
(2006) 02 DEL CK 0139

In the Delhi High Court

Case No : IA No"s. 7410, 9273 and 9274 of 2005 in CS (OS) No. 1321 of 2005

Cogent Silver Fibre Pte Ltd.

APPELLANT

Vs

Noble Fibre Technologies Inc. and Others

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 4, Order 7 Rule 11
Contract Act, 1872 — Section 230, 29
Specific Relief Act, 1963 — Section 14(1), 19, 41, 42, 9

Citation : AIR 2006 Delhi 292 : (2006) 3 CivCC 673 : (2006) 127 DLT 707 : (2006) 87 DRJ 583

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : A.S. Chandhiok and Gurdeep Singh, for the Appellant; P.V. Kapur Dhruv Wahi and Namrata Kapoor for defendant No. 1, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Sikri, J.—In this suit filed by the plaintiff for specific performance, declaration and cancellation of documents and permanent injunction, rendition of accounts, the plaintiff has filed is No. 7410/2005 under Order XXXIX Rule 1 & 2 of the CPC (CPC) seeking ad interim injunction. Vide order dated 20th September, 2005, ex-parte injunction was granted to the plaintiff in this application. Aggrieved by this ex-parte injunction order, the defendant No. 1 has filed is No. 9273/2005 under Order XXXIX Rule 4 CPC praying for vacation of the aforesaid injunction order. According to the defendant No. 1, suit filed by the plaintiff against the defendant No. 1 is without any cause of action and further even the requisite court fee has not been affixed. On this premise, the defendant No. 1 has filed another application i.e. is No. 9274/2005 under Order VII Rule 11 read with Section 151 CPC for rejection of the suit against the defendant No. 1. All these applications were heard together and I propose to dispose of the same in this common order.

2. Injunction order dated 20th September, 2005 would give a glimpse of the plaintiff's case. The operative portion of the said order, Therefore, is extracted below:

Learned counsel for the plaintiff has taken me through the plaint averments and various documents filed in support thereof. Under MOU dated 28.4.2005 entered into between plaintiff and defendants No. 1 & 2, plaintiff undertook to market defendants' product, namely, 'X-Statics' which had layer of pure silver permanently bonded to the surface of a textile fibre used in the uniforms of army personnel, astronauts, sports persons. The defendants No. 1 & 2 undertook to supply all the necessary material namely samples, marketing, material, literature, CDs. Clause 10 clearly stipulates that defendant will not assign the work handed over by the plaintiff to any other agent. Clause 17 further stipulates that any enquiry from institutional segments received by the defendants shall be directed to the plaintiff. It is alleged by the plaintiff that after MOU the plaintiff made special efforts creating various institutional segments to launch the said product and market the same. Marketing search and surveys were conducted. Some renowned professionals named in para 8 were also introduced in the organisational structure of the plaintiff. It is further pleaded that plaintiff made huge development infrastructure, created sales force, hired consultants and created a market for 'X-Static' by contacting 400 business houses in the court. Suddenly on 20.6.2005, the plaintiff received a e-mail from the defendant informing that as regards defense sector they would like to work with their existing customer and the plaintiff will have the option of working with other para-military forces only. This according to the plaintiff is in gross violation of the MOU. When the plaintiff sought clarification in this regard, the defendants informed that their Vice President Mr. Satish Chandra would sort out the matter with the plaintiff. Mr. Satish Chandra, however, never contacted the plaintiff although he came to Hyderabad. plaintiff further pleaded that he has spent over Rs.140 lacs for promoting 'X-Static' product. The plaintiff is ready and willing to perform its part of obligation under the said MOU. However, in breach of the said agreement, defendant 1 and 2 allegedly entered into an agreement with defendant No. 3 granting sole rights to it which plaintiff alone is entitled in violation of the MOU. Hence, the suit. Learned counsel for the plaintiff has also placed reliance on a decision of Calcutta High Court in the case of Vijay Minerals Pvt. Ltd. Vs. Bikash Chandra Deb, , wherein it was held that ad interim injunction can be granted even at the interim stage to enforce a negative covenant.

Having considered the submissions of the learned counsel for the plaintiff and the material on record, I think it is a fit case for grant of an ad interim injunction against the defendants.

Notice for the date fixed.

In the meantime, an ad-interim injunction in terms of prayer clause 5 (a) of the application be issued. Compliance under Order 39 Rule 3 be made within 3 days.

