

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

JUSTICE SUJOY PAUL

&

JUSTICE AMAR NATH (KESHARWANI)

ON THE 13th OF FEBRUARY, 2023

MISC. APPEAL No. 439 of 2023

BETWEEN:-

**1. OMFR PIPES AND PRODUCTS THROUGH
ITS PROPRIETOR SHRI MOHAMMAD
SHAHID**

2. MOHAMMAD SHAHID

..... APPELLANTS

**(BY SHRI BRIAN D' SILVA-SR. ADVOCATE WITH SHRI SARABVIR SINGH OBEROI-
ADVOCATE FOR THE APPELLANTS)**

AND

**1. ITARSI PIPE SALES THROUGH MR.
BILAL OFFICE DIVERSION ROAD, AWAM
NAGAR NEAR RELIANCE TOWER,
ITARSI, (MADHYA PRADESH)**

**2. CHANDNI BORING AND MACHINERY
THROUGH MOHAMMAD AYYUB
DIVERSION ROAD AWAM NAGAR NEAR**

RELIANCE TOWER, ITARSI (MADHYA PRADESH)

**3. RAINY ENTERPRISES PVT. LTD. INDORE
41-42 PODDAR PLAZA NEW SIYAGANJ,
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(NONE FOR THE RESPONDENTS)

*This appeal coming on for admission this day, **JUSTICE SUJOY***

PAUL passed the following:

ORDER

1] This appeal filed under Section 13(1) of **Commercial Courts Act, 2015** (in short '**Act of 2015**') assails the order dated 10-01-2023 (Annexure A/1) whereby the learned Commercial Court, Jabalpur has non-suited the present appellants for following twin reasons:-

- (i) No cause of action has arisen within the territorial jurisdiction of Commercial Court, Jabalpur.
- (ii) The process of pre-litigation mediation has not been followed and therefore, in the teeth of Section 12(A) of Act of 2015, the suit cannot be entertained.

FACTUAL BACKDROP:-

2] Briefly stated, the case of the appellants is that it is involved in the business of manufacturing and supply of agricultural pipes including but, not limited to HDPE Coil pipes, column pipes, rigid agriculture pipes and irrigation pipes etc.

The appellants came to know that the defendants, who are also manufacturer and supplier of irrigation pipes were manufacturing, selling and supplying irrigation pipes using the same design and colour combination of red and black for their products as that of the present appellants.

3] When the appellants came to know about it, he filed an application under Order VII Rule 1 of CPC seeking permanent injunction restraining infringement of

copyright, trade-mark, passing off, unfair competition, dilution, delivery, rendition of accounts etc., and also for claiming compensation. Along with the said application, the appellants have also filed two more applications under Order XXXIX Rule 1 and 2 of CPC and Order XXXIX Rule 3 of CPC.

4] The Court below by impugned order non-suited the appellants for the said twin reasons. It is submitted that without putting the other side to notice, appellants were non-suited in exercise of power under Order VII Rule 11 of CPC. Since, the other side did not enter appearance before the court below, without notice to the other side, this matter can be heard and decided.

CONTENTIONS :-

5] Shri Brian D'Silva, learned Senior counsel assisted by Shri S.S. Oberoi submits that twin reasons on the strength of which appellants are non-suited cannot sustain judicial scrutiny. Firstly, appellants are non-suited on the ground that no part of cause of action has arisen within the territorial jurisdiction of Commercial Court, Jabalpur. The Court below opined that the manufacture, sale and distribution of material in question did not take place in the jurisdiction of Commercial Court, Jabalpur. This finding is factually incorrect because the appellants pleaded about it in Para-6 of his aforesaid application preferred under Order VII Rule 1 of C.P.C. Invoice/documents were filed to substantiate the pleadings. In his interim application, in Para-14, it is averred that cause of action has occurred in the territorial jurisdiction of this Court and, therefore, without examining those averments, Court below has reached to a conclusion which runs contrary to record/pleadings. In support of this submission, he placed reliance on a Division Bench judgment of this Court reported in **2021 (3) MP LJ 715 (Curewin Pharmaceuticals (P) Ltd. v. Curewin Hylico Pharma (P) Ltd.)**

6] Criticizing the second reason for non-suiting the appellants, learned Senior counsel has drawn our attention to the language employed in Section 12-A of the

Act of 2015. It is submitted that when application of appellants under Order VII Rule 1 was pregnant with two more applications filed under Order XXXIX Rule 1 and 2 and Order XXXIX Rule 3 of C.P.C, wherein appellants prayed for interim relief, by no stretch of imagination, appellants could have been non-suited for not fulfilling the requirement of mediation. In support of this submission, he placed reliance on a recent judgment of Supreme Court reported in **2022 (10) SCC 1 (Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.)**.

