

Memtec Limited and Another Vs. Lunarmech and Another

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Court : Delhi

Decided On : Jul-14-2000

Reported in : [2002]46CLA20(Delhi); [2001]103CompCas1078(Delhi)

Judge : Vikramajit Sen, J.

Appeal No. : I.A. Nos. 8511/98, 2238/99, 8315/99, 10258/99 and 35/2000 in Suit No. 910/95

Appellant : Memtec Limited and Another

Respondent : Lunarmech and Another

Advocate for Def. : Mr. S.K. Mehra and ; Ms. Mamta Mehra, Advs.

Advocate for Pet/Ap. : Mr. Sudhir Chandra Agarwal, Sr. Adv.,; Mr. Praveen Anand and;

Judgement :

ORDER

Vikramajit Sen, J.

I.A. 2238/99. 8511/98 and 8315/1999.

1. These applications have been filed by the Plaintiff for change of the name of the Plaintiff No. 1 from the present Memtec Limited to USF Filtration Ltd. and of

Plaintiff No. 2 from the present Manteec America Corporation to USF Fitteration and Separation Group Inc. The application is support by an affidavit of Mr. Kevin F.O. Neill which has been duly notarised and authenticated by the Indian Embassy in Washington D.C. A Certificate from the Australian Securities Commission and Secretary of State, State of Delaware has also been filed in support of the change of names.

2. The relief has been strenuously opposed by Shri S.K. Mehra, Learned Counsel for the Defendant. He has contended that the application has been filed only after the Defendants had moved I.A. No. 8511/1998 for dismissal of the suit 'as the Plaintiff Company had ceased and having been acquired by USF Fitteration to be the owner and manufacturer of the machine; and also subsequent to the filling of I.A. 8315/99 for the dismissal of the suit as even USF Fitteration had been taken over by Vivendi, a French Group.' Reliance was placed on the treatise of Dutta and also of Gower on Company Law. It is Mr. Mehra's contention that an amalgamation of the Companies had taken place and hence the suit was liable to be dismissed.

3. It must be borne in mind that a Company is a distinct legal entity and should not be confused with its shareholders. This distinction appears to have been lost sight of by the Defendant. Shares of Companies are usually freely transferable. The Corporation legal entity does not mutate or transform itself or undergo a transfer, with each change in its shareholders. Even if the total shareholding of a Company is purchased by one person or a group of persons acting in concert, the legal consequence is not that the Company ceases to exist or undergoes a cataclysmic metamorphosis leading to its complete disappearance. There is a further distinction between change in share-holding and amalgamation. In the present case the latter has not occurred. The Plaintiff at no stage extinguished its existence by a mere change in its name, nor does this follow even if a change occurs in ownership. Neither of the treatises relied on by the Learned Counsel for the Defendant are authorities for the proposition pressed by him. Even where amalgamation takes place, due care is taken to transfer the assets and debts of one company to the other so as to, inter alias, protect pending litigation. The objection is therefore without merit.

In this analysis I.A. 2238/99 is allowed. The amended Memorandum of Parties is taken on record. I.As. 8511/98 and I.A. 8315/99 are dismissed. Change in ownership of a Company is no ground for dismissal of the suit.

I.A. 10258/1999.

4. I.A. No. 10258/1999, under Order XI, Rule 12 of the Code of Civil Procedure has been filed by the Defendant on 5.10.1999, inter alia, for the following relief:

'It is thereforee prayed that this Hon'ble Court may be pleased to direct the Plaintiffs to give discovery on oath of all the relevant documents which are in their possession and power in respect of acquisition of Burnswick Corporation by the Plaintiffs; and thereafter acquisition of present Plaintiffs by the US Filteration Ltd. and USF Filteration & Separation Group Inc. and again thereafter acquisition of said companies by M/s Vivendi. The Plaintiff be also directed to file the said documents in the Court.

/BLOCKQUOTE>5. The application is predicated, as the above extracted relief would itself indicate, on the acquisition of the present Plaintiff of Burnswick Corporation, and thereafter by the alleged acquisition of the Plaintiff by USF Filteration Ltd. and USF Filteration & Separations Group Inc., and again by the alleged subsequent acquisition of these Companies by VIVENDI. In reply, the Plaintiff has disclosed that in the first instance the copyright which vested in Burnswick Corporation was purchased by the plaintiff; thereafter only a change in name had occurred and hence an application for amending the Memo of Parties was filed; thereafter VIVENDI had acquired the shares of US Filteration Ltd. and USF Filteration & Separation Group Inc. These Companies continued to exist. Documents evidencing these transactions have been filed by the Plaintiff, but it is speciously argued that these documents are not sufficient compliance. The contention of Learned Counsel for the Defendant that because of these transactions an amalgamation of the Plaintiff has occurred and hence the suits are not maintainable, is untenable being an incorrect assumption and understanding of the law relating to the formation and existence of Companies. For this reason I.As. Nos.8511/1998 and 8315/1999 are dismissed by separate orders. This is sufficient reason to dismiss the present application also.

6. The defense of Defendant No. 1, in addition to the challenge to the territorial jurisdiction of the Court is that the Plaintiff has no right in the CPP System and that the Defendant has not copied the Plaintiff's machines but has adopted and modified the process known would-over. There is a specific denial of the Plaintiff's averment that the Defendant has, by reverse engineering, manufactured the machines. It is not the stand of the Defendant that it has purchased or succeeded to the copyright held by Brunswick Corporation or obtained a right of user by license or otherwise from any of the legal corporations mentioned above. thereforee, the discovery of documents pertaining to these Companies is of no relevance to the defense of the applicant Defendant No. 1, or to the issues that may arise in the case. This application is dismissed.

I.A. 12271/1999.

7. This application has also been filed by the Defendant again under Order XI, Rule 12 C.P.C., on 4.12.1999. Its foundation is that the Plaintiff should give discovery of the blue-prints and drawings on the basis of which Brunswick Corporation was manufacturing the Machines, along with registration Nos. Model Numbers and distinctive marks. Thereafter documents executed between the United States Filtration Corporation and VIVENDI have been called for. In its reply the Plaintiff has stated that full disclosure has been given in response to I.A. 10258/1999. I am of the view that the Plaintiff has made appropriate discovery, even before any order directing it to do so had been passed by the Court, i.e. the drawings created by Ms. Susan Buller, and blue-prints in these proceedings as well as in the Appellate Curt. Since the averments in the plaint are to the effect that the plaintiff has obtained the copyright in the machines from Brunswick, documents relating to the latter no relevant at this stage. If the Plaintiff fails to prove its ownership it runs the danger of a dismissal of the suit. The position would be different had it been the case/defense of the applicant that it had succeeded to the rights formerly possessed and owned by Burunswick. This is not its case. Further, I have already expressed the view that the ownership of Companies can change hands by transfer/purchase of its shares. Predictably, it has been stated in Plaintiff's reply that no documents have been executed between the Plaintiff's and Vivendi. The application is dismissed with costs of Rs. 2000/-.

I.A. 35/2000

This application can be appropriately considered after the issues have been struck by the Court and, therefore, a decision is deferred.

S. No. 910 of 1995

8. On 22.7.1998 the Hon'ble Division Bench of this Court had directed that the matter be listed before Joint Registrar on 17.8.1998 for admission/denial of documents. It was thereafter directed to be listed on 24.8.1998 for framing of issues and that the trial would commence sometime in the first week of October, 1998 and would go on day-to-day basis. Because of the frequent filing of applications these orders have not been implemented till date.

9. Accordingly, the suit be now listed for framing of issues on 31.7.2000.

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