3. In para 5(a) of the injunction application, prayer made is to restrain the defendants No. 1 & 2 from taking any action, in any manner in pursuance to any arrangement arrived with the defendant No. 3 and taking any step in relation thereto and also restrain the defendant No. 3 from representing the defendants No. 1 and 2 for marketing and sale of 'X-Static' product in India especially in relation to institutional segments and more particularly, fabric mills, military and para-military forces, till the final disposal of the case. Thus, it is the injunction in these terms which is operating in favor of the plaintiff.

4. The defendant No. 1 is a company incorporated in Pennsylvania, USA. It is clear from the averments made in the plaint that the defendant No. 2 as the country manager, India of the defendant No. 1 entered into a Memorandum of Understanding (MOU) in April, 2005 with the plaintiff whereby arrangement for marketing of Noble Fibre products under the brand name 'X-Static' was agreed upon. According to the plaintiff, after signing the aforesaid MOU, the plaintiff undertook to market the product of the defendant No. 1 and has spent a substantial amount, namely, Rs. 140 lacs and at this stage the defendants 1 and 2 are backing out and in fact have now entered into an agreement with the defendant No. 3 granting him sole rights to it for marketing the same product in India. The plaintiff perceives this as violation of the MOU and is challenging the right of the defendants 1 and 2 to enter into such an arrangement with the defendant No. 3.

5. In the written statement filed by the defendant No. 1, the defendant No. 1 has tried to strike at the root of the said MOU itself. Its case is that the MOU dated 28th April, 2005 signed between the plaintiff and the defendant No. 2 does not and cannot bind the defendant No. 1 as the defendant No. 1 is not, and has not at any time been, an employee of the defendant No. 1. In fact, the defendant No. 2 is an employee of Sauquoit Industries, LLC, a Pennsylvania limited liability company. He had no authority to execute any document on behalf of the defendant No. 1 and his action of entering into such an agreement was, Therefore, void ab initio and without any authority of law. In so far as the defendant No. 1 is concerned, it has never entered into any such agreement with the plaintiff and, Therefore, the plaintiff cannot restrain the defendant No. 1 from entering into any such arrangement with the defendant No. 3 or any other person. In addition, following objections to the maintainability of the suit are also raised:

(a) The plaintiff has suppressed material facts and information which, if disclosed, should disentitle the plaintiff to any discretionary relief.

(b) The suit is bad for mis-joinder of parties as there is no cause of action against the defendant No. 1 and, Therefore, the defendant No. 1 should be discharged from the array of parties.

(c) No cause of action arose against the defendant No. 1 at New Delhi as MOU was not signed on behalf of the defendant No. 1 by any authorised

representative. The jurisdiction, Therefore, if any against the defendant No. 1 would only be with the state courts located in the Commonwealth of Pennsylvania, USA where the defendant No. 1 carries on the business and works for gain.

(d) Even if it is presumed that the defendant No. 2 was authorised to sign the MOU on behalf of the defendant No. 1, important conditions such as the rate of commission that would become payable to the plaintiff had not been finalized and was to be finalized later at the time of execution of formal contract by 30th June, 2005. Since no such formal written agreement/contract was eventually signed between the parties incorporating the some of the basic and important terms and conditions, no concluded contract ever came into existence between the parties.

(e) The suit has not been valued properly for the purpose of court fee and jurisdiction. The plaintiff is liable to pay ad-valorem court fee on each of the reliefs claimed. Therefore, the plaint be rejected under Order VII Rule 11 CPC.

(f) Prayer for perpetual injunction of the plaintiff would have the effect of total restraint of trade inasmuch as the defendant No. 1 would not be able to conduct its business in India in future. Such an injunction in total restraint of trade cannot be granted in favor of the plaintiff.

(g) In any case, MOU was determinable and valid for the period 28th April, 2005 to 30th June, 2005 and because of the failure by the parties to enter into formal agreement, MOU stood terminated and is incapable of being specifically performed. Therefore, no decree for specific performance can be passed.

(h) Even otherwise in view of the provisions of the Specific Relief Act, decree for perpetual injunction would not be passed as the plaintiff can be compensated in money terms.

