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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2025

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.Nos.205 & 206 of 2025
in C.S.(Comm.Div.) No.194 of 2023

Ms Reliance Retail Limited
4th Floor Court House Lokmanya Tilak Marg Dhobi Talao
Mumbai 400 002 ... Applicant

-VS-

Mr K.Karthik Chandran
4th Floor Court House Lokmanya Tilak Marg Dhobi Talao
Mumbai 400 002 ... Respondent

For Applicant : Mr.Thriyambak J.Kannan

For Respondent : Mr.K.Newlin Frederick for R1 & R2
Mr.R.Gopinath for R3 to R10
R11 & R12 – No Appearance

ORDER

Both these applications were triggered by developments that took place subsequent to the filing of the suit. These developments are the execution of deed of cancellation of the distribution agreement between the first and second defendants and deed of cancellation of the supply agreement



between the second and ninth defendants.

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2. By A.No.205 of 2025, the second defendant seeks recasting of all the issues framed earlier in light of the above developments. In A.No.206 of 2025, the second defendant seeks the dismissal of prayers (a), (a-1) and (b) to (e).

3. On instructions, learned counsel for the plaintiff has filed memo dated 10.03.2025. Paragraph 3 thereof is as under:

“It is submitted that the plaintiffs are giving up the said prayers in prayer No.'a', 'a-1', 'b', 'c' and 'd' alone and they are pursuing and prosecuting the above suit with regard to the prayers in prayer No.'e', 'f', 'g' & 'h'.”

4. In effect, the plaintiff has given up prayers (1), (a-1), (b), (c) and (d). Consequently, the suit stands dismissed insofar as these prayers are concerned.

5. The plaintiffs have, however stated that they intend to prosecute the



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suit with regard to prayers (e) to (h). Learned counsel for the applicant / second defendant submits that prayer (c) also does not survive as a result of the cancellation of the two agreements referred to above. In particular, he states that the second defendant was not a party to the deed of mutual agreement dated 12.03.1993. Consequently, he states that obligations arising out of the said agreement are not binding on the second defendant. Especially in view of the cancellation of the distribution and supply agreements, wherein the second defendant was a party, he submits that a case is made out to exercise jurisdiction under Section 151 of the Code of Civil Procedure, 1908 (the CPC) to dismiss the suit as regards prayer (e). This contention is refuted by learned counsel for the plaintiffs by submitting that the suit is at the stage of cross examination of P.W.1. Therefore, he submits that an application seeking summary judgment is no longer maintainable, whether under Order XIII A of the CPC, as applicable to commercial disputes or under Section 151 thereof.

6. The question as to whether obligations arising out of the deed of



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mutual agreement dated 12.03.1993 are enforceable against a third party, such as the second defendant, is a matter to be examined in course of final disposal. As submitted by learned counsel for the plaintiffs, the record shows that the suit is at the stage of cross examination of P.W.1. Parliament has consciously provided for summary judgment during the period subsequent to service of suit summons but prior to the framing of issues. In those circumstances, an application for summary judgment while the trial is under way is not permissible by resort to Section 151 CPC. Therefore, the application for summary judgment is liable to be and is hereby rejected.

7. Turning to the application to re-frame issues, it is noticeable that Issue No.4 pertains to a declaration that the distribution and supply agreements dated 05.04.2023 are null and void. As noticed earlier, the plaintiffs have given up the relief of declaration as regards the said agreements. Consequently, Issue No.4 is liable to be deleted. As regards Issue Nos.1 to 3, as currently framed, the issues proceed on the basis that the distribution and supply agreements remain in force. Since the factual situation has changed, re-framing of these issues is necessary. Accordingly,



the issues framed on 05.06.2024 are re-framed as under:

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1. *Whether the first defendant entered into distribution agreement dated 05.04.2023 with the second defendant in breach of the deed of mutual agreement dated 12.03.1993 registered as Document No.201 of 1993 in the office of the Joint Sub Registrar at Madras North?*
2. *Whether the ninth defendant entered into the supply agreement dated 05.04.2023 with the second defendant in breach of the deed of mutual agreement dated 12.03.1993 related to Document No.201 of 1993 in the office of the Joint Sub Registrar at Madras North?*
3. *Whether the distribution and supply agreements dated 05.04.2023 enabled a third party to be involved in the family business of Kalimark thereby violating the deed of mutual agreement dated 12.03.1993?*
4. *Whether the first and ninth defendants have acted within the framework of deed of mutual agreement dated 12.03.1993 particularly clause (Q) while executing the agreements dated 05.04.2023 in favour of the second defendant?*
5. *When the first and ninth defendants are functioning as per deed of*



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agreement dated 12.03.1993 (DOMA), the execution of the distribution and supply agreements dated 05.04.2023 is valid?

- 6. Whether the communication of the first and ninth defendants dated 09.02.2024 to the second defendant renders the relief sought for by the plaintiff in the suit as non-maintainable and infructuous?*
- 7. Whether the present suit is barred under Order II Rule 2 of the Code of Civil Procedure, 1908?*
- 8. Whether the plaintiffs have established the claim for loss of Rs.75,00,000/-?*
- 9. Whether the plaintiffs have established the claim for loss of Rs.10,00,000/- per month from the date of filing of suit until ceasing of sale of Kalimark family products by the second defendant?*

8. Both the above mentioned applications are disposed of on the above terms.

19.03.2025
(1/2)

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