IN THE COURT OF SH. KAPIL KUMAR, ADJ–01, NORTH EAST, KARKARDOOMA COURTS: DELHI

Civil Suit No. 114/23

SADA SYSTEMS INC ..... Plaintiff

Vs.

CORPELSERVE INDIA PRIVATE LIMITED AND ORS ..... Defendants

O R D E R

1. Vide this order, I shall dispose off the application under Order VII Rule 11 r/w Section 151 CPC moved on behalf of the defendant no. 1, 2 and 3.

2. It is stated that the plaintiff has filed the present suit for recovery of money which is based upon the `commercial dispute' as defined under Section 2 of the Commercial Courts Act, 2015 and accordingly only the commercial court has the jurisdiction to try the dispute as per Section 6 of the Act. It is stated that the dispute was emanated from the unlawful termination of agreement for consultancy services vide engagement letter dated 22.11.2021 and accordingly it is a commercial dispute. It is stated that the plaint is liable to be rejected under Order VII Rule 11 (d) CPC.

3. During the course of arguments, ld. counsel for defendant no.1, 2 and 3 placed reliance upon the judgment titled as **T.V. Today Network Ltd. vs. News Loundary Media Pvt. Ltd. & ors. 2022 SCC Online Delhi DL 2233** to show that any

dispute `arising out of commercial transaction' is commercial dispute.

4. The reply to the present application was filed on behalf the plaintiff wherein it is stated that it is a suit for recovery of sum of money which was inadvertently transferred by the plaintiff company into the account of defendant no. 1 company. It is stated that the invoices raised by the defendants on behalf of defendant no.1 company as to their services for pre and post-acquisition of Indian entity has been duly paid which is corroborated from the e-mail dated 05.04.2022, copy of which is available on record. It is stated that thereafter on 29.09.2022, SADA Systems India Private Limited, a wholly owned subsidiary of the plaintiff in India raised invoice of USD 86,000 on the plaintiff company against the expenses payable for the month of October 2022, however, when the plaintiff company was making the transfer of the said amount to its Indian subsidiary the amount was inadvertently transferred into the account of defendant no.1 company. It is stated that requests were made to defendants to return the money but the same has not been done for which the present suit was filed.

5. It was vehemently argued that the present suit has been filed for the recovery of money which was inadvertently transferred by the plaintiff company to the defendant no.1 company and as such there is nothing as to the commercial dispute between the parties and accordingly the present suit for recovery of money is very much maintainable before this court. It was argued that the present application is liable to be dismissed.

6. I have heard arguments advanced by both the parties at

length and carefully perused the records.

7. For the ready reference, the provision of Order VII Rule 11 CPC is required to be reproduced here :-

> *Rejection of plaint.-The plaint shall be rejected in the following case:-*
> *(a) where it does not disclose a cause of action;*
> *(b) where the relief claimed in undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
> *(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the stamp paper within a time to be fixed by the Court, fails to do so;*
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
> *(e) where it is not filed in duplicate;*
> *(f) where the plaintiff fails to comply with the provisions of Rule 9.*

8. It is settled proposition of law that the averments in the plaint are the germane for the purpose of deciding an application under Order VII Rule 11 of the Code of Civil Procedure and the pleas taken by the defendant in the written statement would be wholly irrelevant at this stage. The Hon'ble Apex Court in the judgment titled as **Kamala & ors. vs. K.T. Eshwara SA & ors. (2008) 12 SCC 661** held that for invoking the clause (d) of the provision of Order VII Rule 11 CPC only the averments in the plaint would be relevant and for that purpose there cannot be any addition or subtraction and no amount of evidence can be looked into. The Hon'ble Apex Court further observed that issue on merits of the matter would not be within

the realm of the court at that stage and the court would not consider any evidence or enter a disputed question of fact or law. The similar observations were made by the Hon'ble Apex Court in the judgment titled as **Shakti Bhog Food Industries Ltd. vs. Central Bank of India & anr. (2020) 17 SCC 260** and **Srihari Hanuman Dass Totala vs. Hemant Vithal Kamat & ors. (2021) 9 SCC 99.**

9. The law relating to deciding an application under Order VII Rule 11 CPC was summed up by the Hon'ble Apex Court in the judgment titled as **Dahiben vs. Arvindbhai Kalyanji Bhanushali (Gajra) dead, through legal representatives & ors. (2020)** wherein it was held that the remedy under Order VII Rue 11 CPC is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without recording the evidence and conducting a trial, if it is satisfied that action should be terminated on the grounds contained in the provision. It was held that at this stage the court would determine if the assertions made in the plaint are contrary to the statutory law or judicial dicta, for deciding whether a case for rejecting the plaint on the merits at the threshold is made out but at this stage the pleas taken by defendants in the written statement and application for rejection of plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. The similar was the observation of the Hon'ble Apex Court in the judgment titled as **Geetha vs. Nanjundaswami & ors. (2023) SCC Online SC 1407.** Support could be drawn from judgment titled as **Eldeco**

Housing & Industries Ltd. vs. Ashok Vidhyarthi & ors., 2023 SCC Online SC 1612, wherein it was held that no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 CPC.

10. Now coming to the merits of the present application. The plaintiff company is stated to be engaged in the business of providing cloud services to its customers while the defendant no.1 company is allegedly a market entry consulting company specialized in facilitating foreign company's entries in the Indian market by establishing their business.