6. The defendant No. 2 has filed his separate written statement. He is seeking dismissal of suit against him on the ground that no relief is prayed for against him. His submission is that even as per averments of the plaintiff, the defendant No. 2 is at best an agent of the defendant No. 1, a declared principal and, Therefore, suit against the agent is not maintainable in view of Section 230 of the Contract Act. He has also stated that there is no agreement between the plaintiff and the defendants including the defendant No. 1. The plaintiff approached the defendant No. 1 for soliciting some business. Offer of the plaintiff was considered by the defendant No. 1 and some broad parameters, which were to form the basis for further negotiations were put down on paper. The same was only an intention and basis for further negotiations and were not terms and conditions of any binding contract. The formal contract was to be executed but was never got executed between the plaintiff and the defendant No. 1. Therefore, no contractual relationship was established between the plaintiff and the defendant No. 1 and the defendant No. 2 at any stage. He has also stated that he was never authorised to enter into negotiations with the defendant No. 1

and had no authority to execute any contract/agreement on its behalf. Such power has not been vested in him and, Therefore, question of the defendant No. 2 having executed any agreement to appoint the defendant No. 1 or himself vis-a-vis does not arise. His version of negotiations on behalf of the defendant No. 1 is contained in paras 7 and 9 of the preliminary objections in the written statement filed by him which makes out the following narration:

7: That the defendant No. 1 has been in the business of the manufacture, sale and supply of the fabric for over two years and has already established a sizeable presence in the country. It is on account of the growing business potential of the defendant No. 1, that the plaintiff had approached the said defendant for establishing business relations with it. The produce being manufactured and supplied by the defendant No. 1 is a unique product with respect to which a patent has been obtained by it. Any party which is seeking to deal with the said material, is required to pay a license fee to the defendant No. 1 which is in the nature of a royalty being paid to the said defendant for use, sale and supply of the material produced by the said defendant. It was always made clear to the plaintiff that such a license fee will have to be paid by the plaintiff and that the actual terms and conditions which will form the basis of the contract between the parties will be contained in the formal agreement/contract which was to be executed before any business relations could be established between the parties.

9: That the produce being manufactured and sold by the defendant No. 1 being a unique product, it is important for the said defendant to protect its product, patent and the mode and manner of manufacture of the same. Strict agreements protecting the interest of the defendant No. 1 are executed by it before any person is given the right to trade or deal in the said product on behalf of the defendant No. 1. The defendant No. 1 also charges a license fee, which an established business practice in relation to any trade. It is keeping the same in mind that during the stage of negotiations and even in the memorandum of understanding, which was to form the basis for further negotiations between the parties, it is clearly stipulated that a formal agreement will be executed between the parties. The said agreement was to contain all terms and conditions, including the terms and conditions to protect the interest of the defendant No. 1 as well as the terms and conditions containing the quantum, mode and manner of payment of license fee by the plaintiff, for dealing in the product of the defendant No. 1. However, as stated above, the negotiations could not fructify and the formal agreement was never executed between the parties.

7. I have heard learned counsel for the parties and have also gone through the records. Learned counsel for the parties buttressed their submissions based on their respective factual premise as noted above, with the support of legal pleas as would be noted at the time of discussion on various aspects of the case.

8. The first and foremost question is the binding nature of the MOU. As noted above, the case of the defendant No. 1 is that the defendant No. 2 had no authority to enter into such an agreement on behalf of the defendant No. 1 and,

Therefore, the MOU is not binding upon the defendant No. 1 and consequently the defendant No. 1 is not privy to any such MOU. On the other hand, averments made in the plaint would show that the plaintiff has asserted that the defendant No. 2 acted as the authorised representative/country manager/agent of the defendant No. 1 and on this representation of the defendant No. 2, the plaintiff negotiated the MOU dated 28th April, 2005 which was signed by the defendant No. 2 on behalf of the defendant No. 1. It was the submission of learned counsel for the plaintiff that nowadays it has become a trend that foreign companies and multinational companies enter into Indian market through a country manager/agent and take away relevant and important informations of the business of Indian market and in the end try to back out from the said relationships and completely perform the acts of cheating and deceiving the Indian companies in totality and entirety. Interestingly, though the defendant No. 1 states that the defendant No. 2 is not its employee and has never been its employee, he is stated to be the employee of Sauquoit Industries, LLC, another Pennsylvania company. It is alleged that the defendant No. 2 did not even inform Mr. Frank McNally, about these discussions though he had no authority even on behalf of the Sauquoit Industries into any such arrangement. What is the relationship between the defendant No. 1 and Sauquoit Industries has not been disclosed. However, at the time of hearing, learned counsel for the defendant No. 1 conceded that Sauquoit Industries is part of large group of Noble Fibre Technologies Inc. i.e. defendant No. 1. It is, however, not denied that the defendant No. 1 is the country representative of the said Sauquoit Industries . Therefore, it may be possible that for launching of its product in India, the defendant No. 1 may have authorised the defendant No. 2 to negotiate at its behalf even when he was not its employee but the employee of the group company. In fact, the defendant No. 2 in no uncertain terms has accepted that he was authorised to enter into negotiations on behalf of the defendant No. 1 though he denies that he had any authority to execute any agreement on its behalf. Once it is admitted that the defendant No. 3 had an authority to negotiate on behalf of the defendant No. 1 and armed with this authority negotiations were entered into between the plaintiff and the defendant No. 2 wherein the defendant No. 2 held out representation to the effect that he was authorised to enter into such negotiations on behalf of the defendant No. 1, it would ultimately be a matter of evidence as to how much authority the defendant No. 1 had given to the defendant No. 2. The suit of the plaintiff, Therefore, on this ground cannot be thrown out at the threshold as this aspect needs more and detailed evidence and only then the blurred factual position would become clear to enable the court to take one or the other view in the matter. The plaintiff has filed on record certain correspondence exchanged between the parties. There is even an email dated 29th June, 2005 from Frank McNally to the plaintiff, inter alia, stating that the defendant No. 1 had his confidence and that the defendant No. 2 had conducted himself fairly and honestly in representing their company. Therefore, as of now, the averment of the defendant No. 1 that the defendant No. 2 had no authority of any nature whatsoever to represent the defendant No. 1 cannot be accepted

