

(1971) 01 CAL CK 0021
In the Calcutta High Court
Case No : Suit No. 319 of 1970

Life Pharmaceuticals (Private) Ltd.

APPELLANT

Vs

Bengal Medical Hall

RESPONDENT

Date of Decision : 20-01-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : AIR 1971 Cal 345

Hon'ble Judges : Ramendra Mohan Datta, J

Bench : Single Bench

Advocate : B.C. Dutt, for the Appellant;

Final Decision : Allowed

Judgement

Ramendra Mohan Datta, J.—This is an application u/s 30 of the CPC for stay of this suit filed on or about July 28, 1970.

2. The facts shortly are that on or about July 19, 1966 the plaintiff Life Pharmaceuticals Private Ltd. (hereinafter called the plaintiff company) appointed the defendant (hereinafter called the defendant firm) the Chief Regional Distributor of the products of the plaintiff company for the East Zone. On or about December 1969 the defendant firm came to know that one Messrs. Hindusthan Medical Syndicate was appointed as stockist by the plaintiff company in respect of its products. The defendant firm protested against such appointment with the result that on or about January 5, 1970 the plaintiff company terminated the agreement and cancelled the Chief Regional Distributorship granted to the defendant firm.

3. On or about January 6, 1970, the defendant firm filed the Title Suit No. 5 of 1970 in the Alipore Court (hereinafter called the said first suit) against the plaintiff company, inter alia, for a declaration that the appointment of Messrs. Hindusthan Medical Syndicate as stockist was illegal and void and also asked for permanent injunction. An interlocutory application for injunction was made in the

said Title Suit No. 5 of 1970 and on or about January 16, 1970, an order was made thereon whereby the plaintiff company was restrained from making direct sales or supply to the stockists or distributors in West Bengal including the said Messrs. Hindusthan Medical Syndicate except through the defendant. On or about January 29, 1970 the plaintiff company filed its written statement in the said Title Suit No. 5 of 1970.

4. It is to be remembered that neither in the application for injunction resulting in the order dated January 16, 1970, nor in the aforesaid written statement did the plaintiff company ever challenge the validity of the said agreement for distributorship as it did in the present suit filed in this Court.

5. On or about June 15, 1970 the defendant company filed the Money Suit being Suit No. 33 of 1970 (hereinafter called the said second suit) against the plaintiff company before the Sub-Judge's Court at Alipore, inter alia, for realisation of unpaid commission to the extent of Rs. 70,000/-. On or about July 2, 1970 the defendant firm filed another Title Suit being No. 208 of 1970 before the Munsiff's Court at Alipore (hereinafter called the said third suit), against the plaintiff company inter alia, for a declaration, that the notice of termination dated January 5, 1970 was illegal, void, inoperative and not binding on the defendant firm and also for permanent injunction etc. In the said third suit an ad-interim order was made by granting temporary injunction restraining the plaintiff company from giving effect to the purported letter of termination dated January 5, 1970. All the said three suits were filed on the basis that there was a valid and enforceable agreement by and between, the parties.

6. The present suit was filed on or about July 28, 1970 by the plaintiff company, inter alia, for a declaration that the appointment of the defendant firm by the letter dated July 19, 1966 was void and illegal on the ground, that the said agreement appointing the defendant as the Regional Distributor was void and illegal as being in contravention of Section 294(1) of the Companies Act, 1956. It is to be noted that the plaintiff company for the first time challenged the said agreement on the aforesaid ground as being void and illegal. The plaintiff company made an application in this suit for an order of injunction restraining the defendant from enforcing the said agreement and from proceeding with the said three suits filed before the Alipore Court. On August 11, 1970 the said application was finally disposed of by making no order thereon save and except giving directions for expeditious hearing of the said suit. The said order was made without prejudice to the defendant firm's making an application for stay of this suit. On or about August 31, 1970 the defendant firm made this application u/s 10 of the CPC for stay of this suit.

7. Mr. B.C. Dutt, on behalf of the plaintiff company, contended that the order for stay should not be granted for three reasons, It was contended in the first place that the defendant firm submitted to the jurisdiction of this Court by participating in the motion wherein the plaintiff company applied u/s 151 of the CPC to restrain the defendant firm from proceeding with the said three suits at Alipore.

In my opinion, there is no substance in the point. Not only that no order was made on the said application for an order of injunction but it was expressly recorded therein that the said order was made without prejudice to the rights and contentions of the defendant firm's taking steps for initiating the proceedings u/s 10 of the Code of Civil Procedure. Under the circumstances, the defendant firm could not be said to have submitted to the jurisdiction of this Court by opposing the said motion. Moreover, it is settled law and as the language of Section 10 would suggest, an application thereunder would be perfectly maintainable at any stage of the proceeding. As soon as the conditions laid down therein are satisfied the court is bound to stay its hands and will cease to have jurisdiction to proceed with the subsequent suit any longer. The language of the section is mandatory and as such no option is left to the Court to refuse an application on the ground of delay or laches. Accordingly. I reject the contention of Mr. Dutt.

