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O.S.A (CAD) Nos.92 and 93 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.10.2024**

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A (CAD) Nos.92 and 93 of 2023
& C.M.P.Nos.16732 and 16831 of 2023
in O.S.A (CAD) Nos.92 and 93 of 2023

1. J.Manikandan

2. Usha Rani

... Appellants
in both appeals

Vs.

1. M/s. Goodwin Pumps India (P) Ltd.,
(Formerly Known as Ms.Godwin India (P) Ltd.,)

Represented by its Authorized Signatory

K.Kalyanaraman

Currently at

No.112/1, Chinna Amman Koil Street

Kalavakkam, Thiruporur

Kancheepuram District

... 1st Respondent
in O.S.A (CAD)
No.92/2023

1. M/s. Goodwin Pumps India (P) Ltd.,
(Formerly Known as Ms.Godwin India (P) Ltd.,)

Represented by its Authorized Signatory

P.Prabhu

Currently at

No.112/1, Chinna Amman Koil Street

Kalavakkam, Thiruporur

Kancheepuram District

... 1st Respondent in
O.S.A (CAD)
No.93/2023

2. M/s.Goodwin PLC



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Represented by its Authorised Signatory
Goodwin PLC

WEB COPY IVY House Foundary, Hanley
Stoke-On-Trent, Staffordshire
ST1 3 NR, United Kingdom

3. Senthil Kumar

No.19, Gandhi Mati Street

Vetri Nagar, Chennai - 600 082 .. 2nd and 3rd

(3rd respondent set ex parte/given up) Respondents in both appeals

Prayer in O.S.A (CAD) No.92 of 2023 : Original Side Appeal filed under Section 13 of Commercial Courts Act, 2015 read with Order 36 Rule 1 of Original Side Rules against the judgment and common decree dated 10.01.2023 in C.S.No.633 of 2015.

Prayer in O.S.A (CAD) No.93 of 2023 : Original Side Appeal filed under Section 13 of Commercial Courts Act, 2015 read with Order 36 Rule 1 of Original Side Rules against the order dated 10.01.2023 in A.No.3814 of 2022 in C.S.No.633 of 2015.

For Appellant : Mr.V.Selvaraj
in both OSAs for Mr.D.Prabhu Mukunth Arun Kumar

For Respondents : Ms.Suba Shiny for R1 and R2
in both OSAs
R3 Given up in both OSAs

JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

This common order will now dispose of the captioned two 'Original Side Appeals' ['OSAs' in plural and 'OSA' in singular for the sake of brevity] and captioned two 'Civil Miscellaneous Petitions' ['CMPs' in plural and 'CMP' in singular for the sake of brevity] thereat.

2. Factual matrix in a nutshell is that a suit in C.S.No.633 of



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2015 was instituted in the Commercial Division of this Court against three individuals arraying the three individuals as Defendants 1 to 3 [D1, D2 and D3 for the sake of convenience]; that two plaintiffs are, a company incorporated in India and an entity in United Kingdom; that plaintiffs are in the business of manufacturing special type of abrasive resistant submersible slurry pumps; that it is the case of the plaintiffs that the slurry pumps are products of skilled engineering; that D1 sometime in October 2006 applied for a job in the first plaintiff Company [to be noted, first plaintiff is the Company incorporated in India]; that D1 was appointed; that it is the case of the plaintiff that D1 even while in service of the first plaintiff had registered a Limited Liability Partnership in the name and style 'FLOWEZY' along with D2 and D3; that 'FLOWEZY' shall be referred to as 'said LLP' for convenience (to be noted, 'LLP' denotes 'Limited Liability Partnership'); that said LLP started manufacturing and selling spares for the slurry pumps manufactured by plaintiffs; that this led to the aforementioned suit in C.S.No.633 of 2015; that in the suit, damages towards loss of business, loss of reputation and breach of confidentiality in a sum of little over Rs. 1.64 Crores (Rs.1,64,01,517 to be precise), permanent injunctions restraining the defendants, their men, agents, employees from using the domain name



'Goodwin' with or without any suffixes or prefixes, restraining the defendants from claiming to be the representatives of the plaintiffs and restraining the defendants from dealing with the clients and customers of the plaintiffs was sought; that D1 and D2 entered appearance; that D1 filed a written statement and D2 filed a adoption memo adopting the written statement of D1; that D3 remained *ex parte*; that at this stage, before framing of issues, plaintiffs resorted to Order XIII-A of 'the Code of Civil Procedure, 1908 (Central Act V of 1908)' [hereinafter 'CPC' for the sake of brevity] and sought summary judgment; that the summary judgment application is A.No.3814 of 2022; that summary judgment as regards prayer paragraphs (b) to (e) were decreed; that it is to be noted that paragraphs (b) to (d) constitute the three injunctions set out in the earlier part of this narrative and paragraph (e) is for costs; that consequent to such an order dated 10.01.2023 in the Order XIII-A summary judgment application, a decree in the suit in terms of plaint prayers (b) to (e) was drawn up; that assailing the order in the summary judgment application and the decree in the main suit, captioned two OSAs have been preferred; that in the captioned two OSAs, Hon'ble predecessor Bench recorded that a counsel is accepting notice for all three respondents but today Ms.Suba Shiny, learned counsel submits that she



accepted notice only for Respondents 1 and 2 (plaintiffs before the Commercial Division and not for R3 who was D3 before the Commercial Division); that this is understandable; that it is to be noted that the summary judgment / decree is as against D3 also; that the appeals are on Board today.