11. It is stated in the plaint that the plaintiff informed the defendant no.1 that they required the service to the pre-acquisition of the Indian entity as well as post-acquisition and considering the scope of the work the defendant company proposed to provide legal advisory, planning and transaction support for an acquisition of the Indian company for which the pre-acquisition engagement letter dated 18.09.2021 was executed between the parties.

12. It is stated that post-acquisition the Indian company was renamed as SADA Systems India Pvt. Ltd. and accordingly on the proposal of the defendant, the post-acquisition agreement dated 22.11.2021 was executed between the parties. It is stated that the plaintiff agreed to avail the service of defendant for pre and post-acquisition for which the defendant company raised several invoices upon the plaintiff for various amounts of money which was duly paid and till date there is no pending dues upon the plaintiff qua the defendant company.

13. It is stated by the plaintiff vide para no. 12 of the plaint that the defendant no. 2 vide its e-mail dated 05.04.2022 has apprised the plaintiff that every bit of acquisition process at their end has been completed and all the tasks enumerated under the engagement letter have been successfully delivered, against which the defendant no.2 requested the plaintiff to provide them with a written testimony of the services performed by them on the letter of the plaintiff. It is stated that this e-mail reveals that there was no outstanding dues against the plaintiff. It is stated that the requests of the defendants for issuing the testimony of the services was declined.

14. It is mentioned in the plaint that on 22.09.2022 a subsidiary of the plaintiff company raised an invoice of USD 86,000 to the plaintiff for the expenses incurred in the month of October 2022 but at the time of transfer of money the transaction took place with defendant no.1 and the money was wrongly transferred in the account of defendant no.1.

15. It is stated that the defendant no.1 company through defendant no. 2 sent an e-mail dated 13.10.2022 wherein the acknowledgment of the receipt of the funds was made but that payment was attributed towards the illegal termination of engagement letter dated 22.11.2021.

16. It is to be reminded again at this stage that the defence of defendant is completely irrelevant for the disposal of present application under Order VII Rule 11 CPC. Only the plaint and the documents annexed with the plaint are to be considered. If the averments of the plaint are to be considered then it came out that

the plaintiff company took the services of defendant no. 1 company for pre-acquisition and post-acquisition of an Indian entity. The business was started and the defendant no. 1 company provided their services for which they issued various invoices upon the plaintiff company for various amounts which are admittedly paid by the plaintiff company to the defendant no.1 company.

17. Qua the transaction in dispute, it is stated by the plaintiff company that it was a transaction done by the plaintiff company inadvertently. It is stated by plaintiff company that the invoice was raised for USD 86,000 by the subsidiary company of the plaintiff for the expenses incurred but at the time of making the payment of USD 86,000 in the account of subsidiary of plaintiff, the money was inadvertently got transferred in the account of defendant no.1 company. This suit has been filed for the recovery of money which was inadvertently transferred in the account of defendant no. 1 company.

18. The error in making the payment has been pleaded by the plaintiff. It is not the case of the plaintiff that there is some dispute as to the termination of agreement executed between the parties during the lock-in period. This is the defence of the defendant or in other words the justification of the defendant no. 1 company as to the payment of USD 86,000 by the plaintiff company but this defence cannot be looked into while disposing off the application in hand. The merits of the case of the defendant that the payment was against the compensation for the illegal termination of the agreement cannot be appreciated while

disposing off the present application in view of judgments of Kamala & ors. (supra) and Dahiben (supra).

19. The plaint is specific that the e-mail dated 05.04.2022 is clear and loud that the services of the defendant no.1 were completed and nothing was due upon the plaintiff company. The e-mail dated 05.04.2022 has been perused. In view of the pleadings put forth by the plaintiff and the documents filed on record along with the e-mails, it cannot be deduced that the dispute was regarding some illegal termination of business agreement between the parties.

20. If one party is alleging making of payment by mistake but the another party is not accepting the same, then the same is not a commercial dispute. It is a simple cause of action for the recovery of money paid to the opposite party by mistake, as revealed by plaint only.

21. When the mistake/error has been pleaded by the plaintiff, the issue of commercial transaction is nowhere in sight. It is for the defendant to bring on record during the trial that the money which was paid was for illegal termination of agreement and for this the trial is required. The aspect of commercial transaction cannot be adjudicated by the present application under Order VII Rule 11 CPC when there is no pleading to that effect by the plaintiff.

22. The judgment of **T.V. Today (supra)** as relied upon by the ld. counsel for defendants as to what is commercial transaction is not applicable to the application in hand under Order VII Rule 11 CPC, since the mistake simplicitor has been

pleaded by the plaintiff which has been denied by the defendant. The merits of the claim of the defendant cannot be appreciated by virtue of present application in view of the law already discussed for the disposal of the application in hand.

23. The alleged mistake of a party in making the payment after the alleged completion of business transaction is not a commercial dispute. Accordingly, it cannot be adjudicated by virtue of the present application under Order VII Rule 11 CPC as to whether the dispute between the parties is a commercial dispute or not. Hence, the present application is hereby dismissed. No order as to cost.

Typed to the direct dictation and announced in the open court on this 22nd April 2024

(Kapil Kumar)
ADJ-01, North-East
KKD Courts, Delhi