7] No other point is pressed by learned Senior counsel. We have heard him at length and perused the record.

FINDINGS:-

8] As rightly pointed out, the appellants are non-suited for twin reasons. The *first* reason is that in the subject matter of suit, appellants have not pleaded anything which shows that manufacture, sale and distribution of the product in question had taken place within the territorial jurisdiction of Commercial Court, Jabalpur.

9] During the course of hearing, the attention of this Court is drawn on Invoice (Page-23) to show that the sale of product in question has taken place within the territorial jurisdiction of Commercial Court, Jabalpur. The following pleadings were made in the Civil Suit filed under order VII Rule 1 of C.P.C. which reads as under:-

"That, it is submitted that to the complete surprise of the plaintiff, the plaintiff through local customers and suppliers became aware of the fact that the defendant No.1, who is also a manufacturer and supplier of irrigation pipes, was manufacturing, selling and supplying irrigation pipes using the same design and color combination of red and black for its products, as that of the plaintiff. It is submitted that on enquiry the plaintiff found that the defendant No.1 was supplying irrigation pipes through its sister concern i.e. defendant No.2 using the same color combination of

red and black in the markets of Jabalpur, Inodre, Ujjain, Betul, Itarsi etc. It is submitted that such unauthorized use of the exclusive rights of the plaintiff was intentional and willful on the part of the defendant No.1 and No.2, which was intended to capitalize on the good reputation of the product of the plaintiff and increase the sales of the products of defendant No.1 and No.2. It is submitted that the products were being supplied by the defendant No.1 and defendant No.2 in the name and style of Metro Star Pipes for which the defendant No.2 has applied for protection rights under the Intellectual property law. A copy of the relevant documents in support of the averments made in this para is filed herewith as Annexure A-2."

(Emphasis supplied)

10] An interesting question cropped up before Division Bench of this Court in **Curewin Pharmaceuticals (supra)** and one of us (Sujoy Paul, J.) was author of said judgment wherein the parties were at loggerheads on almost similar question whether any minuscule part of cause of action has arisen within the territory of Commercial Court and whether Court has taken care of this aspect with sufficient care and clarity. This Court in the said judgment opined as under:-

"12. We are in respectful agreement with the view taken by the Bombay High Court in the case of Ganga Taro Vaziran (supra), wherein it was clearly held that the purpose of section 12-A of the Act appears to be that parties should try and resolve their dispute amicably in mediation process before coming to the Court. The Commercial Courts Act is a procedural law. The procedural law prescribes procedure to facilitate justice. It should not be construed in a manner to strangle a litigant on hyper technical grounds. The question before us is whether the Commercial Court has rightly passed the impugned order dated 8-3-2020 or not.

13. As pointed out by Shri Atre, the order contains mainly three reasons because of which appellant has been non-suited. No doubt, the appellant has specifically pleaded about cause of action, wherein July, 2020 and 18th August, 2020 are mentioned as dates when cause of action had arisen. However,

the meaning of expression "cause of action" is not unknown to legal fraternity. The "cause of action" is held to be "bundle of facts". [See **Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 4 MP LJ (SC) 578 : (2012) 8 SCC 706**]. The relevant portion reads as under:

13. While scrutinising the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. **The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant.** Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action."

(Emphasis Supplied)

14. Thus, in order to gather whether there exists a recent cause of action, a cause of action which shows urgency, the entire plaint averments and documents are required to be seen meticulously. In the instant case, it was pointed out that the relevant documents including police complaint and the invoice are of recent past. The said documents bears such dates which are subsequent to 18th August, 2020. However, these documents and averments on the strength of which these documents were filed were not taken care of by Court below.

