
(2007) 11 MAD CK 0090

In the Madras High Court

Case No : O.S.A. No. 384 of 2001 and C.M.P. No. 20234 of 2001

Manali Petro Chemicals Ltd.

APPELLANT

Vs

Eastern Organics and UNI Mark Remedies Ltd.

RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (2007) 11 MAD CK 0090

Hon'ble Judges : S.J. Mukhopadhaya, J;A.C. Arumugaperumal Adityan, J

Bench : Division Bench

Advocate : R. Krishnamurthy for Subharaja Aiyar, for the Appellant; T.R. Rajagopal for V. Nataraj, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—The impugned order under challenge in this Original Suit Appeal was passed in A. No. 2049 of 2001 in

C.S. No. 302 of 1996 on the file of this Court. The said application was filed u/s 10 of CPC with a prayer to stay all further proceedings in C.S.

No. 302 of 1996 pending on the file of this Court, till the disposal of the Suit in C.S. No. 4437 of 1995 on the file of the High Court of Judicature

at Bombay.

2. The learned single Judge after meticulously going through the affidavit filed in support of the application in A. No. 2049 of 2001 and also the

counter filed by the other side in A. No. 2049 of 2001/appellant herein and after hearing both sides, has come to an unassailable conclusion that

the petitioner in A. No. 2049 of 2001 is entitled to the relief asked for in the said application and accordingly allowed the application thereby

granting an order of stay of C.S. No. 302 of 1996 till the disposal of the suit in

C.S. No. 4437 of 1995 pending on the file of the Bombay High Court. Against the said order of stay, this appeal has been preferred.

3. The averments in the affidavit to A. No. 2049 of 2001 in C.S. No. 302 of 1996 made by the petitioner are as follows:

3(i) The petitioners in A. No. 2049 of 2001 are the defendants in C.S. No. 302 of 1996. The second defendant i.e. ½ UNI Mark Remedies Ltd., is

a division of the first defendant i.e. ½ M/s. Eastern Organics and the second defendant ceased to exist from 4.1.1996. The plaintiff i.e. ½ M/s. U.B.

Petroproducts Ltd., have appointed the first defendant as Consignment Stockist Agent (CSA) for various products manufactured and marketed by

the plaintiff, for a period of three years from August 1990, which was extended upto 30.6.1995. The said appointment of the first defendant by the

plaintiff as an Agent was on the basis of an agreement dated 23.8.1993. In the year 1994 M/s. Manali Petro Chemicals Ltd., took the control of

the management of the plaintiff by purchasing the shares of the plaintiff.

3(ii) The said Manali Petro Chemicals Ltd., were infact competitor of the second defendant and hence, they are reluctant to continue as CSA for

the plaintiff. From August 1994, the plaintiff stopped the supply of products to the second defendant in accordance with the terms of the agreement

and started claiming higher prices of the products, contrary to the terms of the agreement dated 23.08.1993. The second defendant repeatedly

requested the plaintiff to carry out their obligations under the agreement dated 23.8.1993. Since the plaintiff could not able to perform the terms of

the said agreement dated 23.8.1993, it was agreed upon between the parties to enter into a fresh agreement on 17.5.1995 and accordingly a fresh

agreement was entered into between the plaintiff and the second defendant superseding all previous agreements.

3(iii) After August 1995, the plaintiff/respondent had refused to perform his part under the said agreement dated 17.5.1995. Hence, the second

defendant filed a suit in C.S. No. 4437 of 1995 on 20.11.1995 before the High Court of Judicature at Bombay for specific performance of the

agreement dated 17.5.1995 or in the alternative to direct M/s. Manali Petro Chemical Ltd., the plaintiff in C. No. 302 of 1996 on the file of the

High Court of Judicature at Madras, to pay a sum of Rs. 10,82,95,500/- towards damages. The said suit is pending in Bombay High Court. The

said suit was filed under Clause 12 of the Letters Patent. The plaintiffs took out an application in the form of notice of motion in Suit. No. 4437 of

1995 to revoke the leave granted by the Bombay High Court on the ground that the Bombay High Court did not have any jurisdiction to try the

suit. The said application was dismissed on 4.4.1997, whereupon, the plaintiffs herein filed an Appeal No. 994 of 1997, which was also dismissed

by the Division Bench of Bombay High Court on 10.02.1998 holding that the Bombay High Court has jurisdiction to try the suit. The said suit was

filed on 11.4.1996 for recovery of money from the second defendant. Only on the basis of the agreement dated 17.5.1995, the plaintiff had filed

the said suit in C.S. No. 4437 of 1995 before the High Court of Judicature at Bombay.

