A.No.1190 of 2022
in
C.S(Comm.Div) No.52 of 2022

SENTHILKUMAR RAMAMOORTHY, J

The suit was filed for recovery of a sum of Rs.56,82,430/- towards amounts payable in relation to invoices issued by the plaintiff, and a further sum of Rs.50,00,000/- as damages for alleged loss of reputation and goodwill. In the said suit, the present application is presented to direct the respondent/defendant to provide security for the suit claim.

2. Learned counsel for the applicant submits that the services of the applicant/plaintiff were engaged for providing transportation of goods. Upon being approached by the defendant in that regard, it is stated that the applicant/plaintiff submitted four quotations indicating the tentative amounts payable in relation to the transportation of goods from and to specific destinations as indicated therein. On receipt thereof, it is stated that the respondent/defendant accepted the quotations. Pursuant thereto, five invoices were issued by the applicant/plaintiff. Except for the invoice bearing No.CHN/0233/1920 dated 17.06.2019, which was for a sum of Rs.26,51,500/-, as against the quotation of Rs.27,62,000/- it is submitted that the respective invoice values tallied with the quotations. On receipt of these invoices, it is

submitted that part payment of Rs.5,00,000/- was made against invoice dated 29.03.2019 for a sum of Rs.10,95,000/-. The invoice dated 27.07.2019 for a sum of Rs.6,32,200/- was paid in full. No other payments were made thereby leaving an outstanding of Rs.35,11,000/-.

3. As regards interest, learned counsel for the applicant submits that interest was claimed at 24% p.a., whereas the contractual rate of interest is 12%. Learned counsel for the applicant also submits that the cause of action for the suit arose within the jurisdiction of this Court as evidenced by the e-mail on 22.02.2019, which discloses the branch office of the defendant at Teynampet, Chennai.

4. Since the suit claim is in respect of a debt due and payable by the defendant and the defendant has not disclosed any assets, it is stated that the applicant is entitled to succeed in the application.

5. Learned counsel for the respondent refutes these contentions. He points out that the suit claim consists of two parts. The second part of the suit claim is for damages of Rs.50,00,000/- for alleged loss of reputation and goodwill. By drawing reference to Section 2(1)(c) of the Commercial Courts

Act 2015, it is contended that the said claim does not qualify as a commercial cause. The second contention is that the applicant has not made out a case for grant of relief under Order 38 Rule 5 CPC. Although the respondent/defendant is currently loss making, learned counsel points out that the respondent has an order book of Rs.6291.17 crore for the current financial year. On such basis, he submits that the turnover of the company, which was Rs.1028.84 crore in the financial year ended 31.03.2022, is likely to increase substantially during the current financial year. He also points out that the respondent has released payments of more than Rs.100 crore to its vendors in the last quarter ended 30.06.2022. Therefore, he submits that the application is liable to be rejected.

6. At the outset, the suit claim should be considered. The first part of the suit claim consists of a claim for a principal sum of Rs.35,11,000/- and, by adding interest thereto at 24% p.a., an aggregate claim for Rs.56,82,430/- is made. The applicant/plaintiff has not provided any evidence of the agreed rate of interest. As such, the applicant is not entitled to an order as regards the interest component. The second part of the claim relates to damages of Rs.50,00,000/- for loss of reputation. It is needless to say that a claim for damages is not a claim for a debt due and payable and should be established through trial. Therefore, an order to provide security in relation thereto would

not ordinarily be granted. The claim of Rs.35,11,000/- remains to be considered.

7. In respect thereof, the applicant has produced e-mail communications under which the quotations were sent to the respondent/defendant. The responses thereto from the respondent/defendant accepting the quotations are also enclosed. The invoices relating to the transportation of goods are also on record. In fact, in the written statement also, the respondent/defendant has admitted payment of Rs.6,32,000/- against the invoice dated 27.07.2019 and a sum of Rs.5,00,000/- as part payment of invoice dated 29.03.2019. Although an endeavour was made to contend that these invoices were not accepted, the said contention cannot be given much credibility. Therefore, the applicant has established a strong *prima facie* case with regard to the claim of Rs.35,11,000/-, which is towards a debt due and payable.

8. Upon being called upon to do so, the respondent filed an additional affidavit dated 14.07.2022 and enclosed the financial statement for the year ended 31.03.2021 and the provisional financial statement for the year ended 31.03.2022. On perusal of the profit and loss account for the year ended

31.03.2022, it is evident that the respondent has incurred a loss of Rs.355.42 crore for the said year. Similarly, the provisional financial statement for the year ended 31.03.2022 discloses that the respondent has incurred a loss of Rs.178.07 crore for the year ended 31.03.2022. In the additional affidavit, the respondent has stated that it has current assets valued at Rs.4192.11 crore and fixed assets valued at Rs.345.38 crore. However, it is stated that all those assets are mortgaged/charged in favour of banks or financial institutions and that the respondent does not have unencumbered assets.

9. In the above circumstances, the apprehension of the applicant that the respondent would not be in a position to satisfy a decree, if obtained, is reasonable. Therefore, the applicant is entitled to succeed to the extent of the principal claim of Rs.35,11,000/-. Since the respondent cites temporary liquidity issues, the respondent is granted four weeks time to provide the security. Such security shall be by creating a fixed deposit account in any nationalised bank in the name of the Registrar General of this Court to the credit of the suit. Such fixed deposit shall be initially for one year and should be on auto renewal basis until the disposal of the suit. Upon setting up the fixed deposit account, the original fixed deposit receipt shall be deposited with the Registrar General of this Court and a copy thereof shall be provided to the

applicant / plaintiff. The proceeds of the fixed deposit shall be subject to the outcome of the suit.

10. A.No.1190 of 2022 is disposed of on these terms without any order as to costs.

15.07.2022

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