

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5501 OF 2013
(Arising out of S.L.P. (Civil) No. 22325 of 2011)

|Videocon International Ltd. & Ors. | Appellant(s) |

Versus

|Nandakumar Naidu | Respondent(s) |

O R D E R

1. Leave granted.

2. This appeal by special leave is directed against the judgment and order passed by the High Court of Karnataka, Circuit Bench at Dharwad in R.F.A. No. 760 of 2005, dated 16.03.2011. By the impugned judgment and order, the High Court has allowed the First Appeal filed by the respondent/plaintiff and reversed the judgment and order passed by the Trial Court in O.S. No. 51 of 2002, dated 22.02.2005, whereby the Trial Court had dismissed the suit filed by the respondent/plaintiff.

3. For the sake of uniformity and clarity, we would be referring to the parties herein as stated in the judgment of the Trial Court.

4. The plaintiff, Nandakumar Naidu was appointed as the exclusive dealer of the defendant-Company (appellant No. 1 herein) at Hubli to display, promote, advertise and market the various goods of the defendant-Company for a period of five years from 01.09.1996 to 31.06.2001 with the payment of Rs.60,000/- per month as minimum revenue by offer letter dated 01.09.1996 and acceptance of the same by letter dated 01.10.1996. Accordingly, the plaintiff invested monies and established a showroom in the name of Videocon Plaza at Hubli on 19.09.1996. At the end of every calendar month, the plaintiff used to send the debit note for a sum of Rs.60,000/- alongwith the accounts reflecting the amounts paid by the defendant-Company and the outstanding amount due from them after adjusting the value of goods sent by them. In 1998, due to certain misunderstanding, the plaintiff had to request the defendant-Company to co-operate with him in conducting his business by supplying the goods in time after issuing appropriate debit note(s). In turn, the defendant-Company by letter dated 20.07.1998 requested the plaintiff to settle his accounts at the earliest after returning the unsold goods. On 04.08.1998, the plaintiff replied that he had already returned the unsold goods and further, by the letter dated 04.09.1998 requested the defendant-Company to supply goods and settle the accounts. The defendant-Company assured to settle the accounts at the earliest after the receipt of unsold goods by letter-in-reply dated 08.09.1998 which reads as follows:

"To,
M/s VIDEOCON PLAZA
HUBLI

Sir,

This is reference to your letter Dtd.04.08.98. and Dtd. 04.09.98, kindly note that, as per the discussion it was very clearly mentioned to you that, there won't be any dealing from 1st April'98 and you were to settle your Accounts after returning all the materials. But so far we haven't got any material and we are unable to settle your Accounts without the same.

We now request you to settle your Accounts up to 31st March'98 immediately by returning the material and submit the claims up to 31st March'98.

Thanking you,

Yours faithfully,
For VIDEOCON INTERNATIONAL LTD.

AUTHORISED SIGNATORY.

CC :MR. P.N. DOOTHJI.
MR. CHETAN MANKARNI"

5. The plaintiff by letter dated 11.09.1998 denied the communication with defendant-Company's officials in respect of discontinuation of dealing from 01.04.1998 and requested the defendant-Company to continue the dealings as per the contract and demanded the payment of unsettled accounts. In the meanwhile several orders were placed by the plaintiff for supply of goods alongwith the debit notes of various amounts. By letter dated 31.05.1999, the defendant-Company again reiterated their request to settle accounts at the earliest after returning the unsold goods. The plaintiff again requested the defendant-Company to continue the supply of goods for the period of the contract and settle the outstanding amount as on March 1999 by letter-in-reply dated 11.06.1999. The said letter reads as under:

"

Ref No. Dated : 11.06.1999

To,
Videocon International Ltd.
141/142, Badami Nagar,
Hubli-580023

Sir,
Ref. Your Letter dated 31.05.1999

With reference to your above letter I like to invite your attention towards my letter dated 05.05.1999.

Once again I like to write that you have stopped supplying the goods since last 8 months even after my several request though the agreement period is for 5 years which is not yet completed. So the question of returning the goods will not arise.

Therefore once again I request you to supply the goods till the agreement period and also I request you to send the remaining credit notes up to March 99 as to verify the same with our books of accounts.

I hope you will do the needful and oblige.

