



WEB COPY



A.No.1573 of 2023 in
C.S.No.420 of 2018

A.No.1573 of 2023 in
C.S.(Comm.Div.) No.420 of 2018

P.VELMURUGAN, J.

This application has been filed by the first defendant in the suit under Order VII Rule 11 of CPC seeking to reject the plaint in C.S.(Comm.Div) No.420 of 2018 as against the first defendant or in the alternative return the plaint for presentation to the proper court, which has jurisdiction.

2 Learned counsel for the applicant/1st defendant would submit that the applicant is a public limited company incorporated under the provisions of the Companies Act, 1956 and is involved in the business of import and trading modern coal. The first respondent/plaintiff is a power generation company operating a power plant in Kanchipuram District. The first respondent/plaintiff placed two purchase orders for the supply of 500 MT of imported steaming (non-coking) coal and the applicant/1st defendant after supplying the same raised invoices for total value of Rs.2,70,36,751/- for payment. However, out of the total amount of Rs.2,70,36,751/-, the applicant/1st defendant received a sum of Rs.1,47,50,000/- and that a sum of Rs.1,22,86,751/- remained outstanding and due. Therefore the applicant/1st defendant filed a suit in the year 2013 and a Company Petition in C.P.No.94 pf 2016, which was transferred to the



A.No.1573 of 2023 in
C.S.No.420 of 2018

jurisdictional National Company Law Tribunal (NCLT) and NCLT vide order dated 31.07.2017 allowed the same and appointed an Interim Resolution Professional to manage the affairs of the plaintiff company.

2.1 Aggrieved against the above order, the first respondent plaintiff filed an appeal before the NCLAT and the NCLAT set aside the order of NCLT only on the procedural ground that non issuing of Form 5 notice in the prescribed format, however liberty was granted to the applicant/1st defendant to issue a fresh Form 5. Thereafter, as directed by NCLAT, the applicant/1st defendant issued a fresh Form 5 notice to the plaintiff on 30.03.2018 and the plaintiff chose to file the instant suit for the reliefs sought for in the plaint.

2.2 Learned counsel for the applicant/1st defendant would submit that the plaintiff has failed to establish any cause of action to maintain the suit, more particularly a commercial suit under the Commercial Courts Act, 2015. The pre-requisite to maintain a commercial suit before this Court is to specify how the subject matter of the suit is a 'commercial dispute' as defined under Section 2(1)(c) of the Commercial Courts Act and the value of the suit meets the threshold of the 'Specified Value' as defined under Section 2(1)(i) of the



A.No.1573 of 2023 in
C.S.No.420 of 2018

Commercial Court Act. None of the three reliefs claimed in the plaint, fall within the purview of Section 2(1)(c) of the Commercial Courts Act.

2.3 Further, in fact, a suit for malicious prosecution is a tortious claim and can never fall under the definition of commercial dispute. The plaintiff Company itself pleaded that there is no contract with the applicant/1st defendant and hence under no circumstances, the subject matter of the dispute falls under the definition of commercial dispute as defined under the Commercial Courts Act.

2.4 This Court does not have the jurisdiction to hear the present suit under the Commercial Courts Act and only suits and applications relating to commercial dispute of a specified value can be heard and disposed of by the Commercial Division of this Court.

2.5 To support his contentions, the learned counsel has placed reliance on the decision of the *High Court of Delhi reported in MANU/DE/3048/2016* in the case of *Perpetuuti Technosoft Services Pvt. Ltd., vs. Sanovi Technologies (India) Pvt. Ltd. and others* and the decision of the *High Court*



A.No.1573 of 2023 in
C.S.No.420 of 2018

of Telangana reported in MANU/TL/0669/2021 in the case of Big Bang

WEB COPY

Boom Solutions vs. Centauri Composites Pvt. Ltd.,

2.6 Therefore the plaint has to be rejected as against the first defendant or in alternate, the plaint may be returned for presenting the same before the appropriate Court, which has got jurisdiction.

3 Learned counsel for the first respondent/plaintiff would submit that the applicant/1st defendant alleged that the first respondent/plaintiff placed two purchase orders and there is outstanding due. But, the first respondent/plaintiff never knew about the existence of such purchase orders till the applicant/1st defendant issued notice asking to make payments. The contrary averment made in this application is denied and this is not an argumentative issue, but required determination by way of trial. However, the purchase orders, which are denied by the plaintiff are also nothing but agreements for sale of goods thereby specifically covered under Section 2(c)(xviii) of the Commercial Courts Act. Therefore the dispute is very much within the purview of the Commercial Courts Act, as it arises out of the agreement dated 18.06.2010 between the plaintiff and the second defendant.



