

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 230 OF 2024

Camus Pharma Private Limited ... Applicant
V/s.

Snowbell Machines Private Limited ... Respondent

Mr. Kartikey Bhalotia I.by Spice Route Legal, for the Applicant.

Mr. Anuj Singh, Anima Mishra, Ritu Singh and Arvind Singh I.by SBG Law, for the Respondent No. 1.

CORAM : N.J. JAMADAR, J.

DATE : 4TH APRIL 2025.

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1. This is an application under Section 24 of the Code of Civil Procedure, 1908 (for short 'Code') for transfer of Commercial Suit No. 738 of 2021 pending before the City Civil Court, Bombay at Dindoshi Division, to the High Court for hearing and disposal along with Commercial Suit No. 288 of 2022 filed by the applicant and the respondent no. 2.

2. The substance of the application is that the applicant had placed an order on 30th May 2017 on the respondent no. 1 for manufacture and delivery of a pharmaceutical machine, which was intended to be operationalised and installed in the factory of the respondent no. 2 in

Russia. The applicant claims that since respondent no. 1 failed to operationalise and install machine, in accordance with the terms of the contract, disputes arose between the parties.

3. In the wake of the said dispute, the respondent no. 1 has instituted Commercial Suit No. 738 of 2021 before the City Civil Court at Dindoshi Division seeking payment of balance 10% of the purchase value, and damages. The applicant and the respondent no. 2 have, on their part, instituted Commercial Suit No. 288 of 2022 against the respondent no. 1 seeking refund of all the amounts paid to the respondent no. 1, pursuant to the purchase order, along with damages for breach of contract, aggregating to Rs. 69,65,53,972.00/-.

4. The applicant asserts both the suits have their genesis in the same transaction of sale and delivery of the pharmaceutical machine. Causes of action are same. Common questions of facts and law would arise for determination in both the suits. If the suits are tried before two different Courts, there is a possibility of conflicting decisions. It is, therefore, necessary to withdraw the Commercial Suit No. 738 of 2021 from Bombay City Civil Court and transfer the same to the High Court for hearing and disposal in accordance with law.

5. An affidavit-in-reply has been filed on behalf of the respondent no. 1. Though it is admitted that both the suits arise from the same transaction, the respondent no. 1 has categorically denied that the suits are based on the same cause of action and share the same circumstances and genesis. According to the respondent no. 1, the suits in question involve entirely different sets of prayers, causes of action and claims and, therefore, the prayer for transfer and clubbing of the

suits is not tenable. Respondent no. 1 further contends that the applicant and respondent no.2 have filed the suit with an inflated claim in order to bring the same within the pecuniary jurisdiction of the High Court. The suit instituted by the applicant and the respondent no. 2 is, in essence, a counter-claim to the suit instituted by the respondent no. 1. Thus, the applicant and the respondent no. 2 have instituted the Commercial Suit circumventing the provisions contained in Order VIII Rule 6A of the Code.

6. The learned counsel for the applicant submitted that a bare perusal of the averments in the plaint and prayers in both the suits would indicate that the suits are based on the same set of facts and the transaction of sale and delivery of pharmaceutical machinery. Since it is the claim of the respondent no. 1 that, the applicant and the respondent no. 2 ought to have filed a counterclaim instead of instituting a fresh suit before this Court, there can be no objection to the transfer of the suit from the City Civil Court to this Court.

7. The learned counsel for the applicant placed reliance on the judgments of the Supreme Court in the cases of ***Prem Lala Nahata and Anr. V/s Chandi Prasad Sikaria***¹ and ***Chitivalasa Jute Mills V/s. Jaypee Rewa Cement***².

8. In opposition to this, learned counsel for the respondent no. 1 submitted that the respondent no. 1 had instituted the suit prior in point of time. In order to harass the respondent no. 1 and derail the expeditious disposal of the suit instituted by the respondent no. 1, the

1 (2007) 2 SCC 551

2 (2004) 3 SCC 85

applicant and the respondent no. 2 have instituted a Commercial Suit before this Court by making an exorbitant claim. Since the respondent no. 2 is not a party to the suit before the City Civil Court, it cannot be said that both the suits raise common questions of facts and law. The prayers in both the suits are also materially distinct. Thus, it would be a case of misjoinder of causes of action and the parties in the event both the suits are tried by the High Court.

9. Evidently, the genesis of the dispute is in the transaction of manufacture and sale of the pharmaceutical machine pursuant to the purchase order placed by the applicant on respondent no. 1. The respondent no. 1 has instituted the suit for balance consideration along with damages. The applicant and the respondent no. 2, in turn, claim refund of the amount paid pursuant to the purchase order, along with damages. Incontrovertibly, common questions of facts and law would arise for determination in both the suits. In fact, the decision in one suit may obviate adjudication of the other suit.

10. The stand of the respondent no. 1 in the affidavit-in-reply that instead of filing a fresh suit the applicant and the respondent no. 2 should have filed a counter-claim in the suit instituted by the respondent no. 1 underscores the fact that the pivotal issue that would arise for determination in both the suits is, who of the parties has committed the breach of contract. Since the value of the claim made by the applicant and the respondent no. 2 exceeds the pecuniary limits of the jurisdiction of the City Civil Court, such a counter-claim could not have been filed before the City Civil Court. Thus, the suits are in the nature of cross-suits.

11. The matter can be looked at from another perspective. Under Section 12 of the Bombay City Civil and Sessions Court of 1948, the High Court has power to withdraw any proceeding from the City Civil Court for trial by the the High Court. Section 12 reads as under:

“12. High Court jurisdiction barred except in certain cases.-

Notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court:

Provided that the High Court may, for any special reason, and at any stage remove for trial by itself any suit or proceedings from the City Court.”

12. Though Section 12 begins with a non obstante clause that, notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court, the proviso empowers the High Court for any special reason, and at any stage remove for trial by itself a suit or proceeding from the City Court.

13. Thus power of withdrawal for trial by itself a suit or proceeding from the City court, has been conferred on the High Court to address the exigency of the situation, albeit for a special reason. The possibility of conflicting decisions and the element of expediency in the interest of justice which the trial of both the suits by the High Court promotes, constitute a special reason.

14. Therefore, I am inclined to allow the application.

15. Hence, the following order:

ORDER

- i) The application stands allowed.
- ii) Suit No. 738 of 2021 pending on the file of City Civil Court Bombay at Dindoshi Division, stands transferred to the High Court, Bombay, for hearing and disposal in accordance with law along with Suit No. No. 288 of 2022.
- iii) The learned Principal Judge, City Civil Court, shall transfer the record and proceedings in Suit No. 738 of 2021 with such dispatch that it reaches the High Court, Original Side, Bombay, within a period of three weeks from the date of communication of this order.
- iv) Application stands disposed.

No costs.

(N.J. JAMADAR, J)