



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 159/2023 & CM APPL. 39051/2023**
(Summoning of Trial Court record)
Date of decision: 16th August, 2023

M/S MARVS TRAVEL INDIA PVT LTD Appellant
Through: **Mr. Sahil Mongia, Mr. Rahul**
Yadav and Mr. Sahil Rao,
Advs.

versus

M/S K HOME APPLIANCES Respondent
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J. (ORAL)

1. This First Appeal is preferred by the appellant under Section 13 (1A) of the Commercial Courts Act, 2015, as amended up to date¹ assailing the impugned order dated 6 April 2023 passed by the learned District Judge (Commercial Court)-02, West District, Tis Hazari Courts, Delhi in CS (Comm.) No. 555/2021 thereby dismissing the application of the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908².

2. Briefly stated, the respondent/plaintiff instituted a Suit against the appellant/defendant for recovery of Rs. 8,00,000/- (Rupees Eight

¹ The Act
² CPC



Lakhs Only) along with interest and damages on the ground that it is a renowned firm, having a lot of goodwill in dealing with Utensils, Tablewares, Pressure Cookers etc. under the registered trademark 'Devidayal' and is marketing its products through various agents, distributors, authorized dealers and associates, and a marketing strategy for its products, the plaintiff rewards its agents, distributors etc., by organising international travel in a group to various countries. It is the case of the plaintiff that for planning an international holiday to Australia, they approached one Mr. Jatin, who introduced them to defendant no. 1/appellant company through defendant no. 2 (real brother of Mr. Jatin) and it was represented that they were working with M/s. Marvs Travel Group³, which is an Australian counterpart of defendant no. 1.

3. It is stated that after few rounds of negotiation and exchange of e-mails through Mr. Jatin and defendant no. 2 besides their Australian counterpart, the plaintiff booked a package for a group tour to Australia for 63 people and a final quotation was given by defendant no. 2 @ 1245 Australian Dollars per person plus GST and the travelling date from 6 June 2020 to 12 June 2020 was agreed upon. The package included a stay of 06 nights and 07 days at Sydney and Melbourne in Australia including hotel bookings, travelling over land including coaches for sightseeing and meals. Accordingly on 4 December 2019 advance part payment of Rs. 8,00,000/- was made by

³ MTG



the plaintiff in the account of MTG in its Account no. 034063300000060, with Yes Bank Branch at Kirti Nagar and simultaneously visa applications were applied spending about Rs. 6.30 Lakhs. However, due to advent of Covid-19 Coronavirus situation, the international tourist travel to Australia was closed.

4. The grievance of the plaintiff was that due to cancellation of the tour on 25 March 2020 on account of Covid situation, the entire amount paid towards the package tour became refundable and the defendants became liable to refund the amount of package fees paid by them but despite repeated calls, reminders and lastly legal notice through their advocate, the said amount was not paid. Hence, a decree is sought jointly and severally against the defendants for recovery of a sum of Rs.8 lakhs with interest @ 8% per annum from the date of filing of the Suit till realization besides damages, costs of the Suit and litigation.

5. The Suit is being contested by the defendants (including appellant) and besides filing the written statement, an application was also filed under Order VII Rule 11 CPC wherein a plea has been taken that the respondent/plaintiff has wrongly labelled them as defendants in the Suit as defendant no. 1 was never a service provider for any kind of travel or tourism let alone organization of international tours; and that defendant no.1 was nothing but a BPO/Call Centre/agent for MTG based in Melbourne, Australia. It was claimed that there was no privity of contract between the plaintiff and defendant no.1 and the offer for International Holiday/Tour to Australia was offered by MTG



and not by the appellant/defendant no. 1. It would be expedient to reproduce the contents of para 6 of the application which reads as under:-

“That it is therefore submitted that the above offer which was being made in the sum of \$1245 Australian Dollars could not have possibly been made by the Defendant No. 1 since, it was offered in Australian Dollars and not INR. This offer was in fact made by **MTG** which is evident from the email dt. 29.11.2019 (@pg. 26) filed by the Plaintiff himself along with his plaint which was sent by **MTG** through their email id sales@marvstravelgroup.com to Jatin of **PMT** (agent of the Plaintiff) wherein it is stated that, “...as discussed please note we are happy to confirm the package at 1245 aud per person as per our discussion based on confirmation with Voco hotel Gold Coast and holiday inn darling harbour.” Therefore, making it abundantly clear that the quotation as well as itinerary was prepared as well as offered by **MTG** and accepted by the Plaintiff, hence, confirming beyond reasonable doubt that there is no privity of contract, whatsoever, between the Plaintiff and Defendant No. 1 rendering the plaint liable to be rejected on this ground alone for want of any offer, acceptance and/or contract between the Plaintiff and Defendants and being barred by law in terms of O7 R11(d) C.P.C.”