A.No.1573 of 2023 in
C.S.No.420 of 2018

WEB COPY

3.1 Further the suit is valued for more than Rs.2,00,000/- and hence qualifies in respect of the specified value for a commercial dispute as well. A mere reading of paragraph No.55 of the plaint would go to show that the plaint discloses specific causes of action in respect of the applicant/1st defendant. That apart, the plaintiff has also sought for reliefs predominantly connected with the applicant. The alleged purchase orders have apparently been issued to the applicant/1st defendant, who issued a notice demanding payment from the first respondent/plaintiff and hence the applicant/1st defendant is very much a necessary party for adjudication of the suit and hence the plaint cannot be rejected as against the applicant/1st defendant.

3.2 Therefore the dispute clearly arises out of the purchase orders, which are nothing but agreements for sale of goods or provision of services. The dispute includes a claim of Rs.2,00,00,000/- as damages, which arisen as consequences of misuse of the agreement dated 18.06.2010 between the first respondent/plaintiff and 2nd respondent/2nd defendant and the present dispute would most certainly fall within the scope of a commercial dispute and deserves to be adjudicated as such. The applicant/1st defendant did not file written



A.No.1573 of 2023 in
C.S.No.420 of 2018

WEB COPY

statement and its right has been forfeited as per the statute, but, still it filed the present application under Order VII Rule 11 CPC only as a feeble attempt to overcome the defect of immense delay in filing of its written statement in the suit and to protract the suit proceedings. The plaint has to be read in toto and the plaint cannot be rejected in part and if the Commercial Court has got jurisdiction to try any one of the reliefs then the suit can very well be tried by the Commercial Court. The contentions raised by the applicant/1st defendant are bad in law, as held by the Division Bench of this Court reported in **2021 (1) CTC 595 in the case of G.I.Retail Pvt. Ltd., vs. Gooms Orbit and Leisure**. Therefore the application is liable to be dismissed.

4 Heard the learned counsel on either side and perused the materials on record.

5 The applicant is the first defendant and the first respondent is the plaintiff in the above suit. The plaintiff filed the instant suit seeking the following reliefs:

a) Direct the defendant Nos.1, 3, 4 and 5 to pay a sum of Rs.2,00,00,000/- (Rupees Two Crores only) to the plaintiff as damages caused



A.No.1573 of 2023 in
C.S.No.420 of 2018

by instituting malicious and wrongful proceedings under the provisions of the Companies Act and continuing the same under the Insolvency and Bankruptcy Code against the plaintiff;

b) Declare that the plaintiff is not liable to make any payments to the defendant No.1 for sums due in respect of invoices pertaining to Purchase Order No.202 dated 23.02.2011 and Purchase Order No.204 dated 21.03.2011;

c) Issue an order of permanent injunction restraining defendant No.1 and its officers/employees/agents and/ or those claiming on its behalf from in any manner claiming sums due in respect of invoices pertaining to Purchase Order No.202 dated 23.02.2011 and Purchase Order No.204 dated 21.03.2011 from the plaintiff;

d) direct the defendant No.1 to pay the costs of the plaintiff

6 It is seen that the applicant/1st defendant did not file its written statement within the statutory period and hence it lost the right of filing written statement and its right to file written statement has been forfeited. The suit is of the year 2018 and the applicant/1st defendant without even filing the written statement, has filed the instant application in the year 2023 to reject the plaint.



A.No.1573 of 2023 in
C.S.No.420 of 2018

WEB COPY

7 Admittedly the applicant/1st defendant sent demand notice, based on which, the present suit is filed by the first respondent/plaintiff. A careful reading of the plaint, would go to show that the plaintiff pleaded cause of action =and the same falls under the definition of commercial dispute. A reading of all the prayer sought for in the plaint, reveal that all are arising out of commercial transaction and hence this Court does not find that the suit is barred by any law.

8 It is settled proposition of law at the time of deciding application under Order VII Rule 11 CPC, the Court has to see only the averments made in the plaint and without addition or omission the plaint has to be considered in-*toto* and not the defence taken by the defendant and further it is also settled proposition of law the plaint cannot be rejected in part, either it can be rejected in-toto or can be entertained and the plaint cannot be rejected in part if the plaintiff is entitled to maintain the suit for granting any one of the reliefs.

9 The decisions relied on by the learned counsel for the applicant/1st defendant is not applicable to the facts of the present case on hand. Therefore, considering the facts and circumstances of the case and on a careful reading of the averments made in the plant, this Court does not find any merit in the



A.No.1573 of 2023 in
C.S.No.420 of 2018

application and the same is liable to be dismissed.

WEB COPY

10 Accordingly, the application stands dismissed. However, the applicant/1st defendant is at liberty to cross examine the plaintiff side witnesses.

List the suit on _____.

10.06.2024

cgi



WEB COPY



A.No.1573 of 2023 in
C.S.No.420 of 2018

P.VELMURUGAN, J.

A.No.1573 of 2023 in
C.S.(Comm.Div.) No.420 of 2018

10.06.2024