(2016) 12 DEL CK 0049

In the Delhi High Court

Case No : CS(OS) 3148 of 2015

Oxbridge Associates Limited — APPELLANT

Vs

Mr. Atul Kumra — RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5

Citation : (2017) 2 ADDelhi 434

Hon'ble Judges : Ms. Deepa Sharma, J.

Bench : Single Bench

Advocate : Mr. S.K. Singh, Advocate along with Mr. Abhishekh Sharma, Advocate, for the Respondent; Mr. Jayant Mehta, Advocate along with Mr. Sumeet Lall and Ms. Ashmi Mohan, Advocates, for the Petitioner

Final Decision : Disposed off

Judgement

Deepa Sharma, J. - I.A. No. 487/2016 (under Order 38, Rule 5 read with Section 151 of the Code of Civil Procedure)

The present suit has been filed for recovery of a sum of Rs.1,55,46,586.62/- along with the pendete lite and future interest against the defendant. It is not in dispute that the plaintiff had placed two purchase orders Nos.205 and 213 with the defendant and as per these orders the defendant raised performa invoices and one of the conditions was to make pre-payment and accordingly, the plaintiff had made the payment against the performa invoices for purchase order Nos.205 and 213.

2. The contentions of the plaintiff is that the defendant failed to provide the products in terms and conditions of the purchase order and invoices which caused huge losses to the plaintiff. The plaintiff cancelled the purchase order no.205 on 24.04.2015 and purchase order no.213 on 22.05.2015 and sought refund of USD 281,753.92 and USD 84,275.60 which money was paid in advance by the plaintiff to the defendant against the performa invoices. On demand, the

defendant refused to refund the entire amount and arbitrarily and unilaterally made a deduction of 25% towards handling and cancellation charges and exchange rate difference against both the purchase orders. It is submitted that they are not entitled to make such deductions. It is further contended that the plaintiff had accepted a sum of USD 150,000 as part payment under protest with respect of first purchase order. The total sum due in respect of first purchase order no. 205 is USD 131,735.92 and USD 84,725.60 in respect of second purchase order 213 and the total due amount is USD 216,461.52 which along with interest as on 29.09.2015 in rupees comes to Rs.1,55,46,586.62. It is further submitted that the defendant in his Statement of Account as on 13.05.2015 and 15.06.2015 sent through an e-mails dated 13.05.2015 and 26.06.2015 admitted having received USD 281,753.92 and USD 84,275.60 and their liability to pay a sum of USD 180,037.30 against the purchase order no. 205 and USD 57,790.93 against purchase order no. 213. It is submitted that the plaintiff has learnt that the drug license of the defendant is subject to final outcome of the proceedings pending before the Supreme Court in SLP (C) 5844 and 5846 of 2005 and in case the order is passed against the defendant they would be out of business and in that eventuality it would not be possible for the plaintiff to recover the said amount. It is also submitted that several other proceedings including summary suit (Federal Express Corporation v. Atul Kumra Prop. Medicine House) and criminal proceedings relating to cheating (CBI v. Atul Kumra and Another) are pending against the defendant and if he is convicted, the defendant being is the sole proprietorship concern, it would not be possible for the plaintiff to recover decretal amount. On these submissions it is prayed that defendant be directed to furnish security either by depositing this amount in the court or in any other manner.

3. The application is contested by the defendant. It is submitted that the present application is not maintainable since on ground for the grant of the relief under the provisions of Order 38, Rule 5 CPC has been made out. The plaintiff has not shown any facts which would suggest that defendant was about to dispose of his properties with intent to delay or obstruct the execution of decree and hence the application is liable to be dismissed. It is also submitted that it is the plaintiff who owes money to the defendant as per the latest Statement of Accounts, copy of which was furnished by the defendant during the course of arguments. It is prayed that the application be dismissed.

4. I have heard arguments and given due consideration to the rival contentions of the parties including the documents on record and furnished during arguments.

5. The Supreme Court in the case of Rajendran and Others v. Shankar Sundaram and Others (2008) 2 SCC 724 has held that while disposing of the application under Order 38 CPC the court has to take prima facie view and it is not required to go into the correctness or otherwise of all the contentions raised by the parties. In the present case, the documents on record prima facie establish the fact that there were two purchase orders no.205 and 213 and two invoices were

issued by the defendant. Pursuant to those invoices the plaintiff made the payments. The receipts of the said payments is also on record and also in their emails dated 13.05.2015 and 26.06.2015, the defendant had admitted that they had received an amount of USD 281,753.92 and USD 84,275.60. The documents showing the cancellation of purchase order is also on record.

6. There is an e-mail of the defendant sent to the plaintiff enclosing the Statement of Account as on 13.05.2015 acknowledging the receipt of an amount of USD 281,753.93 and after making certain adjustments payable amount as USD 180,037.30 in respect of first purchase order. Defendant sent another e-mail dated 26.06.2015 and the accompanying Statement of Account of the defendant as on 26.06.2015, which shows an acknowledgement of receipt of USD 84,275.60 and refund amount of USD 57,790.93 as on 26.06.2015. Out of this total amount received by the defendant a sum i.e USD 150,000 admitted to have been received by the plaintiff. The defendant although during the course of arguments has filed his current Statement of Account as on 30.06.2015 showing its liability to pay plaintiff USD 36,947.60 and liability of the plaintiff to pay to the defendant a sum of USD 37,544.75 showing balance payable by plaintiff to him as USD 597.15. However, it is not shown that this Statement of Account was ever sent to the plaintiff by him. On the other hand, the earlier e-mails dated 13.05.2015 and 15.06.2015 of the defendant shows a different liability of the defendants as regards the repayment of the received amount is concerned in respect of two orders.

7. It is settled proposition that the courts at this stage is concerned with the prima facie case and is not required to go in the merit of the case. Prima facie it is apparent that the defendant owes money to the plaintiff. It is not disputed that their drug license is subject matter of a dispute before the Supreme Court in SLP (C) 5844 and 5846 of 2005 and if it is cancelled, it is obvious that the defendant would be out of business, he is doing the business of supplying pharmaceutical and medical products which he cannot run without a license. Also there are criminal cases pending before CBI against the defendant. In view of this, I hereby direct the defendant to deposit Rs.1,55,46,586.62/- with the Registrar General of this Court within four weeks from the date of this order and the Registry is directed to keep the said sum in the form of Fixed Deposit initially for one year and thereafter renewable from year to year.

8. With these directions, the application stands disposed of.