as conclusive. This coupled with the fact that pursuant to the said MOU information about the product "X-Statics" was also disseminated to the plaintiff and the plaintiff thereafter worked and performed its part on the basis of the said MOU. It is only when definite factual position emerges, the court would be in a position to know as to whether such an MOU is binding on behalf the defendant No. 1 or not. Since the defendant No. 2 has accepted that it had the authority to at least negotiate on behalf of the defendant No. 1 from which it can be implied that he held out such a representation to the plaintiff coupled with the fact that he has signed the MOU as authorised representative of the defendant No. 1, for the purposes of these application, it will have to be presumed that he had the authority as an agent of the defendant No. 1 to enter into an agreement with the plaintiff.

9. In view of the aforesaid observations, it is clear that the plaintiff cannot be non-suited at this stage and plaint cannot be rejected qua the defendant No. 1 either on the ground that there is any suppression of material facts or that there is no cause of action against the defendant No. 1 or it is a case of mis-joinder of the defendant No. 1 or this court had no territorial jurisdiction qua the defendant No. 1 inasmuch as MOU in question is, indubitably, signed at New Delhi.

10. In so far as non-enforceability of MOU is concerned, this is again a matter which requires evidence. No doubt para 2 of the said MOU states that "both the parties will enter into a formal agreement before 30th June, 2005" and no such formal agreement was entered into between the parties. However, same very second para of the MOU also states that "however, the first party will start representing the second party to prospective customers immediately after signing this MOU". In the first part, it is stated that both the parties have entered into an undertaking for marketing of Nubile Fibres Produce under their brand name "X-statics". The MOU also states that both the parties will jointly work on big institutional accounts for product approval and further, the defendant No. 1 shall be responsible for executing orders generated by the plaintiff. It is also worth mentioning that within three days of this MOU, the parties signed a Confidentiality and Non-disclosure Agreement dated 1st May, 2005 and clause 10 thereof provides that provision of said confidentiality agreement shall remain in effect with respect to any confidential information disclosed by either party, for a period of five years or until the confidential information (or that portion of it that is disclosed) becomes generally available to the public without breach of this agreement. Therefore, this aspect needs to be thrashed out fully at the appropriate stage including the aspect as to what would be a matter of argument as to what would be the effect of enforceability of such a MOU in the absence of a formal agreement and it is not necessary to deal with this aspect at this stage.

11. In view of the aforesaid discussion, application (IA No. 9274/2005) filed by the defendant No. 1 under Order VII Rule 11 CPC cannot be accepted at this stage and is accordingly dismissed. However, liberty is granted to the defendant No. 1 to press the framing of issues on the basis of averments made in this

application, which pleas are taken in the written statement as well. At the stage of framing of the issues, it would be open to the defendant No. 1 to seek hearing of a particular issue as preliminary issue, if no evidence is required thereon.

