

1. Johnson and Johnson Ltd., Vs. Hostech Services,

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SooperKanoon Citation : [sooperkanoon.com/2063](http://sooperkanoon.com/2063)

Court : Chennai

Decided On : Dec-09-2014

Judge : M.Duraiswamy

Appellant : 1. Johnson and Johnson Ltd.,

Respondent : Hostech Services,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

09. 12.2014 CORAM THE HONOURABLE MR.JUSTICE M.DURAISWAMY C.R.P.(MD)(PD).No.2126 of 2014 and M.P.(MD)No.1 of 2014 1. Johnson and Johnson Ltd., represented by its Branch Officer's Authorized Signatory, Kaushik Ray, Office at No.499, New No.632, Anna Salai, Chennai.

2. Johnson and Johnson Ltd., Registered Office at Spencer's Building, No.30, Forjett Street, Mumbai-36. ... Revision Petitioners/Petitioners Vs. Hostech Services, A Partnership Fir, represented by its Partners, Usha K.Ramesh and N.S.Nayaki through their Power Agent, and administrator, K.Ramesh ... Respondent/Respondent Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order dated 04.04.2014 in I.A.No.302 of 2013 in O.S.No.22 of 2013 of the Principal Subordinate Judge, Thanjavur. !For Petitioners : Mr.Krishna Srinivasan for Mr.S.Ramasubramanian ^For Respondent : Mr.V.G.Kamalesh :

## ORDER

Reserved on :

25. 11.2014 Pronounced on:09.12.2014 The Civil Revision Petition arises against the fair and decreetal order passed in I.A.No.302 of 2013 in O.S.No.22 of 2013, on the file of the Principal Subordinate Court, Thanjavur.

2. The revision petitioners are the defendants and the respondent is the plaintiff in the suit. The plaintiff filed the suit in O.S.No.22 of 2013 for the following reliefs: "(a) For a relief of declaration to declare that the notice dated 22.01.2013 issued by the first defendant with the concurrence of second defendant to the plaintiff terminating the distributor agreement dated 30.03.2010 entered into between the plaintiff and the defendants is null and void, ab-initio, arbitrary, colourable, irrational, malafide, biased and against principles of natural justice; (b) for a relief of mandatory injunction restraining directing the defendants to immediately restore the supply of the stocks regularly to the plaintiff's concern Hostech Services without any reservations and thereby restoring the distributorship; (c) for costs of the suit; and (d) for such other and further reliefs as this Honourable Court may deem fit and proper in the circumstances of the case" 3. The brief averments stated in the plaint are as follows: According to the plaintiff, they are running a registered partnership firm and have been doing business in dealing with Johnson and Johnson hospital products. The plaintiff is an authorized dealer for Johnson and Johnson for Thanjavur District for more than 12 years. The plaintiff firm established and developed the sales of Johnson and Johnson products from Rs.One Lakh per month in 1999 to more than Rs.Twenty Lakhs per month. This business is the sole livelihood of the partners of the firm and they do not know any other business to do. At the time of taking partnership from the defendants to promote their products, the Officials of the defendants obtained the signature of the administrator on behalf of the partners in certain filled and unfilled forms. The plaintiff has no knowledge about the distributorship agreement dated 30.03.2010. The plaintiffs relied upon a report published in a weekly namely Kumutham Reporter, which published a news item against the products of Johnson and Johnson. (ii) According to the plaintiff, a few years ago, Johnson and Johnson had

sent a circular to all its dealers stating that they had information from the market that spurious products of Prolene Mesh were available in the market wherein they described the differences between the original and spurious products. According to the plaintiff, without any reasonable reasons and without any cause but with malafide intention, the defendants Company without giving an opportunity of being heard, issued the impugned notice. In the impugned notice they referred to a meeting that took place on 22.01.2013, which was not there. The impugned notice was received by the plaintiff on 28.01.2013 and pursuant to the notice, the defendants suspended the supply of stocks to the plaintiff firm. By the act of the defendants, the plaintiff firm was put to hardship.

4. In these circumstances, the plaintiff filed the suit for the above mentioned reliefs. After the receipt of the suit summons, the defendants filed their written statement on 18.04.2013. Thereafter on 25.06.2013, the defendants filed an application in I.A.No.302 of 2013 under Order 7 Rule 11 of the Code of Civil Procedure to reject the plaint.

