, by e-mail dated 22.10.2016, the defendant would submit that the outstanding amount from the market was Rs.8,18,000/- and the outstanding amount to the plaintiff by the defendant and the remaining stock worth Rs.28,00,000/- would be settled as a full and final payment. However, the defendant failed to honour their commitment.

8.On 31.12.2016, the defendant issued a notice to two employees of the plaintiff making allegations against them and seeking recovery of a sum of Rs.7,80,000/- . This appears to be backlash to the legal notice issued by the plaintiff to the defendant dated 16.08.2016. The letter dated 31.12.2016 appears to be a defence strategy if the plaintiff were to approach the Court of law. Since, payments were not made, the plaintiff had filed a suit as the Summary suit (Under Chapter suit) to recover the aforesaid sum.

9.The defendant on being served with the summon in the above suit had filed an application for granting an Unconditional leave to defend the suit in I.A.No.143 of 2017. In the affidavit filed in support of the said petition, the defendant would contend that the summary suit was maintainable as it is filed for recovery of money based on alleged admissions of liability by the defendant. The defendant at the outset took a defence that the plaintiff had not complied with Clause 18 of the agreement dated 12.09.2013. It is their contention that the agreement contained a dispute resolution mechanism which had to be adopted by the plaintiff in case there was a dispute regarding the transaction. The defendant also refuted the said agreement. He would contend that claim was only based on invoices, all dated 18.06.2016.

10.They would further contend that post 2013, no dues had been claimed by the plaintiff which would only go to show that the defendant had been very prompt in his payment and clearing up the dues. It is the case of the defendant that the plaintiff owed a sum of Rs.9,24,000/- , on June 2016 which had been clearly mentioned in several correspondence that it is a triable issue and therefore a Summary suit would not be the ideal remedy as it would cause severe prejudice to the defendant.

11.The defendant would submit that even through reply dated 03.09.2016, it is informed to the plaintiff that a sum of Rs.9,24,000/- was due and payable from the plaintiff's personnel to the defendant. The defendant would also submit that even in the letter of admission, the amount admitted was only a sum of Rs.12,37,285.94/- whereas the suit is filed for a higher value. Therefore, there was a dispute with regard to the amount that was due from the plaintiff. The defendant would submit that the reasons given below would demonstrate that the suit involves triable issue and therefore leave to be granted.

(a) Whether the Court had jurisdiction in the light of Clause 18 of the agreement dated 12.09.2016?

(b) Whether the defendant was entitled to a sum of Rs.9,24,000/- from the plaintiff's employees which had to be deducted from out of the claim of Rs.14,78,811.68/-?

(c) Whether the acts of the plaintiff's employees are actions in the course of their duty and therefore the plaintiff is vicariously liable for any such amount due to the defendant?

(d) Whether the plaintiff could invoke the provisions of Order 37 Rule (2) of the Code of Civil Procedure, especially when the defendant had disputed the quality of the goods that was allegedly supplied by the respondent?

Therefore, the defendant would submit that leave had to be granted to them.

12.The defence to this application was that the reasons given to show that the suit involved triable issue was nothing but a moon shine defence not backed by evidence. The plaintiff would contend that even in their e-mail dated 22.10.2016 the defendant had admitted their liability to the tune of Rs.12,37,285/-. The defendant had also in the said e-mail undertaken to settle all the dues after liquidating the remaining stock worth Rs.28,00,000/- towards full and final settlement of the dues. The triable issue according to the plaintiff were illusory in nature and a mere sham raised for the purpose of obtaining an unconditional leave. The plaintiff therefore sought to have the application dismissed.

13.The learned XVIII Additional City Civil Judge, Chennai, by order dated 21.12.2017 had dismissed the leave to defend application and had consequently proceeded to decree the suit as prayed for.

14.The defendant has challenged only the decree in the suit and there is no challenge to the order dismissing the leave to defend the application.

15.An initial objection was taken by the learned Counsel for the plaintiff regarding the maintainability of the appeal filed challenging the decree in the suit alone, since the Order passed in the leave to defend application has not been challenged.

16.Mr.Sathish Kumar, learned Counsel appearing on behalf of the defendant would submit that he has challenged the Order and finding passed in the I.A.No.143 of 2017 in his ground of appeal and therefore there is a compliance in challenging the Order passed in I.A.No.143 of 2017. He would also rely upon the Judgment of the single Judge of this Court in a Civil Revision Petition and reported in Shivsu Canadian Clear International Ltd. Vs. Freightcan Global Logistics Private Limited [2013 (3) CTC 305] in support of the above argument.

17.The issue involved in the above revision was as follows,

“Whether the right of appeal against a decree to be passed is consequent upon the dismissal of an Interlocutary application under Order XXXVII, Rule 3(5) of the Code of Civil Procedure thereby, declining to grant leave to defend is the bar for the aggrieved defendant to challenge the said Order by way of revision”.