15. Non-suiting a litigant has a drastic effect on his business. Thus, in a case of this nature, the commercial Court was expected to examine the plaint averments and documents with accuracy and precision. We find substance in the argument of Shri Atre that certain relevant pleadings of plaint and documents, which could have been of some assistance to the appellant escaped notice of Court below. In this backdrop, we deem it proper to set aside the order dated 8-3-2021 and restore the case in the file of Commercial Court with further direction to re-hear the parties and decide the application afresh. Since both the parties entered appearance before this Court, we deem it proper to fix a date of hearing to save the

time. The matter before Commercial Court is restored for next date of hearing i.e. 12-7-2021. The parties shall appear before the said Court on the said date and for this purpose, no notices will be required to be issued to the parties.

(Emphasis Supplied)

11] If the present matter is examined on the touchstone of principles laid down by Division Bench in **Curewin Pharmaceuticals (supra)**, it will be clear like noon day that to examine the aspect of cause of action, the Court needs to examine each fact and averment meticulously. In addition, the documents filed with the suit must be gone into to examine whether any part of or in other words, a minuscule part of cause of action has arisen within the jurisdiction of the Court.

12] As noticed above, it cannot be said that there was no pleading whatsoever about existence of cause of action within the territorial jurisdiction of Commercial Court, Jabalpur. The Court below was obliged to examine the aforesaid paragraphs mentioned in the Civil Suit and in the injunction application. After having dealt with those paragraphs and the relevant documents filed by the appellant, the Court below could have given a finding regarding availability of cause of action in its jurisdiction. In our considered opinion, the Court below did not deal with those averments in specific and also failed to see the documents filed with the suit. Thus, the order became vulnerable and liable to be interfered with.

13] The *Second* reason for dismissing the suit is non-compliance of requirement of Section 12-A of the Act of 2015. It is apposite to quote relevant portion of the same:

12A. Pre-Institution Mediation and Settlement- (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of preinstitution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(Emphasis supplied)

14] The language employed in Section 12-A itself is very clear which leaves no room for any doubt that in cases where interim relief is prayed for, the appellant cannot be non-suited for want of pre-institution mediation process. The curtains are finally drawn on this aspect in the recent judgment of Supreme Court in **Patil Automation Pvt. Ltd. (supra)**. The relevant para reads as under:-

“74. It is noteworthy that Section 12-A provides for a bypass and a fast-track route without for a moment taking the precious time of a court. At this juncture, it must be immediately noticed that the lawgiver has, in Section 12-A, provided for pre-institution mediation only in suits, which do not contemplate any urgent interim relief. Therefore, pre-institution mediation has been mandated only in a class of suits. We say this for the reason that in suits which contemplate urgent interim relief, the lawgiver has carefully vouchsafed immediate access to justice as contemplated ordinarily through the courts. The carving out of a class of suits and selecting them for compulsory mediation, harmonises with the attainment of the object of the law. The load on the Judges is lightened. They can concentrate on matters where urgent interim relief is contemplated and, on other matters, which already crowd their dockets.

(Emphasis Supplied)

15] In view of foregoing analysis, we are unable to give our stamp of approval to the order dated 10.01.2023 passed by learned Commercial Court, Jabalpur. The instant suit is pregnant with an application for interim relief. In view of urgency shown, suit assumes a different character. In a case of this class/character, pre-institution mediation is not a pre-condition. The Court below has clearly erred in rejecting the plaint on this count in purported exercise of power under Order VII Rule 11 of CPC.

16] As a result, the said order is set aside. The case No. COMMS/1/23 is restored to its original number. The appellants shall appear before the Commercial Court, Jabalpur on 20th February, 2023 alongwith copy of this order.

17] The Court below shall rehear the appellants on the question of territorial jurisdiction and pass an order afresh in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the case and regarding territorial jurisdiction of the Commercial Court.

18] The appeal is **allowed** to the extent indicated above.

19] Registry shall communicate this order to Commercial Court, Jabalpur forthwith.

(SUJOY PAUL)
JUDGE

AMAR NATH (KESHARWANI)
JUDGE

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