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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 22ND DAY OF JULY 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No.9624 of 2019

in

C.S. No.633 of 2015

M/s.Goodwin Pumps India (P) Ltd.,
(Formerly Known as M/s. Goodwin India (P) Ltd.,
Represented by its Authorized Signatory,
K.Kalyanaraman,
Currently at,
No.112/1, Chinna Amman Koil Street,
Kalavakkam, Thiruporur,
Kancheepuram District.

..Plaintiff

-Versus-

1.J.Manikandan,
S/o.Jagadeesan,
No.147, SSV Koil Street,
Vyasarpadi, Chennai 600 039.

2.Usha Rani,
W/o. Jagadeesan,
No.147, SSV Koil Street,
Vyasarpadi, Chennai 600 039.

3.Senthil Kumar,
No.19, Gandhi Mati Street,
Vetri Nagar, Chennai 600 082.

..Defendants

A.No.9624 of 2019:

1.J.Manikandan,
S/o.Jagadeesan,
No.147, SSV Koil Street,
Vyasarpadi, Chennai 600 039.



2.Usha Rani,
W/o. Jagadeesan,
No.147, SSV Koil Street,
Vyasarpadi, Chennai 600 039.

..Applicants/Defendants

Vs

M/s.Goodwin Pumps India (P) Ltd.,
(Formerly Known as M/s. Goodwin India (P) Ltd.,
Represented by its Authorized Signatory,
K.Kalyanaraman,
Currently at,
No.112/1, Chinna Amman Koil Street,
Kalavakkam, Thiruporur,
Kancheepuram District.

..Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to pass a summary judgment of dismissing the suit in C.S.No.633 of 2015 on the file of this Hon'ble Court with exemplary costs.

Application coming on this day before this court for hearing, the Court made the following order:-

This application has been filed under Order 13-A of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015, seeking a summary dismissal of the suit, on the ground that the plaintiff has no real chance of succeeding in the claim.



injunctions. The basis of the claim of the plaintiff is that the 1st defendant, who was employed with it as a sales personnel, had making use of contacts he developed during the course of the employment, sold his own goods as the goods of the plaintiff claiming to be a representative of the plaintiff. He had also attempted to provide service contracts for the submersible slurry pumps manufactured by the plaintiff. Claiming that these actions of the 1st defendant has resulted in huge business loss, the plaintiff has come up with the suit.

3.The plaintiff seeks to support its claim by contending that the customers of the plaintiff, who had purchased the pumps had not sought the services of the plaintiff for quite a long time. Upon enquiries, it was discovered that the 1st defendant, who had worked for the plaintiff had claimed that he is representing the plaintiff and has been providing the services and also spare parts for the pumps manufactured by the plaintiff, claiming that these spare parts are manufactured by the plaintiff itself. The relief of damages is valued at Rs.1,64,01,517/-. The plaintiff would claim the relief on the basis of an Auditor's report, which has been produced along with the plaint. It is also pleaded that the plaintiff came to know about the conduct of the defendants from its customers.



4.The defendants resisted the suit, contending that they were not doing business as the agents of the plaintiff. They never claimed to be the agents of the plaintiff and they never supplied duplicate or fake spare parts, as if they were manufactured by the plaintiff. An undertaking has also been given in the written statement that the defendants would not claim to be the dealers or representatives or agents of the plaintiff while carrying on business. No doubt, two agreements have been entered into by the 1st defendant with the plaintiff during the course of his employment on 09.10.2006 and on 06.04.2007. The agreement dated 06.04.2007, which titled as a confidentiality agreement contains a clause prohibiting the defendant from making and / or selling and / or renting spare parts for Goodwin designed pumps.