6. The said application came up for consideration before the learned District Judge (Commercial-02), West District, Tis Hazari Courts, Delhi who vide impugned order dated 6 April 2023 dismissed the application under Order VII Rule 11 of the CPC assigning the following reasons:-

“5. From the bare reading of the aforesaid ratio, it is more than evident that to reject a plaint under Order VII Rule 11 CPC, the court is required to only go through the averments made in the plaint. The plaint on its plain reading reflects that it is specifically pleaded by the plaintiff that it were defendants who had painted a rosy picture of organising international travel for large groups and that after the quotation of 1,245 Australian Dollars per person plus GST was given by defendant No.2, that the advance payment of Rs.8 lakhs was transferred to the account of defendant No.1. To



substantiate this averment, learned counsel for plaintiff also placed on record the bank statement of plaintiff which reflects that the amount of Rs.8 lakhs was transferred to the bank account of defendant No.1. Hence, considering the allegations against the defendants which are also supported by the bank statement of plaintiff, no ground to allow the present application is made out. The same is, accordingly, dismissed.

6. However, considering the fact that defendant Nos.2 and 3 are the Directors of defendant No.1 and do not have any personal liability, they are struck from the array of defendants. Amended Memo of Parties be filed.

Matter be now listed for admission/denial of documents, framing of issues and case management for **18.04.2023**. ARs of the parties to be present on the date fixed to conduct admission/denial.

(Hemani Malhotra)
District Judge (Comm.Court)-02
West/THC/06.04.2023”

7. Although the respondent was put to advance notice, having heard the learned counsel for the appellant and on perusal of the record, at the outset we find that the present appeal is bereft of any merit. It is a well settled proposition of law that while considering an application under Order VII Rule 11 CPC, the Court is enjoined upon to read the averments in the plaint as a whole and ascertain if it discloses any cause of action. The expression ‘cause of action’ connotes a bundle of legal rights which must be shown to be existing and enforceable. While considering an application under Order VII Rule 11 CPC the Court cannot travel beyond the pleadings and consider the defence espoused in the written statement. Learned District Judge (Commercial-02) West District, Tis Hazari Courts, Delhi in deciding the matter rightly relied on the decision in **Salim**



Bhai v. State of Maharashtra & Ors.⁴, wherein it was observed as follows:-

“A perusal of Order VII Rule 11 CPC, makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit before registering the plaint or after issuing the summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane, the pleas taken by the defendant in the Written Statement would be wholly irrelevant at that stage.”

8. A careful perusal of the averments of the plaint as a whole would show that the respondent/plaintiff has made payment towards package tour of 63 individuals to defendant no. 1 and there is a clear averment that the entire negotiation had taken place with the involvement of defendant no. 2 as also Mr. Jatin for and on behalf of Australian counter-part viz., MTG. The documents filed along with the plaint would clearly go to suggest that the correspondence for booking of the tour to Australia was being done through the appellant company, which was involved in finalization of the itinerary, quotations for package tour and the eventual agreement. Further, it was also stipulated in terms of an email dated 18 November, 2019 that “cancellation made 40 days prior to the scheduled tour shall be fully refundable’.

⁴ Civil Appeal No.8518 of 2002 decided on 17.12.2002 (Supreme Court)



9. The aforesaid averments in the plaint clearly bring out that there exists a 'cause of action' in favour of the plaintiff and at this stage the defence put forth by the appellant cannot be considered.

10. In view of the foregoing reasons, the present appeal is dismissed *in limine*. It is, however, provided that the observations expressed hereinabove by us shall not tantamount to an expression of opinion on the merits of the case. No orders as to costs. Pending application also stands disposed of.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

AUGUST 16, 2023

'sm'