



A.No.3037 of 2020
in C.S.No.490 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.07.2021

Pronounced on: 15.07.2021

Coram::

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.No.3037 of 2020
in C.S.No.490 of 2019

Sutherland Global Service Pvt Ltd.,
Represented by its authorized person Mr.Raghavan. A.
No.45-A, Velachery Main Road, Vijayanagaram,
Chennai, Tamil Nadu – 600 042.

... Applicant

/versus/

1. Candor Management Services Private Limited,
Represented by its Managing Director,
Mr.Thirumurugan Subramanian,
No.292, 1st Floor, 1st Main, 7th Cross, Domlur Layout,
Bangalore – 560 071.
2. M/s.SG iConsult Management and Outsourcing Private Limited,
Represented by its Director Mr.Sathyaseelan AthikayanPalliyil,
No.N-406, Raj Lake View Phase, Bilekahalli Village,
Begur Hobli, Bangalore – 560 075.
3. Mrs.Sandhya Chandrasekar alias Sandhya Ganapathy,
New No.406, Nyasa SNN Raj Lake View, BTM 2nd Stage,
29th Main, Bannerghatta Road, Bangalore – 560 076.
4. Mr.SathyaseelanAthikayanPalliyil,
Plot No.12, Nandanam behind Nikhil Niwas Apartment,
8th Cross Maruthi Nagar, 10th Main, Malleshpalya,
Thippasandra Post, Bangalore – 560 075.



5. Mr.Ganapathy Ramachandran,
No.N-406, Nyasa SNN Raj Lake View, BTM, 2nd Stage,
29th Main, Bannerghatta Road,
Bangalore – 560 076.

... Respondents

Prayer:

This Application is filed under Order VII Rule 10 read with Section 151 of C.P.C read with order XIV Rule 8 of Original Side Rules.

- a). This application should not be treated as urgent.
- b). To Dismiss the counter claim of the 3rd defendant with costs.

For Plaintiff : Mr.Ramakrishnan, Senior Counsel
for Mr.S.R.Sundar

For D1 : Mr.Arun Karthik Mohan

For D2, D4 & D5 : Mr.P.Giridharan

For D3 : Mr. Prasad Vijayakumar

ORDER

This Application is filed by the plaintiff to dismiss the counter claim made by the 3rd defendant in the written statement filed in response to the plaint.

2. The applicant herein is the plaintiff in C.S.No.490 of 2019. The suit filed against five defendants. The 3rd defendant is the erstwhile employee of



the plaintiff. In the plaint, it is alleged that, the 3rd defendant along with the other defendants conspired to defraud and cause loss to the plaintiff, had indulged in the act of fraudulent procurement of contract, excess payment and overpricing of the contract between the 1st defendant and the plaintiff. She approved the poor quality of work and lesser volume of work by the 1st defendant and pressurised the plaintiff to pay the 1st defendant.

3. The specific averment against the 3rd defendant is that she was employed as Vice President in the plaintiff's Company between 06.05.2013 and 20.11.2018. The 1st defendant Company was known to the 3rd defendant in her previous employment. The 3rd defendant while managing the plaintiff's Contract Management Department, empanelled the 1st defendant as a service provider for the plaintiff. The service agreement and purchased orders were procured in favour of the 1st defendant by the 3rd defendant while, she was in employment of the plaintiff. She, using her position in the plaintiff's Company had made excess payment and overpricing for the contracts entered between the 1st defendant and the plaintiff. Though, the work and volume done by the 1st defendant under the service contract was less and poor, the 3rd defendant did not conduct check on the work done but pressurised to release payment to the 1st defendant on the invoices raised by the 1st defendant.



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4. The 2nd defendant Company is controlled by the 4th and 5th defendant. The 4th defendant is the husband of the 3rd defendant. The 5th defendant is the father of the 3rd defendant. Thus, making out a case of conspiracy between all the defendants, the 3rd defendant, the former employee as the nuclear. The suit is filed for the following reliefs:-

(a). Granting Mandatory injunction directing the defendants to return the confidential data shared among them during the pursuant to the agreement between the plaintiff and the 1st defendant dated August 1, 2016 and the extended agreement dated November 15, 2017 for statement of work 1 and 2.

