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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 132/2024 & I.As.3953-54/2024**

M/S AQUALITE INDUSTRIES PVT. LTD. Plaintiff

Through: Mr. Archit Singhal & Mr. U.K. Singhal, Advs. (M:9599043045)

versus

M/S COMPASS GROUP (INDIA) SUPPORT SERVICES PVT. LTD. & ORS. Defendants

Through: Mr. Niraj Singh, Mr. Deepak Jaiswal & Mr. Mridul Shukla, Advs. (M: 9810009829)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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19.02.2024

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff - M/S Aqualite Industries Pvt. Ltd. seeking recovery of damages of Rs.5 crores, which arises out of an agreement dated 19th October, 2019 entered into between the parties for providing food services.
3. The case of the Plaintiff is that the Defendants did not provide proper services and the quality of service was deficient and it suffered huge damages because of the said deficiencies.
4. The matter has been listed today for the first time before the Court. The Court put a query to Id. Counsel for the Plaintiff as to whether there was any suit filed by the Defendants against the Plaintiff to which the clear response was that the Plaintiff was not aware of any cases filed against them.



5. However, Id. Counsel for the Defendants, who has appeared upon the advance service, submits that the Defendants have filed a suit being ***CS(COMM) 850/2023*** titled ***Compass India Food Services v. Aqualite Industries Pvt. Ltd.*** at the District Court seeking recovery of Rs.1.04 crores approximately. The same was listed on 23rd January, 2024 and the Counsel for the Plaintiff herein i.e., who is the Defendant in the said suit, had also appeared. Written statement has also been directed to be filed on the said date of hearing. The said suit is now listed on 4th April, 2024 before the District Judge, Commercial-02, District Court Tis Hazari Courts, West District, Delhi.

6. Clearly, there has been no disclosure of the filing of this suit, either in the present plaint or in the applications, which have been filed by the Plaintiff. It is seen that there is an advance service affidavit dated 8th February, 2024 by Mr. Archit Singhal, Id. Counsel. Thus the present suit has been moved for listing after the suit before Tis Hazari was filed by the Defendant but there is no disclosure of the said suit.

7. Obviously, a suit has been filed and summons have been issued in the matter, the same deserves to be disclosed on the date when the matter is listed before the Court. The court passed over the matter to enable the counsel for Plaintiff to seek instructions. Mr. Nitin Sharma, Authorized Representative of the Plaintiff company has then appeared online and he does not have a valid explanation for the non-disclosure except to say that the counsels for the Plaintiff in this Court are different from the counsel in Tis Hazri.

8. At this stage, the Court is, therefore, inclined to dismiss the suit for suppression and concealment. However, Id. Counsel for the Plaintiff prays



that he may be permitted to withdraw the suit with liberty to file a fresh suit.

9. The settled legal position on concealment is that such a suit where there is concealment or suppression is not liable to be entertained. In the case of ***Satish Khosla vs M/S Eli Lilly Ranbaxy Ltd. & Ors. 71 (1998) DLT 1***, the Division Bench of Delhi High Court held that withholding the plaint of an earlier suit from the Court constitutes playing fraud on the Court. The relevant extract is set out below:

“17. As held by the Supreme Court in Advocate-General, State of Bihar Vs. M/s. Madhya Pradesh Khair Industries and another, every abuse of the process of the Court may not necessarily amount to Contempt of Court, Abuse of the process of the Court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice is a Contempt of Court. It may be that certain minor abuses of the process of the Court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice.

18. In our view, by withholding the plaint of the earlier suit from the Court and by not disclosing that in the earlier suit the respondent has not been able to get the injunction, the respondent is guilty of playing fraud on the Court as well as on the opposite party and such acts had been done only in order to gain advantage on the other side and to get a stay in the second suit.”



10. A coordinate bench of this court, **CS(COMM) 382/2022** in ***Sun Pharmaceutical Industries Ltd V. DWD Pharmaceuticals Ltd.***, held the Plaintiff liable for material suppression. The relevant portions are cited below:

“47. At the same time, the plaintiff cannot be allowed to escape the consequences of having concealed material facts from this Court to obtain an ex-parte order of injunction. Whether with the disclosure of the above-mentioned material facts, the Court would have still granted the ad-interim ex-parte order of injunction or not, is not relevant and cannot absolve the plaintiff from the consequences of not making such disclosure of material facts. Such a practice not only has to be deprecated but must also be penalised. The plaintiff, therefore, is saddled with costs of Rs.10 Lakh (Rupees Ten Lakh only) to be deposited with the Delhi High Court Legal Services Committee within a period of two weeks from the date of the judgment.”

11. In view of the above, under the circumstances of the present case, this Court is not inclined to entertain the present suit. Suit is dismissed as withdrawn with liberty as prayed for.

12. All pending applications shall also stand disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 19, 2024/dk/bh