(2010) 01 DEL CK 0282

In the Delhi High Court

Case No : FAO (OS) 301 of 2009 and CM No. 9845/09 (For Stay)

Exxonmobil Lubricants P. Ltd. APPELLANT

Vs

Star Glow Signs and Others RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 7 Rule 11

Citation : (2010) 01 DEL CK 0282

Hon'ble Judges : A.P. Shah, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Jayant Bhushan, Mr. M.M. Lal, Mr. Gautam Taluksar and Mr. Nilesh Sinha, for the Appellant; Sandeep Prabhakar, Ms. Prerna Mehta, for the Respondent

Final Decision : Dismissed

Judgement

1. Defendant no. 3 in the suit for recovery of money filed by the respondent no. 1 - plaintiff is aggrieved by the order dated 18th April, 2009 of the learned single Judge dismissing his application under Order 1 Rule 10 read with Order 7 Rule 11 of the CPC for deletion of his name from the array of defendants and for rejection of the plaint qua it. The respondents 2 and 3 herein being the other defendants in the suit and being not interested in the matter in controversy in the appeal, their service is dispensed with. The senior counsel for the appellant and the counsel for the respondent no. 1 have been heard.

2. The senior counsel for the appellant has contended that on a meaningful reading of the plaint and the documents filed therewith, no cause of action whatsoever against the appellant/defendant no. 3 is disclosed. It is contended that by clever drafting, a cause of action, where none exists, cannot be created and the court should see through such attempt. Reliance in this regard is placed on T. Arivandandam Vs. T.V. Satyapal and Another, .

3. The senior counsel for the appellant has also taken us through the plaint. It is

contended that on a reading thereof it is clear that the transaction of the respondent no. 1 - plaintiff and on the basis whereof monetary claim is made, was with the respondents 2 and 3 (defendants 1 and 2) only and not with the appellant. It is urged that the appellant has been falsely and mischievously added as a defendant to the suit with the knowledge that the appellant, being a multinational company, to save harassment to itself would be coerced into succumbing to the illegal demands of the respondent no. 1 - plaintiff. It is urged that with the said motive only in paras 3 and 18 of the plaint a bare pleading is made that the respondent / defendant no. 1 was representing itself to be and acting on behalf of and as the agent of the appellant - defendant no. 3. With reference to the documents filed by the respondent no. 1 - plaintiff, it is sought to be shown that the entire transaction of the respondent no. 1 - plaintiff was with the respondents 2 and 3 only and not with the appellant. Attention is invited also to the legal notice got issued by the respondent no. 1 - plaintiff prior to the institution of the suit and in which no case of the other defendants being the agent of the appellant was made out. It is pointed out that on the contrary in the said legal notice it is stated that the appellant was the client of the other defendants and the other defendants were also threatened that if they do not pay the dues of the respondent no. 1 - plaintiff, complaint shall be made with the appellant. It is also urged that the other defendants also in their written statement to the suit have denied being the agents of the appellant.

4. Reliance is also placed on order dated 25th August, 2005 of this Court in CS(OS) 951/2004 titled Arunesh Punetha v. Boston Scientific Corporation, where the documents filed by the plaintiff in that case and found to have been forming the very foundation the claim of the plaintiff were also seen to determine whether cause of action was disclosed against a defendant in that case or not.

5. Per contra, the counsel for the respondent no. 1 - plaintiff draws attention to the reply got sent by the other defendants to the legal notice (supra) and in which they described the appellant as their principal. He also relies on Shree Digvijay Cement Co. Ltd. Vs. The State Trading Corporation of India Ltd., to contend that the relationship of principal and agent arises not only out of agreement but also if the parties have agreed to a state of facts on which the law imposes the consequences which result from agency. It is contended that the ultimate beneficiary of the goods / services availed from the respondent no. 1 - plaintiff was the appellant only and without trial the relationship between the appellant on the one hand and the other defendants on the other hand cannot be determined.

6. We find the respondent no. 1 - plaintiff to have in the plaint unequivocally averred that appellant was the principal of the other defendants and the goods / services provided by the respondent no. 1 - plaintiff and which remain unpaid for were ultimately availed of by the appellant. It is the case of the respondent No.1/ plaintiff that defendant no. 1 through the defendant no. 2 had placed an order on the plaintiff for supply and fixing of glow sign boards and mobile lubricants

complete with MS pillar and foundation work and oil display racks at various independent oil petrol pumps in Delhi, Bombay, Calcutta and Madras for advertising the products of the appellant. The monetary claims of the respondent no. 1 - plaintiff flow from the said transactions. It is the averment in the plaint that the other defendants having acted on behalf of the appellant, all of them are jointly and severally liable for the dues of the respondent no. 1 - plaintiff.

7. Ordinarily at the stage of an application under Order 7 Rule 11 of the CPC, only a plaint is to be looked at and not the defence of the defendant. From a bare reading of the plaint in the present case, it cannot be said that it does not disclose any cause of action against the appellant. The judgment in Arunesh Punetha (supra) relied upon by the senior counsel for the appellant turned on its own facts and it was in the peculiar facts of that case that this court found no cause of action to be disclosed. The same cannot be said to be the position in the present case. Here not only from the averments in the plaint but also from the nature of the transaction and the language in the reply to the legal notice, it cannot be outrightly said that the appellant is a stranger to the transactions or its impleadment is merely by clever drafting. We, therefore, do not find a case for interference in appeal to have been made out. The appeal is dismissed. No order as to costs.