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C.M.P.No.11355 of 2024

C.M.P.No.11355 of 2024
in
O.S.A(CAD)No.50 of 2024

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by
M.SUNDAR. J.,]

Read this in conjunction with and in continuation of separate order

/ proceedings made in captioned main O.S.A(CAD)No.50 of 2024 and

two CMPs thereat today (07.06.2024) which reads as follows:

'O.S.A(CAD)No.50 of 2024
and
C.M.P.Nos.11359 & 11360 of 2024
in
O.S.A(CAD)No.50 of 2024

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by
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Captioned intra-Court appeal i.e., 'Original Side Appeal' [hereinafter 'OSA' for the sake of brevity] has been presented in this 'Commercial Appellate Division' [hereinafter 'CAD' for the sake of brevity] on 20.05.2024 by plaintiff before the Commercial Division of this Court in C.S.No.186 of 2023.

2. Aforementioned plaintiff presented a suit in the Commercial Division of this Court inter alia with prayers for declaratory reliefs and permanent injunction as regards payment policies relating to Service Fee, Terms and Conditions qua Websites / Portals / Web pages. We deem it appropriate not to dilate further on this as captioned matter turns on a rejection of plaint order and therefore, it would suffice to write that defendants 6 and 7 in the aforementioned suit took out an application in A.No.4193 of 2023 inter alia under Order VII Rule 11(d) of 'the Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of brevity, convenience and clarity] seeking rejection of the plaint. The rejection of the plaint plea was predicated primarily on the ground that the suit is barred by law i.e., Section 61 of 'The Competition Act, 2002 (12 of 2003)' [hereinafter 'Competition Act' for the sake of convenience and clarity] and Section 24 of 'The Payment and



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Settlement Systems Act, 2007 [Act 51 of 2007] {as amended in 2019}' [hereinafter 'PSS Act' for the sake of convenience and clarity].

3. After full contest, the Commercial Division in and by an 'order dated 30.04.2024' [hereinafter 'impugned order' for the sake of convenience and clarity] acceded to the rejection of plaintiff prayer i.e., allowed A.No.4193 of 2023 in C.S.No.186 of 2023. Assailing the impugned order, captioned intra-Court appeal has been presented in this Commercial Appellate Division inter alia under Section 13(1A) of 'The Commercial Courts Act, 2015 [Act 4 of 2016]' {hereinafter 'CCA' for the sake of brevity}.

4. Mr.J.Sivanandaraaj, learned Senior counsel appearing on behalf of counsel on record for appellant submitted that the impugned order is very different from a common order made in August of 2023 by another Hon'ble single Judge of Commercial Division in A.Nos.3098 of 2023 etc., in C.S.(Comm.Div.)Nos.98 of 2023 etc., which was carried in appeal i.e., intra-Court appeal vide 13 OSAs and 13 cross objection and a Hon'ble Division Bench of this Court in and by a common order dated 19.01.2024 dismissed the intra-Court appeals and sustained the



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order. To be noted, this 19.01.2024 Division Bench order has been carried to Hon'ble Supreme Court vide SLP No.2711 of 2024, Hon'ble Supreme Court issued notice on 09.02.2024, matter was thereafter listed on 19.03.2024 and adjourned to enable the SLP petitioners to resort to Dasti. This fact is captured only to add specificity to the argument of learned Senior counsel that the August of 2023 order of another Hon'ble Judge of Commercial Division that has been carried to Hon'ble Supreme Court i.e., the aforementioned matter which Hon'ble Supreme Court is in seizen is different qua impugned order. In support of this submission, learned Senior counsel, adverting to paragraph No.11 of the impugned order submitted that the Commercial Division proceeded on the basis that plaintiff has approached the 'Competition Commission of India' ['CCI' for the sake of brevity] but that is factually incorrect. Learned Senior Counsel also, adverting to paragraph No.11 of the impugned order pointed out that the Commercial Division has relied on documents on 'either side' which is impermissible qua a Order VII Rule 11 CPC legal drill.

5. In the aforesaid backdrop, it is emphatically submitted by learned Senior Counsel that the appellant's plaint is not hit



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either by Section 61 of the Competition Act or by Section 24 of PSS Act.

6. In the light of paragraph No.11 of the impugned order and aforementioned assertion, we find that the appellant has made out a prima facie case for notice being issued.

