

(2009) 06 AP CK 0006

Andhra Pradesh High Court

Case No: C.R.P. No. 2433 of 2005

Novartis Consumer Health India
Pvt. Ltd.

APPELLANT

Vs

Vijaya Sai Medical Distributor
and Others

RESPONDENT

Date of Decision: June 23, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Trade Marks Act, 1999 - Section 154, 28

Citation: (2009) 5 ALD 157 : (2009) 5 ALT 790

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: N.V. Suryanarayana Murthy, for the Appellant; M.S. Prasad, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The 1st respondent filed O.S. No. 7401 of 2004 in the Court of IV Junior Civil Judge, City Civil Court, Hyderabad, against respondents 2 and 3 (defendants 1 and 2), and the petitioner herein (defendant No. 3), for the relief of perpetual injunction, to restrain the 2nd respondent from manufacturing and marketing "Triaminic" brand products, enumerated in the schedule; through the 3rd respondent and the petitioner or their agents; for perpetual injunction, to restrain the said parties from distributing that produce, and for mandatory injunction, directing the respondents 2 and 3 herein to continue the supply of that product.

2. The petitioner filed I.A. No. 153 of 2005 under Order 7 Rule 11 C.P.C., with a prayer to reject the plaint. It was pleaded that there was no cause of action for the 1st respondent to file the suit against the petitioner, and that there did not exist any privity of contract between them. A further plea was taken to the effect that the 1st

respondent is neither a registered proprietor, nor a licenced user of the trade mark "Triamanic", or Triomanic" u/s 28 of the Trade Marks Act, 1999 (for short "the Act") and that the jurisdiction of the trial Court is barred, u/s 154 of the Act. The 1st respondent opposed the application, stating that though there was no privity of contract between itself and the petitioner, the arrangement between the 3rd respondent, on the one hand, and the petitioner, on the other hand, has necessitated the filing of the suit against the petitioner also. Through its order dated 15-04-2005, the trial Court dismissed the I.A. Hence this C.R.P.

3. Sri N.V. Suryanarayana Murthy, learned Senior Counsel appearing for the petitioner, submits that the suit, in so far as it was filed against the petitioner is totally without any basis and there is absolutely no cause of action for it. He contends that in clear and specific terms, the 1st respondent intended to enforce his rights under the Distributor on Consignment Basis (DCB), and once it is not denied, that the petitioner is not a party to the DCB, there is no way, that the petitioner could have been included in the array of the parties, much less any relief could have been claimed.

4. Sri M.S. Prasad, learned Counsel for the 1st respondent, on the other hand, submits that the necessity for the 1st respondent to implead the petitioner herein, as defendant No. 3 in the suit, has arisen, on account of an arrangement between the petitioner and the 3rd respondent, which is very much a party to the DCB.

5. The basis for the suit filed by the 1st respondent is a DCB agreement, between itself and the 3rd respondent. The first paragraph of the plaint reads as under:

The plaintiff respectfully submits that the defendant No. 1 has been manufacturing various pharmaceutical preparations, drops, syrups, including Triaminic - c.s. cough, syrup, Triaminic drops, Triaminic - e, Expectorant and other related preparations for the last twenty years. The plaintiff has been the Distributor on Consignment Basis (DCB) for the defendant No. 2 for the entire state of Andhra Pradesh since a long time and the agreement is valid up to 31-03-2006. The plaintiff respectfully submits that he has spent considerable time, energy and money to develop the brand and also increase the sales of the Triaminic syrup, drops and tablets as a brand through out the State of Andhra Pradesh as the DCB of the defendant No. 2. As submitted earlier the defendant No. 1 exclusively manufactures the therapeutic preparations under the brand name "Triaminic" for the defendant No. 2.

6. The only basis pleaded by the 1st respondent to implead the petitioner herein is mentioned in paragraph 4, as under:

The plaintiff respectfully submits that the erstwhile Wander Pvt. Limited gave out an assurance to the plaintiff that in terms of its agreement with the defendant No. 3, it would be the exclusive distributor for a period of eight years for the product above mentioned.