5. In the affidavit filed in support of the application in I.A.No.302 of 2013, the defendants have stated as follows: According to the defendants, the plaintiff approached them seeking to be appointed as one of its distributors in India. Accordingly the plaintiff was appointed as distributor of the defendants and such appointment was always for a specific period of time and subject to reappointment thereafter. The last such appointment of the plaintiff was made in 2010 on the terms and conditions specified in distributor agreement dated 30.03.2010. The said distributor agreement was valid for a period of three years i.e. upto 31.03.2013. Further the distributor agreement provided for termination of the appointment of the plaintiff as a distributor of the defendants by giving 30 days notice to the plaintiff without assigning any reason whatsoever. The agreement also provided for immediate termination of the appointment of the plaintiff as a distributor of the defendants under certain circumstances such as breach of terms of the distributor agreement, failure to render required services communicated by the representatives of the defendants, the plaintiff acting in a manner prejudicial to the interest of the defendants etc. (ii) In such circumstances, the defendants came to know about certain irregularities in the operations of the plaintiff and wrongful

and questionable practices, misreporting sales and claiming wrong benefits from the defendants followed by the plaintiff in the execution of its operations as the distributor of the defendants. Due to such wrongful and questionable practices, the defendants lost trust and faith in the plaintiff. By e- email dated 26.12.2012, the plaintiff had requested for the reasons for suspending supplies. On 22.02.2013, a meeting was conducted at the defendants' office at Chennai, which was attended by the officers of the defendants Company and Mr.K.Ramesh representing the plaintiff along with the plaintiff's advocate and auditor. (iii) In the said meeting, the reasons for suspension of supplies and the reasons why the defendants lost trust and faith in the plaintiff, due to which the termination of the appointment of the plaintiff as the distributor of the defendants by terminating the distributor agreement were discussed. By letter dated 22.01.2013, notice for termination of the distributor agreement was issued to the plaintiff wherein it was categorically stated that the distributor agreement shall stand terminated with effect from 22.02.2013. The termination of the agreement is in accordance with the provisions of the distributor agreement and it is legally valid and binding on the plaintiff. (iv) According to the defendants, the relief sought for by the plaintiff in the suit cannot be granted by the Court, in view of the well settled principle that a contract which in its nature determinable cannot be specifically enforceable as per Section 14(c) of the Specific Relief Act and a contract for the non-performance of which compensation in money is an adequate relief cannot be specifically enforceable as per Section 14(a) of the Specific Relief Act. According to the plaintiff, even if the distributor agreement with effect from 22.02.2013 is wrongful, then the plaintiff is entitled to claim compensation or damages and he cannot seek to extend the period of appointment of the distributorship by extending the distributor agreement beyond the aforesaid period. (v) According to the defendants, as per the provisions of the Specific Relief Act 1963, the plaint deserves to be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure. Any alleged disputes between the parties ought to be resolved by initiating arbitration proceedings. In these circumstances, the defendants prayed for rejection of the plaint.

6. The plaintiff in their counter affidavit have stated that they have no knowledge about the distributor agreement. The plaintiff reiterated the averments stated in the plaint, in the counter affidavit filed by them. The plaintiffs also relied upon the order

passed by the trial Court in I.A.No.59 of 2013 wherein the plaintiffs filed an application in I.A.No.59 of 2013 for interim injunction and the trial Court while dismissing the application held that the issue whether the defendants had rightly stopped the supply of stocks or not has to be analysed only after the trial. Further the plaintiff has stated that since the agreement itself is in question, the same can be decided only at the time of trial. In these circumstances, the plaintiff prayed for dismissal of the application.

7. The trial Court, after taking into consideration the case of both parties, dismissed the application. Aggrieved over the same, the defendants have filed the above Civil Revision Petition.

8. Heard Mr.Krishna Srinivasan for Mr.S.Rama Subramanian learned Counsel appearing for the petitioners and Mr.V.G.Kamalesh, learned Counsel appearing for the respondent.