(b). Directing all the defendants jointly and severally to pay the plaintiff a sum of Rs.59,12,653/- (Rupees Fifty Nine Lakhs Twelve Thousand Six Hundred and Fifty Three) along with future interest @ 24 % p.a from the date of filing of the suit until the payments are duly made.

(c). Directing all the defendants jointly and severally to pay to the plaintiff a sum of Rs.1,00,00,100/- towards compensation for conspiracy and for breach of the contractual obligations as maintaining to confidentiality including non-disclosure of intellectual property rights.

<https://hcservices.ecourts.gov.in/hcservices/>

(d). Direct the 3rd defendant to pay damages to a



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sum of Rs.50,00,000/- for violating the terms and conditions of employment between the plaintiff and 3rd defendant.

(e). Directing the defendants to pay the cost of the suit.

5. The plaintiff has declared the subject matter of the suit as a dispute arising out of violation of terms and conditions of the service agreement dated 11.08.2016 and renewal agreement dated 15.11.2017 entered between the plaintiff and the 1st defendant. It is a Commercial dispute under Section 2(1)(c) (x) and (xviii) of the Commercial Court Act.

6. The 1st defendant has filed written statement with counter claim. Likewise, the 3rd defendant also filed the written statement with counter claim. The other defendants 2, 4 and 5 have filed common written statement.

7. This present application is filed by the plaintiff to dismiss the counter claim of the 3rd defendant with costs.

8. According to the applicant/plaintiff, the counter claim made by the 3rd defendant in her written statement doesn't fall within the scope of Commercial dispute. Alleged cause of action for the counter claim is not



connected with the suit transaction but connected with the termination of her employment by the plaintiff. The counter claim of the 3rd defendant is in the nature of labour dispute. Termination of employment is questioned by her on the ground of violation of natural justice and service law. Whereas, the suit is on a different footing alleging breach of the agreement entered between the 1st defendant and the plaintiff. Conspiracy to enrich at the costs of plaintiff by overpricing poor quality of work and lesser volume of work. Breach of confidentiality obligation regarding the information pertaining to the plaintiff's Company which were within the knowledge of 3rd defendant in the course of her employment.

9. Whereas, in the written statement filed by the 3rd defendant counter claim for a sum of Rs.31,91,167/- towards non-payment of salary from 20.11.2018 till 29.03.2019; A sum of Rs.1,00,00,000/- towards damages for unlawful and illegal termination; and a sum of Rs.10,00,000/- towards mental agony suffered due to illegal termination is claimed.

10. The Learned Counsel for the plaintiff/applicant referring the statements in the plaint and the specific averments against the 3rd defendant regarding conspiracy among the defendants, her failure to check the quality for



the work done by the 1st defendant, breach of confidentiality agreement while in the course of the employment and unlawful sharing of the architecture of the plaintiff's platform and tools with the other defendants and third parties; and violation of the intellectual property of the plaintiff submit that, the cause of action in the present suit arise during the employment of the 3rd defendant, whereas the counter claim for salary and damages for illegal termination are all issues falling outside the scope of litigation. The evidence required for the suit claim and the evidence required for the counter claim are distinct and separate. The counter claim raised ought not to be disposed of by way of counter claim but in an independent suit, if so advised.

11. The Learned Counsel appearing for the 3rd defendant in response to the above submission, per contra submits that the plaintiff has specifically made a claim of Rs.50,00,000/- as damages from the 3rd defendant for violating the terms and conditions of the employment between the plaintiff and 3rd defendant. While so, the counter claim for illegal termination of employment contrary to the terms and conditions of the employment is very well maintainable.

12. Relying upon the judgments of the Hon'ble Supreme Court



rendered in *Ambalal Sarabai case*, regarding interpretation of the jurisdiction clause Section 2(1)(c) of Commercial Courts Act, the Learned Counsels made their submissions regarding interpretation of the phrase “arising out of” referred in the said section and whether a strict and restricted meaning should be given to the said phrase or a liberal interpretation should be given to the said phrase to determine the jurisdiction, as well as whether a counter claim, which doesn't fall within the meaning of Commercial Dispute can be entertained in a suit under Commercial Division.