7. In paragraph 5, an allegation is made to the following effect:

...The plaintiff respectfully submits that the defendant No. 3 is a Multi-National Company, having a turn over in Billions and clout in the pharmaceutical field and the defendant No. 1 is manufacturer of formulations of various drugs for the defendant Nos. 2 and 3 including schedule drugs. The plaintiff respectfully submits that the defendant No. 3 in view of its size and control is putting undue influence and pressure on the defendant No. 1 to manufacture Triaminic products for itself and thereby deprive the plaintiff of its legitimate business. The plaintiff respectfully submits that the defendant No. 3 is known for such activities and has been dealing with the Indian Companies as it likes in view of its status as Multi-National Company.

8. In paragraph 6, a further mention is made as under:

The plaintiff respectfully submits that if the defendant No. 3 is allowed its way and force the defendant No. 1 to manufacture Triaminic products enumerated in the schedule to this plaint, the plaintiff will suffer grave and irreparable loss and all its efforts of establishing the brand name of Triaminic over the years will be lost and the entire sales will be usurped by the defendant No. 3.

9. Law requires the existence of a "cause of action" in favour of a plaintiff, before he can file a suit against a defendant. In a catena of decisions, the expression "cause of action" was explained as a bundle of facts that create a right in a plaintiff to sue the defendants. Rule 11 of Order 7 enlists the circumstances under which, a Civil Court can reject a plaint. Clause (a) enables a Court to reject a plaint, "where it does not disclose a cause of action".

10. Though the expression "cause of action" cannot be defined with an amount of precision, it is not difficult to discern it. Before a plaintiff in a suit can complain of violation or infringement of his rights, he must state the nature of such right, and the manner in which it has accrued to him. By its very nature, the right presupposes existence of two individuals, or sets of persons: the one, who is the beneficiary or the enjoyer of such right, and the other, who is under obligation to respect it, or to create the atmosphere for such enjoyment. The obligation may arise out of a contract or by operation of law. While asserting his right and the corresponding obligation of the other individual, the plaintiff must assert not only the content of his right, but also the manner in which it has accrued to him, and as to how the defendant in the suit is under obligation to respect it, it is only then, that a cause of action can be said to have existed for the plaintiff to file the suit.

11. Howsoever grave the violation of a right that is vested in a plaintiff may be, he just cannot enforce it against a person, who is not placed under obligation, by law, to respect such a right.

12. In the instant case, the source of rights claimed by the 1st respondent is the DCB. to be more precise, he did not claim the rights against the defendants by

operation of law, or any custom or commercial practice. Admittedly, it is only the 3rd respondent, that is a party to the agreement, or contract. Nowhere in the entire contract, any mention is made to the petitioner herein, much less, to any activity undertaken by it. The petitioner owes no obligation to the 1st respondent, much less to abide by the terms of the contract, between the respondents 1 and 2. As a result, even if there is any violation of the terms of the DCB agreement, there does not exist any occasion for the 1st respondent, to seek any relief against the petitioner.

13. There may be instances, where, in the absence of any definite contract also, relief in the form of declaration, as to right of a plaintiff, vis-a-vis the defendant, can be claimed. In such an event, though the relevant facts pleaded in the plaint, may not, by themselves constitute the cause of action; would be verified, and adjudication would be undertaken as to the feasibility of granting the declaratory relief. Relief of injunction, whether perpetual or mandatory, would be consequential in such cases. Admittedly, the 1st respondent did not seek any relief of declaration in the instant suit, much less against the petitioner. Therefore, there did not exist any cause of action for the 1st respondent to file the suit against the petitioner.

14. It is not necessary that the plaint, as a whole must be rejected under Order 7 Rule 11 C.P.C., if a case is made out by one of the defendants. The suit can remain on the file, and it can be proceeded against the other defendants, who do not raise any objection as to the existence of cause of action. The plaint becomes separable in this context. In other words, a plaint is capable of being rejected, only to the extent of the defendants, against whom the cause of action is found to be not existing, and it can remain on the file of the Court, vis-a-vis the other defendants.

15. For the foregoing reasons, the C.R.P. is allowed, and the order under revision is set aside. Consequently, I.A. No. 153 of 2005 shall stand allowed, as a result of which, the plaint in O.S. No. 7401 of 2004 shall stand rejected, vis-a-vis the petitioner, and shall remain on the file of the Trial Court, as regards the other defendants, in that suit.

16. There shall be no order as to costs.