9. The learned Counsel appearing for the petitioners submitted that under Sections 14(a) and 14(c) of the Specific Relief Act, the suit filed by the plaintiff is liable to be rejected. The learned Counsel submitted that the relief sought for by the plaintiff in the present suit cannot be granted by the trial Court, since a contract which in its nature determinable cannot be specifically enforceable as per Section 14(c) of the Specific Relief Act and a contract for non performance of which compensation in money is an adequate relief cannot be specifically enforceable as per Section 14(a) of the Specific Relief Act. Therefore, the learned Counsel submitted that the suit filed by the plaintiff is barred under Section 14 of the Specific Relief Act. In support of his contention, the learned Counsel relied upon the following judgments: (i) In Indian Oil Corporation Ltd., Vs. Amritsar Gas Service and Others reported in (1991)1 SCC533 wherein the Honourable Apex Court held that granting of relief of restoration of distributorship on finding of breach of contract committed by the respondent is contrary to Section 14(1), the relief that could be granted of compensation for period of notice. (ii) In Hindustan Petroleum Corporation Ltd., Vs. Pinkcity Midway Petroleums reported in (2003)6 SCC503 wherein the Honourable Supreme Court held that the Civil Court had no jurisdiction to entertain a suit after an application under Section 8 of the Arbitration

and Conciliation Act, 1996, is made for arbitration. The refusal to refer the dispute to arbitration would amount to failure of justice as also causing irreparable injury to the appellant. (iii) In T.Arivandandam Vs. T.V.Satyapal and Another reported in (1977)4 SCC467 wherein the Honourable Apex Court held as follows: "5. We have not the slightest hesitation in contemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful -- not formal -- reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch.XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

10. Countering the submissions made by the learned Counsel for the revision petitioners, the learned Counsel appearing for the respondent at the outset submitted that the Civil Revision Petition filed by the defendants is not maintainable, since only an appeal shall lie as against the dismissal of the application filed Order 7 Rule 11 of the Code of Civil Procedure. The learned Counsel submitted that since the plaintiff is challenging the very distributor agreement itself, the present suit filed by the plaintiff is maintainable. That apart, the learned Counsel also submitted that since the issue involved is with regard to the validity of the distributor agreement, only the civil Court has jurisdiction to try the matter. In support of his contentions, the learned Counsel relied upon the following judgments: (i) In the Ootacamund Club, represented by its Secretary Vs. H.S.Mehta reported in 2009(5) CTC627 wherein this Court held that the order

dismissing the application filed under Order 7 Rule 11 of the Code of the Civil Procedure is to be construed as judgment and therefore, only an appeal shall lie as against the said order. (ii) In T.Mohanraj Vs. Akila Thiruvudancore Siddha Vaidhya Sangam, Munichirai, Puddukkadai Post, K.K.District reported in 2011(3) MWN (Civil) 787, wherein the Division Bench of this Court held that an application cannot be rejected merely on the ground that there is every likelihood of relief claimed by plaintiff would not be granted. (iii) In Arul Singh and Others Vs. Sunil Kumr Singh and Others reported in 2008(2)CTC856 wherein the Honourable Supreme Court held that in a suit for declaration to declare the reconstituted partnership deed as illegal and void, the relief of such declaration could be granted only by a Civil Court and not by Arbitrator. Therefore, the Honourable Apex Court held that the application for referring the matter to Arbitration was not proper.

11. On a careful consideration of the materials available on record and the submissions made by the learned Counsel appearing for the revision petitioners and the learned Counsel appearing for the respondent, the contention raised by the learned Counsel for the respondent that the Civil Revision Petition is not maintainable in view of the judgment of this Court in the Ootacamund Club, represented by its Secretary Vs. H.S.Mehta reported in 2009(5) CTC627 shall not hold good for the reason that the Division Bench of this Court in its judgment dated 28.08.2014 in C.R.P.(PD)No.1436 of 2013 in M.Ravichandran Vs. G.Suresh Babu @ Vincent held that an order declining to reject the plaint filed under Order 7 Rule 11 of the Code of Civil Procedure passed by a Court and Subordinate to High Court, only a revision shall lie and no appeal is maintainable. In view of the judgment of the Division Bench of this Court, the contention raised by the learned Counsel for the respondent with regard to the maintainability of the Civil Revision Petition is rejected.

12. On a perusal of the averments stated in the suit, it could be seen that the plaintiff is questioning the validity of the agreement. It is no doubt as per Clause 44 of the Distributor agreement, the dispute between the parties have to be settled by arbitration under the Arbitration Act.