8. The second point urged by Mr. Dutt was that the said first and the third suits were started before the Munsiffs court at Alipore and the valuations thereof were Rs. 40/- and Rs. 100/- respectively. Accordingly, the present suit filed before this Court could not have been entertained by the said Munsiffs Court nor could the subject-matter of the present suit be the same as that of the subject-matter in the said two suits filed before the Munsiffs Court at Alipore. The valuation of the suit herein has been assessed by the plaintiff company at a sum of Rs. 54,000/-. Mr. Dutt was unable to give a satisfactory explanation as to why the subject-matter of the present suit could not be agitated in the said Money Suit which was filed before the Sub-Judge's Court at Alipore, the valuation whereof was Rs. 70,000/-.

9. All the said three suits were founded on the said agreement whereby the defendant firm was appointed the Regional Distributor of the plaintiff company's products. The said first suit was, inter alia, for a declaration that the appointment of Messrs. Hindusthan Medical Syndicate as stockists was illegal and void and for permanent injunction against the plaintiff company. In other words, the defendant firm had acquired a definite right under the said agreement and that right was bound to be respected by the plaintiff company, if allowed to be made, would be in violation of the defendant firm's right under the said agreement (sic). Again, the said third suit was, inter alia, for a declaration that the notice of termination of the said distributorship granted to the defendant firm was illegal, void and inoperative and not binding on the defendant and for permanent injunction against the plaintiff company from giving effect to the said letter of termination. Here also the foundation is laid on the said agreement and the defendant-firm's right under the said agreement was sought to be enforced by the said reliefs claimed in the said suit. The second suit was for realisation of the unpaid commission for Rs. 70,000/-payable by the plaintiff company. That sum accrued and remained due, according to the defendant firm, in respect of the said agreement. In my opinion, there could not have been any difficulty on the part of the plaintiff company to challenge the said agreement as void and illegal

in the said three respective suits. Neither any procedural difficulty nor any question relating to the pecuniary jurisdiction of the said respective Courts at Alipore would have stood in the way of the plaintiff company's agitating the very same point and relief as it has purported to agitate by filing the present suit here. I see no reason why the very same point could not have been taken in the written statements filed or to be filed in the said Alipore Suits. The question of suffering damages to the extent of Rs. 54,000/- would arise only when the plaintiff company would otherwise succeed in establishing the invalidity or illegality of the said agreement dated July 19, 1966 whereby the defendant firm was appointed the Regional Distributor of the plaintiff company's products. Accordingly there could be no bar in the Munsiff's entertaining the point relating to the invalidity or illegality of the said agreement in the said first and the third suits if the same were raised in the written statements.

10. In any event there could hardly be any explanation as to why the said point could not be agitated in the second suit filed before the Sub-Judge's Court at Alipore wherein the defendant firm claimed the sum of Rs. 70,000/-. Even assuming Mr. Dutt's contention to be correct about the Munsiff's Court not having pecuniary jurisdiction to entertain the subject-matter of this suit yet the Sub-Judge's Court unquestionably had the pecuniary jurisdiction to entertain the subject-matter of this suit. Accordingly I reject the contention of Mr. Dutt on this point.

11. The third point why this suit should not be stayed is that the principle of res judicata cannot be applied in an application u/s 10 of the Code of Civil Procedure. Mr. Dutt argued that the Court should not consider the question of constructive res judicata in an application u/s 10 of the Code of Civil Procedure. According to him the scope of Section 10 would not permit such construction. I am unable to accept this contention.

12. In my opinion, the test to be applied in deciding an application u/s 10 of the CPC is whether the matter in the later suit will be res judicata if the prior suit is taken to have been decreed in the manner as prayed in the plaint. In such circumstances, it will matter little that no written statement has been filed in the earlier suit. If the above test is applied in the present case before me the position will be like this viz., that in the first suit before the Munsiff's Court at Alipore if a decree will be deemed to be passed that will be possible only on the basis of the said agreement being a valid and an enforceable one. Such will be the case also in respect of the second and the third suits. As such it will be idle on the part of the plaintiff company to agitate this point regarding the invalidity of the said agreement by filing another suit later in point of time and by contending that this point regarding the invalidity of the agreement was not agitated in the said Alipore suits. If the plaintiff company fails to make the same a ground of defence in such former suits then the same will be hit by the principles of constructive res judicata in the present suit filed before this Court at a subsequent stage.

13. The principle underlying both Sections 10 and 11 of the CPC is to achieve finality in litigation, to prevent multiplicity of proceedings and also to prevent conflict of decisions in respect of the same subject-matter involved in two different suits filed by and between the same parties. These are the matters relating to the procedure to be followed in suits.

14. The view I have taken finds support from the case of Durgaprasad Vs. Kantichandra Mukerji, where the Division Bench of this Court at page 7 observed:--

"The real criterion to apply is this; supposing the first suit was determined: would the position then be that when the second suit was instituted the matters raised in the second suit were res judicata by reason of the decision of the prior suit? In that way, the provisions of Section 10, logically and naturally, precede Section 11."

15. That being the position, I have no hesitation to reject the contention of Mr. Dutt on this point as well. Several decisions relied on by Mr. Dutt in Choudhuri Jamini Nath Mullick and Others Vs. Midnapur Zemindary Company, ; Nunu Singh Vs. Muni Nath Singh and Others, ; Shorab Merwanji Modi and Another Vs. Mansata Film Distributors and Another, and Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal,) do not, in my opinion, stand in the way of my making an order in this application.

16. Under the circumstances, this application must succeed and I make an order in terms of prayers (a) and (d). The petitioner herein is entitled to the costs of this application.