5.The suit was taken cognizance of by the Commercial Division by order dated 20.04.2018. This application has been filed prior to the framing of issues in the suit, contending that the plaintiff has no real prospect of succeeding in the suit. Mr.V.Selvaraj, learned counsel appearing for the applicant would vehemently contend that the prayers 'b' and 'c' have become infructuous, in view of the undertaking given by the defendants that they will not use the domain name of the plaintiff and they will not claim to be



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6.As far as prayer 'd' in the suit, which is prayer for permanent injunction restraining the defendants from dealing with the clients and customers of the plaintiff, Mr.V.Selvaraj would contend, such prayer cannot be granted as it will amount to restraining them from trading or carrying on business. According to him, the prayer if granted will also be a violation of provision to Section 27 of the Contracts Act, which prohibits an agreement in restraint a trade. Mr.V.Selvaraj would also point out that though the plaintiff had claimed that it discovered that the defendants have been doing business in its name and loads of documents were also discovered by it, not a single document has been produced by the plaintiff in support of its contention.

7.Pointing out the fact that the plaintiff has not chosen to produce documents even along with the counter to this application as required under Sub-rule 3(b) of Rule 4 of Order 13-A of C.P.C., as amended by the Commercial Courts Act, 2015, Mr.V.Selvaraj would contend that the mandatory provisions of Sub-rule 3(b) of Rule 4 of Order 13-A has not been complied with by the respondent / plaintiff and therefore, the suit has to be dismissed, invoking the power of summary disposal under Order 13-A of



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8. Contending contra, Mr. Rishi S. Ahuja, learned counsel appearing for the respondent would submit that the prayer for damages would survive, despite the undertaking that has been given by the defendants in their written statement. He would point out that the case of the plaintiff is that the 1st defendant taking advantage of his erstwhile employment with the plaintiff has claimed that he is the representative of the plaintiff and has robbed the business of the plaintiff. Therefore, according to him, the documents to that effect will be necessarily available with the plaintiff's customers and they will have to be summoned only at the time of trial. He cannot be compelled to produce those documents which are not within his power or custody. Therefore, the learned counsel would submit that the application under Rule 13-A for a summary judgment cannot be entertained.

9. I have heard the rival submissions.

10. No doubt, Order 13-A of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015, empowers a Court to give a summary judgment against the plaintiff or the defendant if it considers that the plaintiff has no prospect to succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be. In



order to give a summary judgment, the Court must be convinced that the plaintiff has no real prospect of succeeding in the claim. The very nature of the provision namely, Order 13-A of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015 would indicate that the conclusion should be writ large on the face of it and should not be dependent on consideration of any material evidence or an answer to a disputed question of fact.

11.To put it otherwise, the prospect of success or failure of a party to a proceeding should be obvious on the face of it without the Court having the benefit of any evidence by either of the parties. No doubt, sub-rule 3(b) of Rule 4 of Order 13-A enables a party to produce documents. It enables a respondent to produce documents he wants to rely upon such documents. I do not think that provision alone would empower the Court to pronounce on disputed questions of fact, while issuing a summary judgment under Order 13-A of C.P.C.

12.The claim of the plaintiff is one for damages. The plaintiff specifically pleads that the defendants had done business claiming themselves to be the agents or servants or authorized dealers of the plaintiff.

This plea has to be proved only by letting in evidence and such evidence, as



rightly contended by the learned counsel appearing for the respondent, may not be within his power or custody at this point of time. Therefore, to expect the plaintiff to produce evidence at this point of time would be akin to asking for the moon.

13. Just because, the provision enables the party to let in evidence before the summary judgment. I do not think, there could be a trial within trial under Order 13-A of C.P.C. I am of the considered opinion, Order 13-A could be invoked by the Court only in cases akin to Order 7 Rule 11 or Order 12 Rule 6 of C.P.C. I therefore, do not find any merit in this application. This application is therefore, dismissed. It is made clear that none of these observations will affect the parties at the time of trial.

Sd./-R.S.M.J
22/07/2021

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

COURT OFFICER(O.S.)

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JJ 06/08/2021