12. This brings me to the vital aspect which needs to be considered in other two applications, namely, whether to maintain the ex-parte injunction or vacate the same. Injunction granted is of mandatory nature. The plaintiff wants that because of the said MOU, the defendant No. 1 should market its products only through the plaintiff and should not be permitted to do so through the defendant No. 3 or any other party. Learned counsel for the defendant No. 1 argued that in view of legal position contained in Section 14(1)(c), Section 19 read with Section 41(e) of the Specific Relief Act such a clause cannot be specifically enforced. The learned senior counsel in support of this submission, highlighted following aspects:

(a) The alleged MOU is determinable in nature.

(b) That compensation in money will not afford the plaintiff an adequate relief in the event the plaintiff is able to establish non-performance of the contract by Noble, assuming whilst denying, that there is any such contract.

(c) In fact a plain reading of the claim made by the plaintiff shows that the plaintiff has itself made a claim for damages by seeking rendition of accounts.

(d) The plaint significantly does not contain any averment necessary for claiming a relief of specific performance but there exists no standard for ascertaining actual damage that may be caused to the plaintiff by the non-performance of the alleged MOU or that the plaintiff cannot be compensated in terms of money. On the contrary, since the plaintiff seeks a rendition of accounts and claims damages, clearly, the relief of specific performance cannot be granted in favor of the plaintiff.

(e) The relief of specific performance cannot be granted against the defendant No. 1 in view of Section 19 of the Specific Relief Act.

(f) Since the final relief of specific performance cannot be granted against the defendant No. 1 u/s 41(e) of the Specific Relief Act, no interim injunction can be granted against Noble.

13. I am of the opinion that Mr. Kapur is right in this submission. No doubt clause 10 of MOU stipulates that "no other agents of second party (i.e. defendant No. 1) will take up the accounts handled by first party (plaintiff) for the products of second party". Further, clause 17 stipulates that "second party will direct all enquiries from institutional segments to first party and in case first party refuses any specific institution, then this will go to others". However, the question is in case the agreement is determined/terminated whether the plaintiff can enforce the same specifically. The factors which are to be kept in mind are that the MOU is determinable in nature. There is a serious dispute as to whether such an MOU is even enforceable or not in the absence of formal agreement between the

parties which was to be executed before 30th June, 2005 but no such agreement was executed by the said date. Further, even if it is presumed that MOU by itself was a complete agreement and by entering into agreement with defendant No. 3, the defendant No. 1 has committed breach of this agreement, the plaintiff can always be compensated in terms of money. The plaintiff itself accepts this position as one of the reliefs prayed for is for rendition of accounts. Once these factors are taken into consideration, provisions of Sections, 14(1)(c), 19 and 41(e) of the Specific Relief Act would come into play. The law stated in these provisions would be clear from the reading thereof. Therefore, let me quote these provisions at this stage:

14. Contracts not specifically enforceable.-(1) The following contracts cannot be specifically enforced, namely:-

(a) a contract for the non-performance of which compensation is an adequate relief;

(b)xxx

(c) a contract which is in its nature determinable

19. Relief against parties and persons claiming under them by subsequent title.- Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) Any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

41. Injunction when refused-An injunction cannot be granted-

(e) to prevent the breach of a contract the performance of which would not be specifically enforced.

14 These provisions have come up for consideration before the courts number of

times. Learned senior counsel for the defendant No. 1 cited four judgments of this court and one judgment of the Supreme Court in support of this plea. These are:

(i) Rajasthan Breweries Ltd. The Stroh Brewery Co. 2000 VI AD(DLEHI) 741

Para 13: As the application by the appellant was filed u/s 9 of the Act prior to commencement of the arbitration proceedings, it is not disputed that the Court is empowered to deal with the same and exercise such power for making orders as it has for the purposes of and in relation to any proceedings before it. The closing words of Section 9 of the Act empowering the Court to deal with such applications for interim measures have on the face of it to be dealt with in accordance with the law applicable to any proceedings taken out before such a court. On the ratio of the decision of the Supreme Court in Sumitomo Heavy Industries Ltd. Vs. ONGC Ltd. and Others, the application will be governed by the law of India and not by the governing law. However, the principles of equity governing specific performance are almost same in Indian law and English law. The discretion of the Courts of England while enforcing the specific performance of a contract is subject to the same constraints as are applicable in the Courts in India. Under the English law of specific performance of contractual obligation is available only in equity and is subject to various restrictions, which have been explained by G.H.Treitel in his work "The Law of Contracts" 6th Edition pages 764 to 775 as follows:

(i) Specific performance will not be ordered where damages are adequate remedy.

(ii) If the party applying for relief is guilty of a breach of the contract or is guilty of wrongful conduct.

(iii) If the Contract involves personal service.