Thanking you,
Yours faithfully

6. On 10.02.2001, the defendant-Company served the demand notice for Rs.8,67,824/- towards principal amount from him as a customer and dealer. By letter dated 01.04.2001, the plaintiff denied the aforesaid claim and demanded the sum of Rs.14,10,003/- due to him as on 31.03.2001 with interest @ 18% per annum from the defendant-Company and further, by letter dated 01.09.2001 re-submitted the debit notes from April to August 2001 to the defendant-Company. As the defendant-Company failed to pay the aforesaid amount, the plaintiff served a legal notice dated 15.12.2001 claiming Rs.21,66,627/- from the defendant-Company. The said claim was denied by the defendant-Company by reply notice dated 23.01.2002. Aggrieved by the same, the plaintiff had filed O.S. No. 51/2002 against the defendant-Company for recovery of a sum of Rs.22,24,060/- or in the alternative a decree for settlement of the accounts from the date of the contract between the parties.

7. At the trial, the defendant-Company had opposed the claim of plaintiff on grounds that the contract between the parties was only for two years and the same was terminated by them on 31.03.1998 and it is the plaintiff who has neither returned their goods nor paid the equivalent value to them. The Trial Court after detailed consideration of the evidence on record has come to the conclusion that the defendant-Company appointed the plaintiff as their authorized dealer for five years with effect from 01.09.1996. The Trial Court has relied upon the letter dated 20.07.1998 of the defendant-Company and subsequent series of communication between the parties with regard to the request for settlement of accounts by returning unsold goods and the non supply of goods to the plaintiff after September, 1998 to reach the conclusion that the said contract between the parties was terminated at the instance of the defendant-Company with effect from 31.08.1998 and therefore, the defendant-Company is not liable to pay any amount to the plaintiff and thus, dismissed the suit filed by the plaintiff.

8. Being aggrieved by the aforesaid judgment and order, the plaintiff had filed Regular First Appeal before the High Court. The High Court has dealt with two issues: firstly, whether the contract between the parties was terminated by the defendant-Company with effect from 31.08.1998 and secondly, whether the plaintiff is entitled to the decree sought for. The High Court has carefully analyzed the evidence on record and the judgment and order of the Trial Court and reached the conclusion that the letters dated 20.07.1998 and 04.08.1998 exchanged between the parties coupled with the conduct of the defendant-Company in supply of goods to the plaintiff indicate that the dealership continued even after the return of unsold goods and thus the contract did not stand terminated and that the payment of monthly minimum revenue was independent of the sales made by the plaintiff. The High Court therefore allowed the appeal and granted decree as prayed for by the plaintiff.

9. Aggrieved by the aforesaid judgment and order of the High Court, the defendant-Company is before us in this appeal.

10. We have heard Shri V.A. Mohta, learned senior counsel appearing for the defendant-Company (appellant herein) and Shri G.V. Chandrashekhar, learned counsel appearing for the respondent-plaintiff.

11. Shri Mohta would submit that the High Court has erred in concluding that the communication between the appellant-Company and the respondent-dealer, dated 20.07.1998 and 04.08.1998, respectively did not amount to implied termination of the dealership contract. He would further submit

that the intention of the appellant-Company towards termination of the contract is abundantly evident in the letters dated 20.07.1998, 08.09.1998 and 31.05.1999 to the respondent, requesting him to settle the accounts by returning the unsold goods and is further apparent from the conduct of the appellant-Company in as much as non supply of goods to the respondent. He would also submit that the respondent by his letter-in-reply dated 04.08.1998 has acknowledged the same and the return of the unsold goods. Further, he would contend that the respondent is not entitled to the amount claimed in the suit.

12. Au contraire Shri Chandrashekhar would submit that the High Court has rightly concluded towards the subsistence of contract for five years and accordingly is justified in decreeing the suit. He would further submit that the contract between the parties could not be terminated unilaterally by the appellant. He would also submit that the conduct of the appellant-Company by continuing to supply goods as per orders placed by the respondent after the said implied termination of the contract would underline the intention to continue the dealership contract. Therefore, he submits that the High Court is justified in passing the impugned judgment and order.

13. We have carefully examined the documents on record and gone through the judgments and orders of the Trial Court as well as the High Court. Upon perusal of the aforesaid, we are of the view that both the Courts have missed an important issue while deciding the claim of the parties.

14. At the outset, it is neither in dispute nor can it be disputed that the contract between the parties was for a period of five years. Admittedly, during the subsistence of the said contract the appellants before us had sent a letter dated 20.07.1998 wherein they have directed the respondent herein to return all the unsold material to the branch office of the appellant-Company so as to settle the accounts at the earliest, whereafter the respondent had informed the appellants that until his accounts are settled he would not return the goods. The appellants continued to repeat their request in subsequent communications and their inability to settle the accounts until the unsold goods are returned. The conduct of the appellants is apparent in the letter dated 11.06.1999, wherein the respondent has categorically stated that the appellants had stopped the supply of goods to the respondent from last eight months in spite of his repeated requests for payment of outstanding amounts and continuation of dealership agreement. In spite of receiving the aforesaid letter, the appellants willfully did not supply any goods to the respondent as per the orders placed by them in pursuance of the contract and continually reiterated their request to return unsold goods and thereafter settle the accounts. In the light of the foregoing, the letter dated 20.07.1998 becomes an intimation of the intention to terminate the contract and the conduct of the appellants by severing the business relationship with the respondent by non-supply of goods for sale, promotion, advertisement and marketing, the termination of the said contract. Since the appellants did not supply any goods to the respondent under the said contract after September, 1998, the Trial Court has rightly held that the contract stood terminated with effect from 31.08.1998.

