
(2012) 10 DEL CK 0339

In the Delhi High Court

Case No : Regular First Appeal (OS) 121 of 2009

Punnamana Agencies

APPELLANT

Vs

Marubeni Corporation and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0339

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; Vikram Dholakia, Advocate for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Appellant sued respondents claiming decree in sum of Rs. 32 lacs. Appellant claimed that the suit was instituted under authority of its partner Mr. P.V. Kumar. As per the plaint, the appellant had entered into a service agreement with respondent No. 1 on October 18, 1988 and was to receive service commission every six months in sum of US\$ 10,000.00. It was pleaded that it was orally agreed that as and when a contract would be finalized, with the efforts of the appellant, it would be paid a commission @ 0.5% of the contract value. Citing two instances of said commission i.e. 0.5% of the invoice value being paid on January 20, 1993 and secondly on November 25, 1993, it was averred that the appellant had not been paid similar commission pertaining to a contract dated June 9, 1992 awarded by ONGC to a consortium consisting of M/s Kawasaki Heavy Industries and Cooper Rolls Inc. It was pleaded that the contract value was approximately US\$ 220 million and the said contract was awarded at the instance of the appellant.

2. As per the respondent the agreement dated October 18, 1988 was superseded by an agreement dated April 1, 1991; both were identically worded. That respondent No. 1 had paid whatever had to be paid under the agreement dated April 1, 1991 and that the full and final settlement was acknowledged by the

appellant as per the letter dated February 25, 1994.

3. With respect to the two agreements dated January 20, 1993 and November 25, 1993, it was highlighted that a different company, having similar name as respondent No. 1, was the signatory to the two agreements and that the appellant could not rely, as conduct of the respondent No. 1, by making any reference to the agreements dated January 20, 1993 and November 25, 1993. Pertaining to the contract dated June 9, 1992 it was highlighted that the contract was between ONGC and consortium consisting of M/s Kawasaki Heavy Industries and Cooper Rolls Inc.; none of which had anything to do with respondent No. 1.

4. A preliminary objection was taken to the maintainability of the suit by pleading that the plaintiff, a partnership firm, was not registered and that Mr. P.V. Kumar, the person under whose authority the suit was instituted was not a registered partner of the firm.

5. Vide impugned judgment and decree dated September 2, 2008 the learned Single Judge has held issue No. 2 pertaining to the suit being filed and instituted, under the signatures of Mr. P.V. Kumar, noting that the appellant had led no evidence to prove that it was registered with the Registrar of Firms and much less Mr. P.V. Kumar being its partner, the suit has been held to be to be not maintainable.

6. Issue pertaining to territorial jurisdiction of the Delhi High Court has been held in favour of the appellant.

7. Learned counsel for the appellant could not show any evidence to establish that the appellant had got itself registered with the Registrar of Firms and that Mr. P.V. Kumar was shown as a partner of the appellant.

8. A feeble attempt was made to urge that the appellant was actually the sole proprietorship firm of Mr. P.V. Kumar; an attempt which we scorch at the inception noting that in the plaint it has been categorically averred in paragraph 1 that the plaintiff is a firm established as per the existing laws of India and is represented through its partner Mr. P.V. Kumar.

9. It may be true that while signing the pleadings Mr. P.V. Kumar styled himself as a proprietor, however, while leading evidence by way of examination-in-chief in the form of an affidavit, Mr. P.V. Kumar clearly described himself as a partner of the appellant firm and during cross-examination admitted that he and his son Mr. C. Suresh were the partners of the firm.

10. Under the circumstances, we hold that the verdict returned under issue No. 2 against the appellant is correct.

11. With respect to issue No. 3 i.e. whether the appellant was entitled to any money with respect to the agreement dated June 9, 1992 entered into between ONGC and consortium of M/s. Kawasaki Heavy Industries and Cooper Rolls Inc., suffice would it be to state that we wonder as to how the appellant could claim

any commission pertaining to the said agreement for the reason respondent No. 1 has no concern therewith.

12. That apart, the service agreement dated October 18, 1988, Ex. P-1 would show that the appellant and the "Marubeni Corporation" are the signatories thereto as per which the appellant had to receive a consultancy fixed payment in sum of US\$ 10,000.00. The period of consultancy was six months. The said agreement was superseded by another agreement dated April 1, 1991, Ex. D-4, to which the appellant had not even made a reference in the pleadings. The said agreement is between the appellant and the "Marubeni Corporation". It is identically worded as Ex. P-1.

13. It is not the case of the appellant that any money is payable to it with respect to the agreement Ex. D-4.

14. As noted hereinabove, the appellant claims oral agreement with respondent No. 1 to pay commission with respect to contracts obtained by respondent No. 1 through the services of the appellant. The appellant had made a reference to such agreements dated January 20, 1993 and November 25, 1993, which we find are Ex. P-2 and P-3. The signatories thereto are the appellant and "Marubeni Corporation, Tokyo".

15. Now, respondent No. 1 is "Marubeni Corporation" and not "Marubeni Corporation, Tokyo".

16. Thus, the appellant cannot rely on Ex. P-2 and P-3 as proof of conduct of respondent No. 1.

17. That apart, the appellant has rested its claim with respect to the agreement dated June 9, 1992 entered into between ONGC and the consortium consisting of M/s. Kawasaki Heavy Industries and Cooper Rolls Inc., none of which have any concern with respondent No. 1.

18. Thus, we agree with the reasoning of the learned Single Judge pertaining to issue No. 3 i.e. that the appellant has failed to justify its claim with respect to the agreement dated June 9, 1992 against the respondent No. 1.

19. Issue No. 4 with respect to the maintainability of the suit against defendants No. 2 to 4 who we note have been alleged to be the officers of respondent No. 1 has rightly been held against the appellant for the reason there are no averment, much less any evidence, that said three persons stood sureties/guarantees for the dues of the respondent No. 1. Even otherwise, as recorded in the order dated December 14, 2011 passed in the appeal, the appellant had given up claim against said respondents, whose names were deleted from the memo of parties.

20. We finally note that as per Ex. P-4 dated February 25, 1994, the appellant has acknowledged having received, in full and final discharge of its claim, a sum of US\$ 5000.00 from the respondent No. 1.

21. If appellant had any claim against respondent No. 1 pertaining to the

contract dated June 9, 1992, we see no reason why on February 25, 1994 the appellant would give a discharge to respondent No. 1 by accepting as afore noted. We find no merit in the appeal which is dismissed but without any order as to costs.