13. The Learned Counsel for the applicant/plaintiff submits that the counter claim is in the nature of labour dispute which falls under Service Jurisprudence between the employer and employee in respect of termination of service. Such a dispute cannot be implanted under the guise of counter claim in the suit which is a Commercial dispute arising out of Consultancy and Service agreement. The damages claimed by the plaintiff against the 3rd defendant for violating the terms and conditions of the employment is in respect of breach of confidential agreement for unauthorisedly sharing the architecture of the plaintiff's platform with the 4th defendant; for using the e-mail ID's of the 2nd defendant to send plaintiff's confidentiality document to herself for enrichment of the defendants. Thus, the relief against the 3rd defendant for violation of



employment agreement is independent to the termination of the 3rd defendant though it might have led to her termination. If at all, the 3rd defendant has any grievance regarding her termination, it is open to her to agitate the cause before the appropriate forum independently.

14. Per contra, the Learned Counsel appearing for the 3rd defendant would further submit that, the counter claim which is for salary arrears, damages for mental agony and illegal termination is intrinsically connected with the plaint averment and claim. If the 3rd defendant doesn't make a counter claim in the present suit, her right may be affected under Order XI Rule 4 of C.P.C.

15. After considering the rival submissions and the respective pleadings, this Court is of the view that the counter claim of the 3rd defendant is regarding the termination of her employment. Whether her termination is in violation of Principle of Natural Justice or not is a issue which has to be dealt independently before the appropriate forum. The 3rd defendant's right to challenge the termination order is independent to the present suit.

16. Commercial Courts Act vest with Commercial Court, Commercial Division and Commercial Appellate Division Disputes to deal exclusively cases which satisfy the definition of Commercial disputes which are



above specified value. Whereas, Order VIII Rule 6A(2) of C.P.C., says counter claim shall have same effect as cross suit and Rule 6A(4) of C.P.C., say whenever counter claim is made, it has to be treated as a plaint.

17. Suppose the claim is filed by the 3rd defendant as a independent suit before the Commercial Division, Court cannot entertain the suit. Then how can same be entertained it as counter claim when the code says counter claims should be treated as cross suit and as plaint.

18. In the service agreement entered between the plaintiff and the 1st defendant there is a clause which says about preservation of the confidentiality of data. It is alleged in the plaint that the said confidentiality has been breached. This requires interpretation of the said agreement. In the plaint, it is also alleged that the 3rd defendant has breached her employment contract by sharing the plaintiff's data with the defendants and others. Therefore, in this suit, the Court is expected to decide whether or not, there was a breach of agreement touching upon the Service Contract and Management Consultancy Agreement entered between the 1st defendant and the plaintiff, in which, the 3rd defendant alleged to have played a pivotal role.

19. This Court is of the view that when the Code of Civil Procedure expects the Court to consider the counter claim as a independent plaint and as



Cross suit, the facts and circumstances of the present case, where a counter claim is made by the 3rd defendant in her written statement cannot be treated as a plaint to be decided by a Commercial Division under the Commercial Courts Act.

20. To wade off the apprehension of the 3rd defendant that if the counter claim is not made in the present suit, the bar of constructive *res judicata* may fall upon her, this Court make it clear that the claim made for wrongful termination of employment as counter claim in a Commercial dispute is not maintainable. Institution of independent suit for the relief sought cannot be barred under *res judicata*. Accordingly, the Application No.3037 of 2020 to dismiss the counter claim of the 3rd defendant is allowed with liberty to the 3rd defendant to initiate independent/separate suit, for the reasons stated in the counter claim. Accordingly, the ***Application No.3037 of 2020 is Allowed.*** The counter claim made in the written statement of the 3rd defendant alone is dismissed with liberty to file independent suit. No order as to costs.

Sd./-G.J.J
15/07/2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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