

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.No.227 of 2020
and C.M.P.No.11736 of 2020

Venkata Narayana Active Ingredients
Pvt. Ltd. (formerly Nutra Specialities
Pvt. Ltd.) Chennai 600 017. ... Appellant

-vs-

- 1.Novartis AG
Lichtstrasse 35, 4056,
Basel, Switzerland,
Rep. by its POA Mr.Atul Bade.
- 2.Novartis Healthcare Pvt. Limited
Rep. by its POA Mr.Atul Bade. ... Respondents

Appeal filed under Order XXXVI Rule 9 of the O.S.Rules read with Cause 15 of the Letters Patent and Section 13 of the Commercial Courts Act, 2015 against the Order and Decreetal Order dated 12.07.2019 passed in Application No.8944 of 2018 in C.S.No.282 of 2018 on the file of original side of this Court.

For Appellant : Mr.T.K.Ramkumar

For Respondents : Mr.Arun C.Mohan

WEB COPY
JUDGMENT

(Delivered by The Hon'ble Chief Justice.)

The appeal arises out of an order by which the defendant's application to lodge a counter-claim has been dismissed on divers grounds.

2.The primary grievance of the defendant-appellant appears

to be that while disallowing the counter-claim to be taken on board, observations have been made on the merits of the matter that may prejudice the defendant in the further course of the suit, particularly at its trial.

3.A preliminary objection is raised on behalf of the plaintiffs that the appeal itself may not be maintainable under Section 13 of the Commercial Courts Act, 2015. Indeed, there is sufficient basis to the objection as the appeal may not be one which is recognised in Order XLIII of the Code of Civil Procedure, 1908. It is nobody's case that the appeal is against a final decree or even a preliminary decree.

4.However, without conclusively addressing the issue of maintainability, it is evident that there may be observations in the impugned judgment that could be held against the appellant in course of the further proceedings in the suit, particularly at the trial. It is evident that the observations were made only for the purpose of assessing whether the counter-claim attempted to be filed by the defendant could be taken on record.

5.As such, the observations on the merits of the defence have to be confined to the considerations relevant for the assessment of the application and not extended beyond the same to the further proceedings in the suit or in course of the trial.

With the above observation and without going into the question of maintainability, the appeal, O.S.A.No.227 of 2020, is disposed of without interfering with the order impugned. There will be no order as to costs. Consequently, C.M.P.No.11736 of 2020 is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

sra

Copy to :

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1 cc to M/s.Arun.C, Advocate Sr.No. 5161

+1 cc to M/s.Ram & Rajan, Advocate Sr.No. 5165

O.S.A.No.227 of 2020

GP(CO)

RMP(19/02/2021)