18.The learned Judge dealt with the Judgment of the Hon'ble Supreme Court and the Judgments of the various High Courts. After extensively discussing the above Judgements, the learned Judge observed that the law in the said judgments has been clinchingly declared by Hon'ble Supreme Court in the case reported as Wada Arun Asbestos (P) Ltd vs. Gujarat Water Supply & Sewerage [2009 (2) SCC 432] and would hold that if the above

Judgment is read alongside the other Judgments of the Hon'ble Supreme Court reported in Ajay Bansal vs. Anup Mehta and others [2007 (2) SCC 275]. The following factors would emerge and one such factor was that it was open to the defendant to wait till the decree is passed and thereafter challenge the decree by way of an Appeal and in this Appeal itself, the appellant could challenge the Order declining the grant of leave to defend by the Trail Court. Therefore, the above Appeal filed by the appellant challenging the Order passed both in I.A.No.143 of 2017 as well as the suit is maintainable.

19.Once this Court holds that the Appeal is maintainable, then the next question to be answered is, "Whether the Order of the Court requires re-consideration or whether the same can be confirmed?"

20.The primary defence that has been put forward by the appellant/defendant is that the defendant in response to the legal notice dated 16.08.2016 issued by the plaintiff had in their reply dated 03.09.2016 contended that a sum of Rs.9,24,000/- was due and payable from the plaintiff's personnel to the defendant. He would refer to a Statement of Account that had been received by the defendant from the plaintiff whether the closing balance on 28.07.2016 was shown as a sum of Rs.12,37,285.94/-, whereas, the suit that has been filed on 29.06.2017 would still claims that a sum of Rs.14,78,811.68/- was due and payable by the defendant to the plaintiff. He would further submit that the plaintiff has not produced the Statement of Accounts and therefore on these grounds also the Judgment requires re-consideration.

21.The learned Counsel would therefore submit that the plaintiff has not come to the Court with a definite case and therefore only if leave is granted, they would be in a position to prove the above payment. Since, important and substantial issues have been raised for consideration, the leave should be granted

22.Per-contra, Mr.Karthik Ram Mohan, learned Counsel for the plaintiff would submit that in their e-mail dated 22.10.2016, the defendant had clearly and categorically submitted that a sum of Rs.12,37,285.94/- was due and payable by them. In the said mail, they have also stated that a sum of Rs.8,18,000/- was still outstanding from the market and further stock worth Rs.3,00,000/- would be transferred with the consent of the plaintiff, the remaining stock which is worth around Rs.28,00,000/- was outstanding amount from the market.

23.He would submit that nowhere in this mail, has the defendant made any mention about the sum of Rs.9,24,000/- due to them. Further, even according to the defendant a sum of Rs.9,24,000/- was due from the two employees in individual capacity and not from the company. That being the case, the defence pleaded is nothing but, illusory and therefore the Court below has rightly dismissed the leave to defend application and the plaintiff having established the liability, the learned Trial Court Judge has rightly decreed the suit.

24.Heard the learned Counsels and perused the records filed in support of the above Appeal.

25.The plaintiff has come forward with a case that a sum of Rs.14,78,811.68/- is due under seven invoices, all dated 18.6.2016 for different amounts. The said amount has not been paid. The defence to the above claim which is in the form of the affidavit filed in support of the leave to defend application would set out that the dues alleged were based on seven invoices dated 18.06.2016. The defendant would contend that after the year 2013, no demands were made by the plaintiff which only goes to show that the defendant has been very prompt in clearing their dues. As on June 2016, it is the plaintiff who owed a sum of Rs.9,24,000/- to the defendant which was the amount payable by two of the employees of the plaintiff who had fudged the funds belonging to the defendant.

26. The plaintiff was vicariously liable for the acts of their employees and therefore a sum of Rs.9,24,000/- was due and payable by the plaintiff to the defendant. In this regard, a perusal of the notice dated 16.08.2016 issued by the plaintiff to the defendant (Exhibit A5) would show that a sum of Rs.14,78,811.68/- has been made towards the seven invoices.

27.The plaintiff has called upon the defendant to pay the above sum within 15 days. The defendant had sent a reply dated 03.09.2016 (Exhibit A6), in which they had raised an issue of amounts beings payable by Mr.Govardhan Gowda, RamKumar and ASM Pradeep Bhandari who are the staffs of the plaintiff liable to the tune of Rs.9,24,000/-. The defendant has categorically denied his liability. Thereafter an e-mail has been issued by the plaintiff dated 20.10.2016 (Exhibit A7), in which the demand for payment for a sum of Rs.14,78,811.68/- was reiterated. To this, a reply mail dated 22.10.2016 has been sent, in which the defendant had categorically admitted that, as on that date a sum of Rs.12,37,285/- was due and payable by them to the plaintiff, therefore there is an admission of liability to the said extent.

28.Therefore, on considering of the entire evidence it is ample clear that defence taken is nothing but, illusory which was not backed by evidence, more particularly, when it is the case of the defendant themselves that the amounts were payable by the employees of the plaintiff and not by the plaintiff themselves. Further, it is seen that there has been an admission of liability to the tune of Rs.12,37,285/- and the Statement of Accounts forwarded by the plaintiff to the defendant would also only indicate about the same.

Therefore, the appeal is partly allowed. The decree is modified to a sum of Rs.12,37,285/- from Rs.14,78,811.68/-. In all other respects, the Judgment and decree stands confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

gd

To

1. XVIIIth Additional City Civil Judge,
Chennai

2.The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.Ramasubramanian, Advocate SR.No.54516

A.S.No.419 of 2018

AD(CO)
CB(03/01/2022)