

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10555/2006

(From the judgement and order dated 30/12/2005 in CRP No. 3533/2004 &
CRP No. 3763/2004 of the HIGH COURT OF A.P AT HYDERABAD)

ITC LTD. (INTERNATIONAL BUSINESS DIV.)

Petitioner(s)

VERSUS

COCONADA ENTREPRENEURS PVT. LTD. & ORS.

Respondent(s)

(With appln(s) for permission to file additional documents and prayer for interim relief
and office report)

Date: 28/02/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s)

Mr. Ravindra Srivastava, Sr.Adv.

Mr. Arvind Verma, Adv.

Mr. Shailendra Swarup, Adv.

Mr. Shivendra Swarup, Adv.

Mr. Kunal Verma, Adv.

Mr. M. Mannan, Adv.

Mr. Arjun Garg, Adv.

Mr. Rajul Shrivastava, Adv.

For Respondent(s) Mr. P.S. Narasimha, Adv.

Mr. M. Srinivas R. Rao, Adv.

Mr. Abid Ali Beeran, P., Adv.

Mr. Avijeet K. Lala, Adv.

Mrs. Sudha Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The civil appeal is allowed, in terms of the signed order.

(N. Annapurna)

(Madhu Saxena)

Court Master

Court Master

(Signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2007

(Arising out of S.L.P.(C) No.10555/2006)

ITC Ltd. (International Business Div.)

...Appellant

Versus

Coconada Entrepreneurs Pvt.Ltd. & Ors.

...Respondents

O R D E R

Leave granted.

I.T.C. Limited (Plaintiff) entered into an agreement on 16th September, 1992 with Coconada Entrepreneurs Pvt.Ltd. (for short, 'Coconada'). In that agreement, Coconada was appointed as an agent by ITC to collect monies from various farmers on credit sales of shrimp feed by ITC to the farmers suggested by Coconada. Under the agreement, Coconada was, in effect, an under-writer. In the event of failure to honour the credit sales by the farmers, Coconada accepted the liability to pay ITC. ITC agreed to pay 10% commission to Coconada taking into account the recovery responsibility undertaken by Coconada. According to plaintiff-ITC, under the terms and conditions of the above agreement, they had supplied approximately Rs.5 Crore worth shrimp feed to the farmers identified by Coconada. This was during the period 1992 to 1995. According to the plaintiff-ITC, they paid the commission at the rate of 10% to Coconada on the realized amount. According to them, an amount of Rs.88 lakhs was recoverable after adjustments from Coconada as on 31st March, 1995 and that the figure of Rs.88 lakhs was confirmed from time to time by Coconada. Ultimately, in 1998, ITC instituted Suit No.41 of 1998 in the District Court, Kakinada, against Coconada and its Directors, praying for a money decree for the sum of Rs.1,25,71,294-20 ps. with interest on the principal amount.

In January, 1999, Coconada filed its written statement-cum-

counter claim against the plaintiff-ITC. In the written statement-cum-counter claim, Coconada made its own claim against the plaintiff-ITC on behalf of a partnership firm called M/s. Sri Venkata Padma Aqua Farms. At this stage, we may also point out that there was a buy back arrangement between ITC and Coconada. It appears, prima facie, that this buy back arrangement was based on technical knowhow being provided by M/s. Minota Aquatech Ltd. alleged to be an associate company of ITC. According to Coconada, the technical assistance allegedly was not upto the mark and, consequently, Coconada suffered a loss. There is one more agreement which is a tripartite agreement between ITC, M/s. Minota Aquatech Ltd. and M/s. Sri Venkata Padma Aqua Farms. Regarding that tripartite agreement, arbitration proceedings have already commenced.

The short question which arises in the present civil appeal is whether the counter claim of the type filed by Coconada along with an impleadment application was maintainable in the money suit based on rendition of accounts instituted by plaintiff-ITC against Coconada, being Suit No.41 of 1998, pending in District Court at Kakinada. The matter is pending on the file of III Additional District Judge, Kakinada. The plaintiff-ITC has challenged the impugned order passed in Civil Revision Petition No.3533/2004 and Civil Revision Petition No.3763/2004 by a single Judge of the

Andhra Pradesh High Court. On perusal of the impugned order which has allowed the written statement-cum-counter claim to be maintainable, we find that the status of M/s. Minota Aquatech Ltd. and that of M/s. Sri Venkat Padma Aqua Farms Ltd., a partnership firm, has not been decided. The question which the High Court ought to have decided is the effect of allowing such counter claim. In deciding such counter claim, the High Court has to consider various aspects. It has to consider various causes of action which may arise on different agreements. In the counter claim, there is no averment alleging the very existence of the above two entities except to state that M/s. Minota Aquatech Ltd. is an associate company of ITC. The said two entities are not bogus companies. Further, the High Court was required to consider the claim of Coconada against M/s. Minota Aquatech Ltd. If the claim of Coconada against M/s. Minota Aquatech Ltd. was for recovery of an amount on the ground of the loss suffered for poor quality of technical knowhow, then the High Court should have considered whether such cause of action could be claimed in the present suit for rendition of accounts by Coconada to ITC. Number of questions, therefore, do arise. The plaintiff-ITC is in the carriage of proceedings. It seeks rendition of accounts from its agents. The suit filed by ITC, being Suit No.41/1998, is by the principal against his agent. Whether in such a case, Coconada was entitled to bring in the question of alleged loss

suffered by it and for which it is claiming a relief against an independent company, whether that subject matter could be brought in the present suit are the questions which the High Court ought to have decided. Merely on the ground of multiplicity of proceedings, one cannot say that all other claims should be read conjointly with the claim of plaintiff-ITC for rendition of accounts against its agent.

One more thing needs to be explained. Coconada is an agent of ITC. It is also a farmer and, in the circumstances, Coconada is having different status with different reliefs. In the circumstances, all these questions were required to be decided by the High Court in the impugned judgment. This has not been done.

In the circumstances, we set aside the impugned judgment dated 30th December, 2005 and remit the matter back to the High Court for fresh consideration on the maintainability of the counter claim filed by Coconada. Consequently, the High Court will also decide the maintainability of the impleadment application. The High Court is requested to expedite the hearing of the Civil Revision Petitions.

Before concluding, we may mention that none of our observations should be treated as our opinion on the merits of the matter.

The Civil Appeal is, accordingly, allowed.

.....J.

(S.H. KAPADIA)

.....J.

(B. SUDERSHAN REDDY)

New Delhi,

February 28, 2007.