IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 2ND DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.Nos. 473 & 474 of 2022
in
C.S(Comm.Div.)No. 95 of 2021

M/s.Viacom 18 Media Pvt. Ltd,
Represented by its Authorised Signatory,
Vinit Chanda Sharma,
Shyamala Towers, 5^{th} Floor,
No.136, Abhusali Street,
Arcot Road, Saligramam,
Chennai - 600 093. ... Plaintiff

-Vs-

Mr. UsmanFaheed,
Sole Properietor,
M/s.SDC PICTUREZ,
No.33/1, Wallajah Road,
Chepauk,
Chennai - 600 002. ... Defendant

A.Nos. 473 & 474 of 2022

Mr. UsmanFaheed,
Sole Properietor,
M/s.SDC PICTUREZ,
No.33/1, Wallajah Road,
Chepauk,
Chennai - 600 002. ... Respondent

Vs.

M/s.Viacom 18 Media Pvt. Ltd,
Shyamala Towers, 5th Floor,
No.136, Abhusali Street,
Arcot Road, Saligramam,
Chennai - 600 093. ... Applicant

A.No. 473 of 2022:-

Application praying that this Hon'ble Court be pleased to pass an order to dismiss the A.No.87 of 2022 seeking attachment before judgment and to withdraw the order dated 11.01.2022 for furnishing the security for the suit claim made by the Applicant/Plaintiff.

A.No. 474 of 2022:-

Application praying that this Hon'ble Court be pleased to pass an order of Stay of all further proceedings in the present suit till the disposal of the former suit filed in O.S.NO.1832 of 2020 on the file of V Asst.City Civil Court, Chennai.

These Applications coming on this day before this court for hearing, the court made the following order:-

A.No.474 of 2022 is filed under Section 10 of the CPC seeking an order of stay of all further proceedings in C.S.(Comm. Div) No.95 of 2021 (this Suit). A.No.473 of 2022 is filed for dismissal of A.No.87 of 2022, which was filed for furnishing security for the suit claim. Both these applications are by the defendant herein.

2. A.No.474 of 2022 is dealt with first. The defendant states that

he filed O.S.No.1832 of 2020, which is pending on the file of the V Assistant City Civil Court, Chennai, and that the said suit is admittedly the earlier suit. The said suit is for the provision of true accounts with regard to the payment of tax on the transaction between the plaintiff and the defendant and to restrain the defendant therein from obstructing the day to day affairs of the plaintiff therein. The defendant asserts that the issues arising in the said suit are directly and substantially the same as the issues arising in this Suit. On such basis, a stay is prayed for.

3. The plaintiff controverts the said contentions on the ground that the cause of action and relief prayed for in the two suits are different. According to the plaintiff, the present suit is for recovery of amounts due and payable by the defendant to the plaintiff towards tax deducted at source (TDS) and Goods and Services Tax (GST). The plaintiff asserts that the defendant deducted amounts purportedly towards TDS but did not remit the same in the Income-tax Department to the credit of the plaintiff. Similarly, GST was not paid with regard to the transaction. By drawing reference to paragraphs 4 and 5 of the counter, the plaintiff points out that it is evident on examining the relief prayed for in the two suits and the averments relating to cause of action in the two suits that the issues are not directly and substantially the same.

4. Upon examining the relief prayed for in O.S.No.1832 of 2020

and the averments pertaining to the cause of action for the said suit, it is evident that the defendant herein/plaintiff therein seeks to prevent the plaintiff herein from interfering with his business and also seeks production of true accounts. By contrast, this suit is for payment of amounts deducted towards TDS and unpaid GST. The position that the amounts deducted towards TDS were neither paid to the plaintiff nor remitted to the Income-tax Department appears *prima facie* to be uncontested. Likewise, as regards GST, it appears *prima facie* that the defendant herein does not dispute that GST was not paid. Instead, the contention is that there was lack of clarity and certainty with regard to the above at the time when payments were made to the plaintiff herein.

5. From the aforesaid, it is clear that the matters in issue in the two suits cannot be said to be directly and substantially the same so as to attract S.10 CPC. Consequently, A.No.474 of 2022 is not sustainable. Hence, the said application is dismissed.

6. As regards A.No.473 of 2022, the said application is filed on the basis that the plaintiff has not made out a case for the grant of relief under Order XXXVIII Rule 5 CPC. According to the defendant, the suit

claim pertains to statutory payments either towards TDS or GST. In addition, the defendant asserts that it does not intend to evade payment and that the defendant is a prominent business person. On the contrary, the plaintiff asserts that the claim is towards statutory dues and such claim was crystallized in the letter of settlement dated 16.12.2019. Besides, the plaintiff asserts that cheques issued towards discharge of liabilities by the defendant were dishonoured on account of insufficient funds. Therefore, it is stated that the plaintiff has established the necessary ingredients for grant of relief under Order XXXVIII Rule 5 CPC.

7. Both in the plaint and in the counter to A.No.473 of 2022, the plaintiff has set out details of the amounts claimed in the suit, including the basis of such claim. Moreover, the plaintiff has set out details of cheques issued by the defendant towards discharge of liabilities and stated that such cheques were dishonoured on account of insufficient funds. More importantly, the position, as on date, is that amounts deducted as TDS have neither been paid to the plaintiff nor remitted to the Income-tax Department. Similarly, GST liability has not been discharged. Based on disclosures made by the defendant, the plaintiff has pointed out that the amounts lying in the bank accounts are negligible and the assets are mortgaged.

8. When these facts and circumstances are considered holistically,

the exercise of jurisdiction under Order XXXVIII Rule 5 CPC is justified. Therefore, A.No.474 of 2022 is also not sustainable.

9. For the reasons set out above, A.Nos.473 and 474 of 2022 are dismissed without any order as to costs.

Sd./-SKRJ.

02/03/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

EVK 09/03/2022