(iv) If the contract requires constant supervision.

(v) If the party against whom specific performance is sought is entitled to terminate the contract.

At page 775, it is stated in the aforementioned work:-

If the party against whom specific performance is sought is entitled to terminate the contract, the order will be refused as the defendant could render it nugatory by exercising his powers to terminate. This principle applies whether the contract is terminable under its express terms or on account of the conduct of the party seeking specific performance.

para 14: The effect of breach of a contract by a party seeking to specifically enforce the contract under the Indian law is enshrined in Section (c) read with Section 41(e) of the Specific Relief Act, 1963. Clause (e) of Section 41 of the Specific Relief Act provides that injunction cannot be granted to prevent the breach of contract, the performance of which would not be specifically enforced.

Clause (c) of Section 41 enumerates the nature of contracts, which could not be specifically enforced. Clause (c) to sub-section (1) of Section 14 says that a contract which is in its nature determinable cannot be specifically enforced. Learned Single Judge thus was justified in saying that if it is found that a contract which by its very nature is determinable, the same not only cannot be enforced but in respect of such a contract no injunction could also be granted and this is mandate of law. This, however, is subject to an exception, as provided in Section 42 that where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement.

Para 18. In *Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others*, , the Supreme Court had an occasion to consider the terms of agreement of distributorship. The agreement could be terminated in accordance with the terms of the agreement as per clauses 27 and 28 thereof. The Arbitrator had also held the distributorship to be revocable in accordance with clauses 27 and 28 of the agreement. The distributorship agreement was held for indefinite period, namely, till the time it was terminated in accordance with the terms contained therein. It was the case of the respondent therein that since the contract had not been terminated in accordance with clause 27 thereof, under which termination had been made, the firm was entitled to continuance of distributorship in the special circumstances of the case, which contention was upheld by the Arbitrator. Supreme Court set aside the award of the arbitrator on the ground that there is error of law apparent on the face of the record and grant of relief in the award cannot be sustained. It was held:-

The arbitrator recorded finding on issue No. 1 that termination of distributorship by the appellant Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, Therefore, the plaintiff-respondent No. 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:-

This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises.

This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the

agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having aid so in the award itself, it is obvious that the arbitrator held the distributorship to be revocable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is a contract which is in its nature determinable. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is no error of law apparent on the face of the award which is stated to be made according to the law governing such cases. The grant of this relief in the award cannot, Therefore, be sustained.

The facts of the present case are identical to those in aforementioned decision of the Supreme Court in as much as the agreements in the instant case are also terminable by the respondent on happening of certain events. In Indian Oil Corporation's case (supra) also agreement was terminable on happening of certain events. Question that whether termination is wrongful or not; the events have happened or not; the respondent is or is not justified in terminating the agreements are yet to be decided. There is no manner of doubt that the contracts by their nature determinable.

In *M/s Classic Motors Ltd. v. M/s Maruti Udyog Ltd.* (1997) 65 D.L.T.166 relying upon number of decisions, learned Single Judge of this court rightly observed:-

In view of long catena of decisions and consistent view of the Supreme Court, I hold that in private commercial transaction the parties could terminate a contract even without assigning any reasons with a reasonable period of notice in terms of such a Clause in the agreement. The submission that there could be no termination of an agreement even in the realm of private law without there being a cause or the said cause has to be valid strong cause going to the root of the matter, Therefore, is apparently fallacious and is accordingly, rejected.

(ii) *Crompton Greaves Limited Vs. Hyundai Electronics Industries Co. Limited*,

(iii) *National Auto Impex v. M/s Auto cop (India) Pvt. Ltd. and Ors.* 2001 VI AD (DELHI) 490

(iv) *Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others*,

(v) Alfa Laval (India) Ltd. Vs. J.K. Corp. Ltd. and Another,

I may mention that though this aspect was specifically highlighted during arguments, learned senior counsel for the plaintiff did not answer this aspect of the matter. Further, though both the parties were given opportunity to file their written submission, written submissions filed by the plaintiff are silent on this issue.

15. Since I am vacating the injunction on the aforesaid ground, it is not necessary for me to go into the argument of the defendant that the plaintiff has concealed material facts or that the MOU is void in terms of Section 29 of the Indian Contract Act. I am, Therefore, of the opinion that the plaintiff is not entitled to the grant of injunction prayed for. Interim injunction dated 20th September, 2005 is liable to be vacated. is No. 7410/2005 is accordingly dismissed and is No. 9273/2005 filed by the defendant No. 1 is allowed.