7. Issue notice regarding admission.

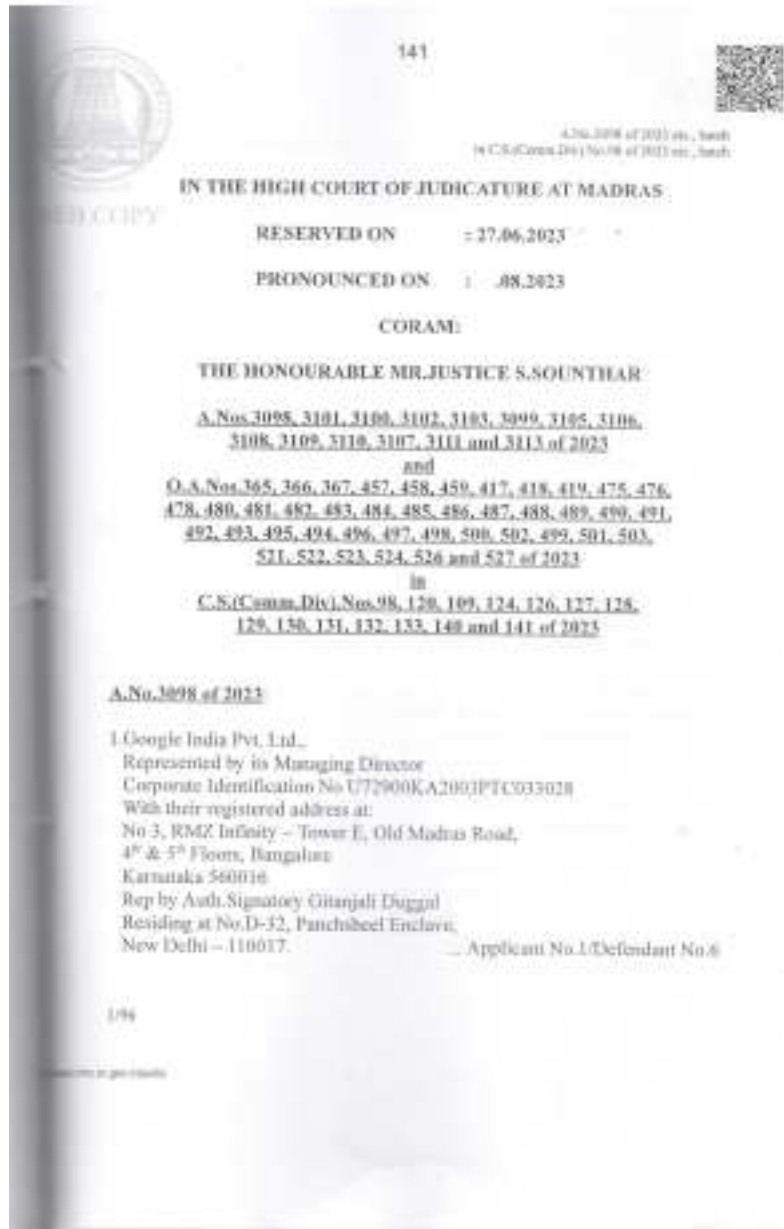
8. Mr.G.Balasubramaniam learned counsel of M/s.Leela and Co (Law Firm) led by Mr.P.S.Raman, learned Senior Counsel, who is on caveat, accepts notice for all seven respondents though caveat has been lodged only on behalf of R1 and R2. Learned counsel undertakes to file vakalatnama for all seven respondents before next listing. Before we conclude, we deem it appropriate to record that we had referred to the other order made by Hon'ble single Judge of the Commercial Division (order which has traveled to Hon'ble Supreme Court) as an order made in August of 2023 as the order as placed before us does not bear a specific date. To be noted, scanned reproduction of the first and last pages of the order as placed before us are as follows:



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A.Nr 3098 of 2023 etc, book
to C.S.(Comm.Div) N.L.08 of 2023 etc, book

23. Therefore, all the applications filed by defendants 6 and 7 seeking rejection of the plaint are allowed and consequently, all the plaints are rejected.

In Nutshell:-

(i) The Applications in A.Nos.3098, 3101, 3100, 3102, 3103, 3099, 3105, 3106, 3108, 3109, 3110, 3107, 3111 and 3113 of 2023 are allowed.

(ii) Consequently, the plaints in C.S.(Comm.Div) Nos.98, 120, 109, 124, 126, 127, 128, 129, 130, 131, 132, 133, 140 and 141 of 2023 are rejected.

(iii) In view of the rejection of the plaints, connected Original Applications in O.A.Nos.365, 366, 367, 457, 458, 459, 417, 418, 419, 475, 476, 478, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 495, 494, 496, 497, 498, 500, 502, 499, 501, 503, 521, 522, 523, 524, 526 and 527 of 2023 are closed. No costs.

Index : Yes / No .08.2023
Speaking order: Yes / No
Neutral Citation: Yes / No
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9. We also find that learned counsel for caveators has filed a typed set i.e., paper book / compilation and the same has been accepted by the Registry. Learned counsel ought not to have filed it and Registry ought not to have accepted the same as the matter is in the Admission Board. Registry and counsel for caveators to take adequate care in this regard in days to come. Therefore, Registry is directed to return the typed set / paper book / compilation filed by counsel for caveators and though obvious, we make it clear that it is open to learned counsel now to refile the same as learned counsel has accepted the notice on behalf of all seven respondents.

10. List the captioned OSA and captioned CMPs under the cause list caption 'ADJOURNED ADMISSION' in the Admission Board i.e., Motion List after three weeks.

List on 03.07.2024.'

2. Aforesaid proceedings capture the crux and gravamen of the matter and it is telltale the trajectory the matter is taking before us and therefore, we are not setting out the same again but deem it appropriate to



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write that aforementioned proceedings / orders in main OSA and two CMPs thereat shall now be read as an integral part and parcel of this order.

3. In the light of the narrative thus far in the aforementioned order which is now being read as an integral part and parcel of this order, we find that an interim prayer for stay of the impugned order will be untenable as Order VII Rule 11 of CPC rejection prayer has been allowed. On this simple technical point, without expressing any view on the merits of the matter, captioned CMP is disposed of as closed. There shall be no order as to costs.

[M.S., J]

[K.G.T., J]

07.06.2024

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M.SUNDAR, J.,
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K.GOVINDARAJAN THILAKAVADI, J.,

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in
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07.06.2024
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