(1980) 10 DEL CK 0027

In the Delhi High Court

Case No : Suit No. 719 of 1980

Bramec Suri P. Ltd. APPELLANT

Vs

Suri Smith Chem. RESPONDENT

Date of Decision : 03-10-1980

Acts Referred:

Citation : (1981) RLR 60

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Advocate : Anita Bahri, S.L. Bhatia and D.P. Sharma, for the Appellant;

Judgement

D.R. Khanna, J.

(1) This suit under order 37 of the C.P.C. has been brought by the Bramec Suri Pvt. Ltd. for the recovery of Rs. 70,000.00 together with interest amounting to Rs. 8,18426. at 18% per annum It is based upon three Hundies dated 30.3.1978, executed by the defendants in plaintiff''s favor. Two of them were of Rs, 30,000.00 each and third of Rs. 10,000.00 First was payable by 150 days from the date of execution, the second by 180 days and the third by 210 days.

(2) The averments are that the plaintiff is engaged in the business of manufacture and sale of brake linings, clutch facings and other types of friction materials. For the purpose of effecting sales within the territory of eastern India, defendant No. 1 company was appointed as plaintiff''s agent with liabilities to secure orders, ensure payments in respect of supplies made and to collect C&D Forms under the Central Sales Tax Act. On compliance, the defendant company was entitled to payment of commission at the agreed rate.

(3) Apart from the agency business, defendant No. 1 also effected direct purchases from the plaintiff of goods for selling them in open market. On such purchases discount was allowed by the plaintiff. Under this head, goods worth several lacs were said to have been purchased by the defendant company from the plaintiff.

(4) It so transpired that the defendant- company was taken over by defendant No. 2 and 3 as Managing Director and Executive Director, and they on 30.3.1978 executed six hundies totalling 16 lacs in plaintiff''s favor, five of which were of Rs. 30,000/00 each and sixth of Rs. 10,000/00. These related to the purchases directly effected by the defendant- company from the plaintiff. Three of these hundies were duly honoured, while the remaining three, which are subject matter of the present, suit, remained undischarged although these were duly presented to the defendants through bankers. Hence the suit.

(5) The defendants have now moved an application under Order 37, rule 3 of the C.P.C. read with the Delhi High Court Rules and Section 10 of the CPC . They have sought permission to defend the suit and further that the proceedings be stayed as the defendants have already instituted a suit in the Calcutta High Court for recovery of Rs. 1,75,495.54 against the present plaintiff. Further reliefs by way of accounts etc. are also being sought there. The basis of that suit is stated to be that considerable amount of commission is due to the defendants from the plaintiff under the said agency agreement. The defendants are further claiming commission on transferred sales effected within that territory, and also damages for wrongful termination of the agency. Their details are given as under ; (a) Commission for 1977-78 financial year. Rs. 60,495.54 (b) Commission on account of orders valued at about 10 lacs transferred as per schedule "C" hereto, Rs. 50,000.00 (c) Damages for wrongful termination of the agency Rs. 65,000.00 Total Rs. 1,75,495.54

(6) The circumstances under which the defendants claim that they felt justified not to honour the three hundies in dispute, were that certain settlement was arrived at between the parties in meetings held from 9 8.1978 to 13.8 1978. These were incorporated in the form of minutes of these meetings in a writing dated 14.8.1978 in which it was inter alias agreed as under :

"9.All outstanding commissions due to Suri Smith from Bramec Suri for the period 1977-78 and up to 28th June, 1978 will be cleared by 16th of August, 1978."

(7) Since the commission so payable to defendants was not cleared by the plaintiff by 16.8.1978 as stipulated in the settlement, it has been claimed that the discharge of these hundies was with held. Specific reference in this regard has been made to the due dates for payment of these hundies and it is pointed out that they all fall due after 16.8.1978, and Therefore, the defendants were obliged not to honour them as a counter measure to the plaintiff not clearing the outstanding commission for the year 1977-78. So far as the commission amounting to Rs. 14,036.47 p. due from 1.4.1978 to 28.6.1978, it has not been disputed that the same was duly paid by the plaintiff to the defendants.

(8) The defendants, Therefore, plead that since the liability for payment of commission arises from the same contract, they are justified to withheld payment of the hundies in dispute, and, Therefore, have a plausible case worth

giving a trial to entitle them to the permission for defending the suit.

(9) The application is opposed from the side of the plaintiff on the ground that the defense sought to be set up is false, frivolous and malicious, and that in fact the claim raised in the present suit is based upon a different cause of action, viz., the sale of goods directly in favor of the defendants. The other suit in the Calcutta High Court, it is pointed out, pertains to the agency business under which the defendant was entitled to commission only subject to compliance of certain conditions. This was a distinct cause of action, and the plaintiff has already set up its defense there that because of non-procurement of the sale price and the C & D Forms under the Central Sales Tax Act, it has been made to suffer huge losses by the defendants.

(10) It has further been pointed out that the defendants had by two letters dated 3.4.78 plainly conceded that the amount of six bundies totalling Rs. 1.6 was committed to be paid by them, and whatever adjustments were to be made by way of commission and accounts statements reconciliation would be treated separately. It was unqualifiedly affirmed that the six hundies would be honoured under that commitment.

(11) I have heard the parties and given my utmost consideration to all the circumstances. So far as the execution of the hundies and they being for consideration in lieu of goods already received ,there has been no dispute. It is also apparent that there was a dual relationship between the parties, one was of principal and agent, and the other of sales directly effected as principal to principal. The parties have been treating these relationships as distinct and separate and this is amply borne from the circumstance that although some commission was being claimed by the defendants from the plaintiff in the agency business, they without any demur agreed to clear off the dues under the direct sale transactions by executions of the hundies. Had there been inter-linking between the two relationships, the defendants would not have executed the hundies and committed themselves to the payment of the amounts thereof without some settlement of the commission due under the agency business. In the letter dated 3.4.1978, it was plainly conceded that the matter relating to commission and accounts statement reconciliation would be treated separately. This commitment extended by the defendants precludes them now to withhold payment of the hundies by referring to the other cause of action under the agency business.

(12) The minutes of the meetings recorded in writing dated 14.8.1978 referred to outstanding commission. They were relatable to agency business. No mention was made of the discount which was allowable to the defendants on direct sales effected in their favor. This circumstance thus further shows that the direct sales or discount were not made the subject matter of these meetings.

(13) Moreover, whether any commission is due to the defendants, and further who committed the breach of the agency agreement and was liable to reimburse

the other for damages, are matters presently seized of by the Calcutta High Court, and they will duly receive adjudication. Similar is the position of accounts. On their score, the unequivocal liability which the defendants had committed to discharge by the execution of the hundies and the letters dated 3.4.1978, cannot be kept in abeyance.

(14) The decision of the Supreme Court in the case of Santosh Kumar Vs. Bhai Mool Singh, , relied upon by the defendants in support of their contention that permission to defend should normally be granted where a plausible defense worth giving a trial arises, does not come to their aid. It is the defense with regard to course of dealings and cause of action set up in the plaint which has to be taken into account while granting such permission. Extraneous controversies and different causes of action cannot justify enlargement of the scope and purpose of the summary action brought under Order 37 of the CPC . This is all the more so when the entire course of conduct and dealings between the parties bring out the existence of dual relationships, distinct and separate from each other. I am, Therefore, constrained to reject the application of the defendants for leave to defend or for stay of the suit u/s 10, CPC .

(15) The suit of the plaintiff shall stand decreed with costs.