3. In the hearing today, Mr.V.Selvaraj, learned counsel appearing for Mr.D.Prabhu Mukunth Arun Kumar, counsel on record for the appellants (to be noted, D1 and D2 are appellants) and Ms.Suba Shiny, learned counsel for R1 and R2 (to be noted, the two plaintiffs or in other words, plaintiffs 1 and 2 are R1 and R2 respectively) are before us.

4. Before we plunge into the matter, it is necessary to set out the broad contours of scope of summary judgment under Order XIII-A of CPC. Order XIII-A of CPC was brought in by 'The Commercial Courts Act, 2015 [Act 4 of 2016]' {hereinafter 'CCA' for the sake of brevity} on and from 23.10.2015. This Order XIII-A provides for summary judgments before framing of issues in cases where the Court considers that either the plaintiff has no real prospects of succeeding on the claim or the defendant has no real prospects of successfully defending the claim. Obviously, in the case of former, the plaintiff will be non-suited and in the case of latter, the suit will be decreed. It is to be noted that under



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Order XIII-A of CPC, claims include part of the claim and therefore, decreeing a part of the suit is clearly permissible.

5. In the light of learned counsel for R1 and R2 making it clear that she has not accepted notice for R3, learned counsel for appellants made an endorsement in the case file saying that they are giving up R3 in two captioned OSAs as well as two captioned CMPs thereat and scanned reproduction of the endorsements are as follows:

Endorsement in O.S.A (CAD) No.92 of 2023

The Hon'ble Court may be pleased to permit the appellant to give up the 3rd respondent in the appeal + miscellaneous petition

D. Paul
Counsel for Appellant
28/10/24

Endorsement in O.S.A (CAD) No.93 of 2023

The Hon'ble Court may be pleased to permit to give up the 3rd respondent in the appeal + miscellaneous petition

D. Paul
Counsel for Appellant
28/10/2024



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6. This Court, having set out the broad contours of summary judgment under Order XIII-A of CPC and the trajectory the matter has taken before us, now deems it appropriate to write that a short point falls for consideration.

7. In the order in the summary judgment application A.No.3814 of 2022 or in the summary judgment in C.S.No.633 of 2015, the Commercial Division has not recorded that the defendants do not have any real prospect of successfully defending the claim. From the submissions made at the Bar and on perusal of the case file, it comes to light that it is not a mere case of not recording that the defendants do not have no real prospect of successfully defending the claim but it is a case of not having gone through the legal drill of ascertaining whether the defendants have real prospect of successfully defending the claim. On the contrary, the impugned order in the summary judgment application and the impugned decree proceed on the merits of the plaintiffs' claim. Therefore, we deem it appropriate to interfere with the impugned order and impugned summary judgment/decreed.



8. At this juncture, learned counsel on both sides who had earlier fairly agreed to have the main OSAs taken up (in the light of R3 being given up) fairly agreed for having the matter remanded to the Commercial Division for fresh disposal of the summary judgment application.

9. In this scenario, the following order is made:

a) Order dated 10.01.2023 in A.No.3814 of 2022 in C.S.No.633 of 2015 and summary judgment in terms of sub-paragraphs (b) to (e) of prayer paragraph 29 in C.S.No.633 of 2015 which is also dated 10.01.2023 are set aside;

b) It is made clear that the impugned order and impugned judgment and decree are set aside on the short point that the exercise of ascertaining and recording satisfaction as to whether the defendants have any real prospect of successfully defending the claim has not been gone into, therefore post remand, all questions are left open;

c) A.No.3814 of 2022 shall now stand remanded to the Commercial Division for *de novo* disposal. We make it cleat that all questions are left open and it would be a *de*



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novo legal drill before the Commercial Division;

d) As regards any other application by either of the parties to the suit, we express no opinion and we leave it to the discretion of the Commercial Division to deal with the same on its own merits and in accordance with law.

Captioned two OSAs are disposed of in the aforesaid manner with the aforesaid directions, observations and preservation of rights. Consequently, captioned two CMPs are disposed of as closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.,J.)
28.10.2024

Index: Yes/No
Neutral Citation: Yes/No
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**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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