3(iv) The issues raised in the above suit are directly and substantially the same in the subsequent suit in C.S. No. 302 of 1996. The main issue is

whether the defendants are liable to pay the alleged claim of the plaintiff under the said agreement dated 17.5.1995 or whether the plaintiffs have

committed breach of the said agreement by not supplying the goods thereby causing damage and loss to the defendants. The applicants/defendants

filed A. No. 2458 of 1996 to stay the above suit pending disposal of the proceedings in the previously instituted suit No. 4437 of 1995 pending on

the file of the Honourable High Court of Bombay. The said application was dismissed on the ground that it was premature since the written

statement had not been filed by then, with an observation that the defendant can file a fresh application after the issues are framed. The suit in

Bombay is still pending. Both the suits challenge the rights of the parties under the agreement dated 17.5.1995 entered into between them. Hence,

the petition u/s 10 of CPC to stay all further proceedings in C.S. No. 302 of 1996 pending on the file of this Court till the disposal of the suit No.

4437 of 1995 pending on the file of the Bombay High Court.

4. 4(i) The respondent/plaintiff in their counter would contend that the plaintiff's company has been amalgamated with M/s. Manali Petro Chemical

Ltd., with effect from 24.4.2000. The earlier application filed by the petitioner was dismissed on 3.12.1996 (A. No. 2758/1996) on the ground

that it was premature. The second defendant has not intimated about the taking over of the business of the first defendant.

4(ii) Only in the written statement the second defendant would state that it was incorporated in December 1993 with an object of running the partnership business of the first defendant (first applicant) and that the first applicant's firm was taken over by the second defendant's company in April 1994. The memorandum of agreement dated 17.5.1995 was only between the plaintiff and the first defendant. The second defendant would put forth a claim before the Bombay High Court claiming to have taken over the first defendant, the second defendant/second applicant was made a party to the suit. Hence, the contention of the applicant that the first defendant firm ceased to exist from 1.4.1994 and the name of the first defendant has to be deleted by amending the plaint, is absolutely baseless.

4(iii) As per the minutes of the meeting held between the first defendant and the plaintiff, a sum of Rs. 2,63,57,144.75 is due from M/s. Eastern Organics Ltd., to the plaintiff and that they agreed to pay the amount at the rate of Rs. 5,00,000/- per month with agreed interest of 18% per annum. The said agreement dated 17.5.1995 was entered into between the parties at Madras. A reading of the plaint as well as the prayer will clearly go to show that the claim made by the 2nd applicant and the plaintiff in that suit is a frivolous one and is not sustainable. There is absolutely no explanation as to the admission of the liability to the plaintiff under the agreement dated 17.5.1995. The second defendant is not a party to the agreement dated 17.5.1995. The plaintiff herein has filed his written statement in O.S. No. 4437 of 1995 as the defendant in that suit. The cause of action can be agitated only before this Court and the Courts at Bombay will have no jurisdiction to entertain the same. The suit No. 4437 of 1995 on the file of the Bombay High Court was filed by the second defendant herein and there was no privity of contract between the plaintiff in the suit in C.S. No. 4437 of 1995 and the plaintiff in the suit in C.S. No. 302 of 1996. The second defendant cannot seek to enforce the agreement dated 17.5.1995.

4(iv) There was no agreement between the second defendant and the plaintiff herein. The first defendant had filed the suit No. 4437 of 1995 before the Bombay High Court, as a successor-in-interest of the first defendant. The first defendant was appointed as Consignment Stockist Agent

(CSA) in August 1990, which was renewed in August 1993 to be in force up to 5.6.1995. As per the agreement, all disputes would be subject to

Madras Jurisdiction and the first defendant is liable to pay interest at 2% pm for the first 30 days of default and thereafter, 2.4% pm for the next 60

days and 3% pm interest for the delay beyond 60%. The first defendant was constantly in default and did not pay the amounts in spite of demands.

In December 1994, the outstanding of the first defendant exceeded a sum of Rs. 3 crores, which was admitted by the first defendant in the meeting

held on 30.12.1994. In the meeting held on 17.5.1995 between the first defendant and the plaintiff, the first defendant has accepted the

outstanding due to the tune of Rs. 2,63,57,144.75 as on 17.5.1995 and on representation of the first defendant, the plaintiff had demanded him to

pay the due amount at the rate of Rs. 5,00,000/- pm. But the first defendant has committed default in repayment, which was pointed out in

plaintiff's letter dated 7.7.1995. The plaintiff had sent reminders under letter dated 24.7.1995, 21.8.1995, 21.9.1995, 26.9.1995 and

6.10.1995. Ultimately, the plaintiff had stopped supply of their products to the first defendant. Hence, this suit has been filed for recovery of

amount from the first defendant.

4(v) The subject matter in suit No. 4437 of 1995 pending on the file of the Bombay High Court is entirely different. The said claim is one for

damages. The said suit is for specific performance of the agreement dated 17.5.1995 and in the alternative, has claimed Rs. 8,82,96,500/- with

18% interest per annum, whereas under this suit the claim is for Rs. 2,63,57,144.75. The question involved in the suit pending on the file of the

Bombay High Court and the question involved in this suit are entirely different. The first defendant is not a necessary party to this suit. Only to

succumb the liability of the first defendant, which was acknowledged under the agreement dated 17.5.1995, the present suit has been filed. The

question involved in the present suit is about the liability of the first defendant to the plaintiff, whereas the question involved in the suit at Bombay is

whether there was any breach of agreement dated 17.5.1995. The matters in issues are not directly or substantially the same in both the suits.

