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C.R.PD.No.4186 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.4186 of 2022

MRF Limited
rep. By its Deputy Manager
Sales Operations
Mr.M.P.Jagadeesan
Registered Office at
114 Greams Road
Chennai 600 006.

...

Petitioner

Vs

Pawan Kumar Jain

...

Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order dated 9/11/2022 passed in I.A.No.5 of 2022 in C.O.S.No.133 of 2022 on the file of the Commercial Court, Chennai.

For Petitioner

...

Mr.M.Vijayan
for M/s.King & Partridge

For Respondent

...

No appearance



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ORDER

This Civil Revision Petition is filed to set aside the order dated 9/11/2022 passed in I.A.No.5 of 2022 in C.O.S.No.133 of 2022 on the file of the Commercial Court, Chennai.

2. The facts which are not in dispute are that the petitioner herein is involved in manufacturing of rubber products, automatic tyres, tubes and other products. The respondent has entered into Franchise Agreement, dated 27/11/2017 with the petitioner, wherein, the petitioner has agreed to supply MRF tyres, machineries and equipments, etc. The said Franchise agreement was agreed to be terminated by giving an advance notice of 45 days. On account of certain issues between the parties, the petitioner/plaintiff has issued notice on 19/7/2021, terminating the Franchise agreement dated 27/11/2017. The petitioner/plaintiff has filed originally O.S.No.664 of 2022, which was subsequently transferred to the Commercial Court, Chennai and renumbered as C.O.S.No.133 of 2022, as the respondent has not returned them, the petitioner has filed a suit for mandatory injunction for return of the machinery and equipment and for the alternate relief for a recovery of Rs.26,54,744/- being the value of the



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machinery and for damages to wards the use of those promotional items.

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3. The respondent/defendant entered appearance and filed an application as I.A.No.5 of 2022 seeking to stay the proceedings before the Commercial Court, Chennai in C.O.S.No.133 of 2022, under Section 10 of the Code of Civil Procedure, on the ground that the respondent/defendant has filed C.S.No.2 of 2021 on the file of the learned Additional Judge No.III, Kangra at Dharmasala, Himachal Pradesh on 26/8/2021. In the said C.S.No.2 of 2021, the petitioner/plaintiff herein filed the written statement along with counter claim, which is alleged by the respondent/defendant that the counter claim sought for by the petitioner/plaintiff as a defendant in C.S.No.2 of 2021 on the file of the learned Additional Judge No.III, Kangra is similar to that of the relief sought for by the petitioner/plaintiff in C.O.S.No.133 of 2022 and thereby, sought for stay of proceedings in the case pending on the file of the Commercial Court, Chennai.

4. After full fledged hearing, the Commercial Court, Chennai has stayed the proceedings, holding that the case before the Commercial Court, Chennai is later to that of C.S.No.2 of 2021 on the file of



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Additional Judge No.III, Kangra, at Dharmasala. Aggrieved by the same,
instant Civil Revision Petition has been filed.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. Section 10 of the Code of Civil Procedure, runs as under:-

“Stay of suit - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.”

7. In order to stay the proceedings in a subsequent suit, the person



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who approaches the Court require to demonstrate that the suit claim in both the suits substantially one and the same and is between the same parties and the suit which is sought for stay is a later one. Therefore, it is required to be considered as to whether both the suits filed for the same reliefs, in order to avoid multiplicity of the findings.

8. There is no dispute that the respondent/defendant is running the business in Kangra, Himachal Pradesh. The District Court at Kangra is having territorial jurisdiction, in respect of the suit filed, seeking relief to declare the termination notice issued by the plaintiff, dated 19/7/2021 terminating the Franchise agreement dated 27/11/2017, as null and void, consequently seeking for damages. On the other hand, the relief sought for by the plaintiff before the Commercial Court in Chennai in C.O.S.No.133 of 2022 is for a mandatory direction to the respondent/defendant for return the machinery and equipment and for the alternative relief of recovery of Rs.26,54,744/-, being the value of the machinery and also consequential damages.

9. There is no dispute that the petitioner and respondent herein are



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parties in both the suits. The petitioner herein as a defendant filed a written statement along with counter claim seeking a relief of mandatory injunction directing the respondent/defendant herein to handover the machinery and equipment. The counter claim has to be treated as a plaint filed by the defendant as against the plaintiff. Therefore, it has to be examined whether the counter claim sought for by the petitioner as a defendant in C.S.No.2 of 2021 on the file of Additional Judge No.III, Kangra at Dharmasala is similar to that of the relief sought for by the plaintiff before the Commercial Court, Chennai.

10. Admittedly, since both the reliefs i.e., relief in the counter claim and main relief sought for by the petitioner in the suit are one and the same i.e., for a mandatory direction to the respondent/defendant herein to return the machinery/equipment, the other reliefs are consequential. If these aspects are to be taken into consideration, the orders of the trial Court do not require any interference. However, the facts as brought forth by the petitioner before this Court are otherwise.

11. According to the petitioner, the respondent/defendant has filed



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C.S.No.2 of 2021 before the Courts at Kangra, and initially though he has filed a written statement along with counter claim. According to the petitioner herein, subsequently, the said counter claim has been withdrawn, thereby as on the date of filing of O.S.No.31 of 2021 on 28/10/2021 on the file of the City Civil Court, Chennai, counter claim in C.S.No. 2 of 2021 before the Courts at Kangra, Himachal Pradesh has already been withdrawn. Thereby, it cannot be said that two suits are pending in two different Courts for the same relief, the trial Court has failed to consider these aspects.

12. Further the dispute between the parties is a commercial dispute, thereby, only Commercial Court can only resolve the disputes and not other Courts. The Court in Kangra at Himachal Pradesh not being a Commercial Court is not competent to dispose of the case, thereby, even if the counter claim not being withdrawn, on the file of Additional Judge No.III, Kangra, at Dharmasala, Himachal Pradesh, still the Court in Chennai, Commercial Court Chennai can resolve the dispute.

13. Further, the trial Court while granting stay has observed that the



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petitioner being the plaintiff in C.O.S.No.133 of 2022 has not mentioned about the pendency of C.S.No.2 of 2021, on the file of learned Additional Judge No.III, Kangra, Dharmasala, Himachal Pradesh. However, at paragraph No.14 of the plaint, in C.O.S.No.31 of 2021, the petitioner/plaintiff has mentioned that the respondent has filed a Civil Suit on the file of the learned Additional Judge NO.III, Kangra, Dharmasala, Himachal Pradesh against the petitioner/plaintiff, challenging the termination notice, dated 19/7/2021, without any jurisdiction, as both parties have agreed in the Franchise agreement that any dispute mutually agreed to resolve before the Court at Chennai, that means, the observation of the trial Court that the petitioner has failed to mention about the pendency of the suit in Additional Judge No.III, Kangra, Dharmasala, Himachal Pradesh, is incorrect.

14. In view of the above, finding of the trial Court that since the petitioner has filed counter claim seeking similar relief to that of the relief sought for in C.O.S.No.133 of 2022 thereby, Section 10 of the Code of Civil Procedure attracts is factually incorrect.

15. In the result, this Civil Revision Petition is allowed and the order



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dated 9/11/2022 passed by the learned Commercial Court, Chennai,

Egmore is hereby set aside. No costs.

12/6/2023

Index :yes/no

Neutral Citation: Yes/No

mvs.

To

The Commercial Court, Chennai.

Dr.D.NAGARJUN,J



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