

M.G.Vasudevan Vs. Paramount Cosmetics (India) Limited

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SooperKanoon Citation : sooperkanoon.com/1133734

Court : Kerala

Decided On : Feb-26-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : M.G.Vasudevan

Respondent : Paramount Cosmetics (India) Limited

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE 26TH DAY OF FEBRUARY 2014 7TH PHALGUNA, 1935 RSA.No. 984 of 2011 ----- AS.NO. 17/2007 of IST ADDL.DISTRICT COURT, ERNAKULAM DATED 26-02-2011 ... OS NO. 305/2003 of II ADDL.SUB COURT, ERNAKULAM DATED 28-03-2006 APPELLANT(S)/APPELLANT/PLAINTIFF:

M.G.VASUDEVAN, S/O.GOVINDAN, RESIDING AT MACHINGAL HOUSE, DILKUSH LANE, THRISSUR - 680 004. BY ADVS.SRI.T.C.SURESH MENON SRI.JIBU P.THOMAS SRI.P.S.APPU SRI.A.R.NIMOD SRI.C.A.ANOOP SRI.MATHEWS RAJU SRI.S.ANANTHAKRISHNAN
RESPONDENT(S)/RESPONDENT/DEFENDANT:

----- PARAMOUNT COSMETICS (INDIA) LIMITED, (FORMERLY TIPS & TOES COSMETICS (I) LTD., REPRESENTED BY ITS BRANCH MANAGER, HAVING ITS PRESENT ADDRESS AT C/O.BOMBAY PIGMENT & ALLIED PRODUCTS LTD, C&F

AGENTS, K.M BUILDINGS, ARANGATH ROAD, OFF:VEEKSHANAM ROAD,
PULLEPPADY, KOCHI - 682 035.(OLD ADDRESS:

34. 1684, E.N.H. ROAD, MAMANGALAM, ERNAKULAM DISTRICT,
REPRESENTED BY ITS BRANCH MANAGER). THIS REGULAR SECOND
APPEAL HAVING BEEN FINALLY HEARD ON 26-02-2014, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING: Kss P.BHAVADASAN, J.

----- Regular Second Appeal No.984
OF 2011----- Dated this the 26th day of February,
2014.

JUDGMENT

A short point that arises for consideration in this appeal is whether the lower courts were justified in declining to grant relief to the plaintiff when the plaintiff claims various amounts under different heads and the defence set up was one of discharge. If the plea of discharge is not established by the defendant, can the plaintiff be deprived of his legal right to receive the amounts due to him? 2. At the time of admission of this R.S.A, the following questions of law have been formulated:

1. Whether the courts below were right in non-suiting the plaintiff on the ground that plaintiff has not proved his claim when in the written statement defendant has only pleaded discharge by way of set off and adjustment and has failed to prove the same.
2. Whether first appellate court was justified in non- suiting the appellant on the ground that the agreement was not produced when Ext.A25 agreement was marked and respondent has admitted R.S.A No.984/2011 2 the agreement as well as the relevant clauses in the agreement.
3. Whether the courts below were right in declining the claim for return of the security amount and the claim for commission at 3%, in the light of the pleadings and the evidence.

3. The facts absolutely necessary for the purpose of disposal of the appeal are as follows: The appellant herein was appointed as agent of the defendant- Company for consumer goods. They entered into an agreement dated 01.01.1997 which is not in dispute. Since amounts were due from the respondent herein, the plaintiff instituted O.S.No.524/1999 before the Sub Court, Thrissur. It was transferred to Sub Court, Ernakulam and was re-numbered as O.S.No.305/2003. It may be worthwhile here to mention that the defendant in the suit has also filed O.S.No.93/2000 against the plaintiff herein claiming amounts allegedly due from him. After joint trial, on appreciation of materials, both the suits were dismissed. The defendant herein did not pursue the dismissal of their suit. However, the plaintiff filed an appeal as A.S.No.17/2007 before the District Court, Ernakulam which was R.S.A No.984/2011 3 dismissed by judgment dated 26.02.2011.

4. Learned counsel appearing for the appellant pointed out that the courts below were not justified in dismissing the claim especially when the entire claims are admitted by the defendant and the only plea is one of discharge. Burden was on the defendant to prove discharge and having not done so, a decree ought to have followed. It is further pointed out that the lower appellate court has dismissed the appeal mainly on the ground that the plaintiff in his plaint had stated that the agreement was on 01.06.1997 while the actual date was 01.01.1997. In fact learned counsel pointed out that it was only a clerical mistake and in the affidavit in chief it has been clearly stated that the date is 01.01.1997. The agreement so entered into between the parties is marked as Ext.A25. There is no dispute regarding this document. The courts below ought to have decreed the suit in the light of the fact that the defendant has not established their plea of discharge.

5. It has to be said that there is considerable force in the above submissions. The lower appellate court was too hasty to R.S.A No.984/2011 4 dismiss the appeal on the ground that there is difference in the date of agreement entered into between the parties. True, in the plaint, the date is shown as 01.06.1997. But, in the chief affidavit, it has been clearly stated that it is a mistake and the actual date is 01.01.1997. The lower appellate court ought to have noticed that the agreement was produced as Ext.A25 and it is not in dispute. Even the defendant had no case that the agreement produced and marked was not the agreement entered into

between the parties. A mere clerical mistake should not have given undue importance to non suit the plaintiff.

6. Coming to the merits of the case, the lower appellate court has narrated various amounts claimed by the plaintiff. In the written statement filed by the defendant, they have pointed out that they are entitled to set off amounts due to them or in other words the plea of discharge with regard to certain amounts. Whether they are entitled to set off is a matter for them to establish. Anyhow, one fact is very evident that the claims made by the plaintiff had not been disputed and in the written statement also the only claim is that they are entitled to R.S.A No.984/2011 5 appropriate amount under certain heads which they have done and the balance amounts have been paid. The fact that they are entitled to adjust the amount is a matter for them to establish.

7. As far as the commission is concerned, it is admitted amount and the reason given for declining to grant commission is that there is termination of agreement by the plaintiff. It is significant to notice that there is no clause in the agreement Ext.A25 that if the agency is terminated, he is not entitled to commission already earned. Commission is something which he is entitled to receive for business already done. One fails to understand how that can be declined.

8. As far as the security deposit of Rs.15,000/- is concerned, the defence is that the defendant has filed a suit against the plaintiff and unless that suit is disposed of, they are not liable to release the security amount. As already noticed, the suit filed by the defendant has been dismissed and that has become final. Therefore, there is no reason to retain that amount also. The plaintiff in his plaint has claimed a sum of Rs.1,71,305.73. The claim seems to be reasonable. R.S.A No.984/2011 6 9. In the result, this R.S.A is allowed. The judgment and decree passed by the courts below are set aside and the following decree is passed. The plaintiff is granted a decree to realise a sum of Rs.1,71,305.73 with 6% interest from the date of the suit till realisation from the defendant and its assets. The plaintiff is entitled to his costs throughout. Sd/- P.BHAVADASAN JUDGE smp // True Copy // P.A. to Judge.