13. In the case on hand, since the plaintiff is questioning the very distributor agreement itself, in view of the judgment of the Honourable Apex Court, in Arul Singh and Others Vs. Sunil Kumr Singh and Others reported in 2008(2)CTC856 the matter need not be referred to arbitration and the relief of such declaration can be granted by the civil Court. Therefore, the contention raised by the revision petitioners that because of the arbitration clause mentioned in the distributor agreement, the suit is liable to be rejected cannot be accepted. Accordingly, the said contention is decided in favour of the respondent.

14. According to the revision petitioners, the distributor agreement between the plaintiff and the defendants Company also provided for termination of the appointment of the plaintiff as a distributor by giving 30 days notice to them without assigning any reason whatsoever, therefore, the agreement cannot be specifically enforceable as per Section 14(c) of the Specific Relief Act. Further, the petitioners contended that the distributor agreement was only for a period of three years i.e. till 31.03.2013. Therefore, the agreement had lapsed on 31.03.2013, since it was not extended thereafter. That apart, the petitioners also contended that even assuming that the agreement was wrongfully terminated by the defendants, in that case the plaintiff can only claim compensation or damages for the wrongful termination without notice and damages would be an adequate remedy, therefore, the distributor agreement cannot be specifically enforceable as per Section 14(a) of the Specific Relief Act.

15. The respondent contended that there was no written distributor agreement and the alleged agreement is not true and genuine. Further they have contended that even without notice and against the principles of natural justice, the agreement was terminated. Further the respondent contended that in view of the order passed in I.A.No.59 of 2013, the present petition filed for rejection of the plaint is barred by principles of res judicata.

16. It is not in dispute that the plaintiff was an authorised dealer for Johnson and Johnson for a period of 12 years. On a perusal of the distributor agreement it is clear that it has been clearly decided that the appointment will remain in force for a period of three years. However the defendants had the liberty to extend the time

by three more years. Further though the agreement is dated 31.03.2010, it was signed on different dates. The contention of the defendants is that the remedy available to the plaintiff to file the suit for compensation or damages is concerned, there is no clause mentioned in the distributor agreement regarding the compensation for non-performance of the contract by either party.

17. That apart in the case on hand, the plaintiff is also questioning the very execution of the distributor agreement. There is a clause regarding the termination of the agreement by giving 30 days notice to the other party and also the clause permitted either of the party for revoking the agreement. Though the defendants contended that there was a meeting prior to the termination letter, the plaintiff denied any such meeting. That apart, the defendants Company has not produced any document to prove that there was a meeting prior to the termination. That apart, there is nothing on record to show that the defendant issued 30 days notice as mentioned in the distributor agreement to the plaintiff for terminating the distributorship. In the absence of any proof with regard to the issuance of 30 days notice to the plaintiff, the trial Court has rightly held that Section 14(a) and 14(c) of the Specific Relief Act has no application. Further the issues involved in the suit can be decided after full-fledged trial.

18. It is settled position that an application filed under Order 7 Rule 11 of the Code of Civil Procedure to reject the plaint should be filed based on the averments stated in the plaint and it would not be proper to file a petition to reject the plaint after the filing of the written statement. In the case on hand, the defendants filed their written statement on 11.06.2013 and the issues were framed on 13.07.2013 and the suit was posted for trial on 16.08.2013. The present application under Order 7 Rule 11 of the Code of Civil Procedure was filed on 16.07.2013 i.e., after filing of the written statement by the defendants. Therefore, when there is a dispute with regard to the execution of the distributor agreement itself, the suit cannot be rejected under Section 14(1)(a) and 14(1)(b) of the Specific Relief Act. The trial Court has rightly dismissed the application filed under Order 7 Rule 11 of the Code of Civil Procedure.

19. The trial Court shall dispose of the suit on merits and in accordance with law independently without being influenced by any of the observations given in this Civil Revision Petition and also in the order passed in I.A.No.302 of 2013.

20. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. Accordingly, the Civil Revision Petition is devoid of merits and the same is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. However, there shall be no order as to costs. ..12.2014  
Index :Yes/No Internet :Yes/No ssl To The Principal Subordinate Court, Thanjavur.  
M.DURAI SWAMY,J.

ssl Pre-Delivery Order made in C.R.P.(MD)(PD).No.2126 of 2014 and  
M.P.(MD)No.1 of 2014 09.12.2014

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