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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2022

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

S.A.No.820 of 2014
and M.P.Nos.1 and 2 of 2014

Quick Sort
Represented by its Proprietor
D.Venkatesh Kumar
Old No.5, New No.9, Thambu Swamy Street,
Kilpauk, Chennai - 600 010.

...Appellant/Plaintiff

Vs.

1. Vetri Software India Pvt. Ltd.,
Rep. By its President Mr.Jayakumar
Nelson Tech Park,
New No.49, Old No.116,
Nelson Manickam Road,
Chennai - 600 029.
2. Lason India Pvt. Ltd.,
Represented by its President Mr.Jayakumar
Nelson Tech Park,
New No.49, Old No.116,
Nelson Manickam Road,
Chennai - 600 029.
3. HOV Services - Indian Office,
Represented by its President Mr.Jayakumar
Dowlath Towers, 8th-12th floor,
59, Taylors Road, Kilpauk,
Chennai - 600 010

...Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure code, against the Judgment and Decree passed in A.S. No.507 of 2012 on the file of the learned XVIII Additional City Civil Judge at Chennai dated 31.07.2013, confirming the Decree and Judgment passed in O.S.No.913 of 2009 on the file of the learned XIV Assistant City Civil Judge at Chennai dated 28.09.2010.



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For Appellant : Mr.V.Raghupathi
For R1 and R2 : Mrs.M.G.Joseph for
M/s.Chennai Law Associates
For R3 : No Appearance (Notice Served)

JUDGMENT

The plaintiff is the appellant in the second appeal. The plaintiff filed a suit in O.S.No.913 of 2009 against the defendants on the ground that they were engaged in execution of a project by the defendants by extending a contract in favour of the plaintiff and that all of a sudden in breach of the contract, the defendants abruptly withdrew the project work from the plaintiff from January 2009 onwards. Hence, the plaintiff sought for the relief of declaration to declare that the stoppage of the project is in breach of the existing agreement and for consequential mandatory injunction to continue the project in favour of the plaintiff in accordance with the contract and for other consequential reliefs.

2. The Trial Court, on appreciation of the oral and documentary evidence and also after considering the facts and circumstances of the case, rejected the claim made by the plaintiff, both on the ground that there was an Arbitration Clause that binds the parties and hence, the relief can be claimed only before an Arbitral Tribunal and on the merits of the case, by a judgment and decree dated 28.09.2010.

3. Aggrieved by the same, the plaintiff filed an appeal before XVIII Additional City Civil Court, Chennai and the lower Appellate Court found in favour of the plaintiff insofar as the issue of Arbitration is concerned and held that such a plea can not be taken after the written statement was filed by the defendants. However, when it came to the merits of the case, the lower Appellate Court, on appreciation of the oral and documentary evidence and on considering the findings rendered by the trial Court, found that there are no merits in the case and concurred with the finding of the trial Court to that extent. The appeal was dismissed by a Judgment and Decree dated 31.07.2013.

4. Aggrieved by the same, the present second appeal has been filed before this Court.

5. The learned counsel for the appellant submitted that both the Courts below went wrong in doubting the genuineness of



Ex.A1 letter, which formed the basis of the case. Learned counsel submitted that if really Ex.A1 letter is held to be a forged document, the burden of proof is upon the defendants to prove the same and both the Courts below straight away came to such conclusion without any basis. The learned counsel further submitted that the agreement between the parties is borne out by documents relied upon by both sides and specifically placed reliance upon Ex.A10 letter dated 28.01.2009. Learned counsel also placed reliance upon Ex.B9 final settlement report, which was issued by the defendants and submitted that this was the document through which final settlement was sent by the defendants and this also substantiates the existence of an agreement between the parties.

6. This Court has carefully considered the submissions made by the learned counsel for the appellant and carefully perused the the materials available on record and also gave anxious consideration to the findings rendered by both the Courts below.

7. In the present case, the appellant is proceeding on the basis that there is an existing agreement. It is only on this basis, the appellant has sought for various reliefs like declaration and mandatory injunction. Both the Courts concurrently found that there is no existing agreement, as claimed by the appellant and it has not been produced before the Court. What the appellant had filed before the Courts below and which have been marked as documents are the letters and the various invoices between the parties. The appellant is specifically alleging that there is a breach of the terms of the existing agreement. In order to substantiate this contention, an agreement must be produced and such an agreement must contain the terms and conditions and on going through the terms and conditions, the Court must satisfy itself that there is a breach. This requirement has not been fulfilled by the appellant in the present case. The appellant has also sought for the relief of mandatory injunction to continue with the existing contract. Once again, to determine this relief, the contract/agreement must be produced before the Court and in the absence of the same, such a relief can never be granted by the Court.

8. Both the Courts below and particularly the lower appellate Court has given a categorical finding that in the absence of an agreement which was never produced by the appellant, the relief sought for by the appellant cannot be granted. This finding rendered by both the Courts below was not



perverse and it is based on the materials available on record. This Court sitting in a second appeal cannot revisit this finding and such an exercise will go beyond the scope of Section 100 of Code of Civil Procedure. In the considered view of this Court, there is no substantial question of law involved in the present case.

9. In the result, the second appeal is dismissed. Considering the facts and circumstances of the case, the parties shall bear their own costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

sr/rgi

To

1. The XVIII Additional District Judge
City Civil Court
Chennai.
2. The XIV Assistant Judge
City Civil Court,
Chennai.
3. The Registrar
City Civil Court, Chennai

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.V.Raghupathi, Advocate sr 8427.

S.A.No.820 of 2014

BS (CO)
SP (25/02/2022)