Hence, the petition is liable to be dismissed.

5. The applicant has filed a rejoinder denying the averments contained in the

counter filed by the respondents.

6. The learned single Judge, after going through the averments in the affidavit to the petition and also the contentions raised in the counter, has

allowed the application granting stay of all the proceedings in C.S. No. 302 of 1996 till the disposal of the suit in C.S. No. 4437 of 1995 pending

on the file of the Bombay High Court, which necessitated the respondent/plaintiff in C.S. No. 302 of 1996 to prefer this appeal.

7. The only point that arose for consideration in this appeal is whether the findings of the learned trial Judge in A. No. 2041 of 2001 in C.S. No.

302 of 1996 holding that C.S. No. 302 of 1996 is liable to be stayed u/s 10 of CPC in lieu of the pendency of an earlier suit between the same

parties in C.S. No. 4437 of 1995 on the file of the Bombay High Court, is sustainable under law?

8. We heard Mr. R. Krishnamurthy, learned Senior Counsel appearing for the appellant and Mr. T.R. Rajagopal, learned senior Counsel

appearing for the respondents and considered their respective submissions.

9. The Point: Section 10 of CPC reads as follows:

No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit

between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the

same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by

the Central Government and having like jurisdiction, or before the Supreme Court,

Explanation: The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

A perusal of the plaint in C.S. No. 302 of 1996 will go to show that the plaintiff is M/s. Manali Petro Chemical Ltd., and the first defendant is M/s.

Eastern Organics and the second defendant is M/s. UNI Mark Remedies Ltd., and the said suit was filed by the plaintiff for recovery of Rs.

7,83,71,202.28 from the defendants with future interest on the basis of the agreement dated 17.5.1995. According to the plaintiff, as per the terms

of agreement dated 17.5.1995, which was entered into between the parties, the earlier agreement dated 23.8.1993 had become non-operational

from 5.6.1995. A perusal of the plaint in C.S. No. 4437 of 1995 on the file of the Bombay High Court will go to show that the said suit was filed

by the second defendant i.e. M/s. UNI Mark Remedies Ltd., in C.S. No. 302 of 1996 as the plaintiff. The plaintiff in C.S. No. 302 of 1996 M/s.

Manali Petro Chemical Ltd., is the second defendant in C.S. No. 4437 of 1995. So the plaintiff in C.S. No. 302 of 1996 is the second defendant

in C.S. No. 4437 of 1995, the second defendant in C.S. No. 302 of 1996 is the plaintiff in C.S. No. 4437 of 1995 and the previous name for the

plaintiff in C.S. No. 302 of 1996 is M/s. U.B. Petroproducts Ltd., which is the first defendant in C.S. No. 4437 of 1995. C.S. No. 4437 of 1995

was filed by the M/s. UNI Mark Remedies Ltd., which is the second defendant in C.S. No. 302 of 1996, for a declaration that the agreement

dated 17.5.1995 is valid, subsisting and binding on the first defendant. M/s. U.B. Petroproducts Ltd., (old name for the present plaintiff), the

plaintiff in C.S. No. 302 of 1996 (Second defendant in C.S. No. 4437 of 1995 is the present plaintiff and also in the alternative the plaintiff in C.S.

No. 4437 of 1995 have claimed Rs. 7,47,49,000/- from the defendants. So a careful perusal of both the plaints in C.S. No. 302 of 1996 pending

on the file of this Court and the plaint in C.S. No. 4437 of 1995 pending on the file of the Bombay High Court will go to show that the subject

matter in both the suits and the parties in both the suits are one and the same and as rightly held by the learned Single Judge, to avoid conflict of

judgments, the suit filed at the later point of time is to be stayed u/s 10 of CPC, when an earlier suit between the parties in respect of the same

subject matter is pending in C.S. No. 4437 of 1995 on the file of the Bombay High Court. It is represented by the learned senior counsel Mr. R.

Krishnamurthy appearing for the appellant that C.S. No. 4437 of 1995 is at the stage of framing of issues. But anyhow that is not a ground for

allowing this appeal. The remedy open to the parties is to file draft issues in C.S. No. 4437 of 1995 and to expedite the trial in the said case

pending on the file of the Bombay High Court. We do not find any illegality or infirmity in the findings of the learned Single Judge in arriving at a

conclusion that C.S. No. 302 of 1996 pending before this Court is liable to be stayed u/s 10 of CPC, to warrant any interference from this Court.

Point is answered accordingly.

10. In fine, the appeal is dismissed confirming the findings of the learned Single Judge in A. No. 2049 of 2001 in C.S. No. 302 of 1996.

Connected miscellaneous petition is closed.