15. To answer the issue whether the respondent is entitled for the suit claim, it may be necessary for us to refer to the understanding between the parties reflected in their letter dated 01.09.1996. The said letter talks of appointing the respondent herein as the agent to "display", "promote", "advertise" and "market" the Videocon goods for a period of five years. Further, the letter would state that the respondent herein would be entitled for a sum of Rs.60,000/- per month as minimum revenue.

16. The essence of the dealership contract between the parties is expressed in the terms display, promote, advertise and market which define the role to be performed by the respondent as an authorized dealer under the contract and thus aid in determining the quantum of suit claim made by the respondent. The terms display, advertise and market have a clear connotation in terms of the respondent's role as an authorized dealer.

However, the import of the term "promote" requires to be construed in light of the said contract to comprehend the tasks undertaken by the respondent in due performance of the same.

17. The expression "promote" as defined in Shorter Oxford Dictionary, Vol II, 3rd Ed. would mean:
"1. support or actively encourage (a cause, venture, etc.); further the progress of;
a. give publicity to (a product, organization, or venture) so as to increase sales or public awareness;..."

The Merriam-Webster's International Dictionary, Vol. II defines the term promote as:
"2... c : to present (merchandise) for buyer acceptance through advertising, publicity, or discounting"

A perusal of the aforesaid definitions would imply that the expression "promote" would not only connote publicity of the goods but also attempts and endeavors made in order to boost the sale of such goods. Therefore, the quantum of damages suffered by the respondent and claimed by him as suit claim would be proportional to the expenses incurred by him in the display, advertisement, promotion and marketing of the appellant's goods.

18. Admittedly, in the present case, the respondent herein did not receive any goods from the appellants after 31.08.1998, meaning thereby that the respondent did not promote the goods of the appellant-Company. In that view of the matter, in our considered opinion, the appellants would be liable only for the damages upto the end of 31.08.1998 and as stated at the bar that amount had already been paid to the respondent.

19. In spite of the aforesaid conclusion of ours, since the respondent has suffered a pecuniary loss for instituting the suit by paying an exorbitant court fee and has waited for such a long time to have the dues settled from the appellants, we are of the considered opinion that in order to give quietus to the lis between the parties, we deem it appropriate for the appellant-Company to pay a sum of Rs.7,00,000/- without any interest in full and final settlement of the claim of the respondent.

20. Accordingly, while disposing of this appeal, we direct appellant-Company to pay a sum of Rs.7,00,000/- to the respondent within a period of two months from today. If for any reason the aforesaid amount is not paid, the said amount will carry interest @ 18 per cent per annum from today till the date of payment.

21. With these observations, the Civil Appeal is disposed of.

Ordered accordingly.

.....J.
[H.L. DATTU]

.....J.
[DIPAK MISRA]

NEW DELHI,
JULY 16, 2013.

ITEM NO. 2 (PH)

COURT NO.5

SECTION IVA

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

Petition(s) for Special Leave to Appeal (Civil) No(s).22325/2011

(From the judgement and order dated 16/03/2011 in RFA No.760/2005 of The
HIGH COURT OF KARNATAKA CIRCUIT BENCH AT DHARWAD)

VIDEOCON INTERNATIONAL LTD & ORS.

Petitioner(s)

VERSUS

NANDAKUMAR NAIDU

Respondent(s)

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

Date: 16/07/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr. V.A. Mohta, Sr.Adv.
Mr. Uday B.Dube, Adv.
Mr. Neelkanth Naik, Adv.

For Respondent(s) Mr. G.V. Chandrashekhar, Adv.
Mr. N.K. Verma, Adv.
Ms.Anjana Chandrashekar, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The Civil Appeal is disposed of in terms of the signed
order. The appellant-company is directed to pay a sum of Rs.
7,00,000/- to the respondent within a period of two months from
today. If for any reason the aforesaid amount is not paid, the

said amount will carry interest @ 18 percent per annum from today till the date of payment.

| [Charanjeet Kaur] | | [Vinod Kulvi] |
| Court Master | | Asstt. Registrar |

[Signed order is placed on the file]