



REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO..... OF 2024
(Arising out of SLP (Civil) No.....2024)
@Diary No.14716 of 2017)

UNIWORLD LOGISTICS
PVT. LTD. ...APPELLANT(S)

VERSUS

INDEV LOGISTICS
PVT. LTD ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. Delay, if any, is condoned.
2. Leave granted.
3. This appeal assails the correctness of the judgment and order dated 24.11.2016 passed by the High Court of Judicature at Madras whereby, it dismissed the civil revision registered as CRP(PD) No.1872 of 2016 and also an application under Order VII Rule 11 CPC registered as Application No.3666 of 2016 in

Commercial Suit No.323 of 2016. Aggrieved by the same, the defendant in both the proceedings is before this Court.

4. Brief facts giving rise to the present appeal is as follows:

A Leave and License agreement was originally entered into between the appellant and the respondent on 25.11.2008. This agreement was superseded by another agreement dated 01/12/2010 whereby the appellant became a licensee in respect of a warehouse on a monthly license fee of Rs.30 lakhs with an escalation clause. As there was default in payment of storage charges, the respondent gave a legal notice dated 27.11.2014 terminating the license, claiming dues towards storage charges, damages and directing the appellant to vacate the warehouse premises within two months. The appellant replied to the said notice on 18.12.2014 denying the dues and also raising some objections regarding extent of the building

mentioned in the notice. The respondent instituted a suit for permanent injunction and also to hand over vacant possession in the Court of District Munsif, Sriperumbudur registered as O.S. No.101 of 2015. The respondent in the plaint of the above suit had clearly mentioned that there were outstanding dues and arrears of storage charges of Rs.2,04,68,464/-. It was further specifically mentioned that respondent-plaintiff reserves its rights to claim against the defendant-appellant for recovery of arrears and also damages due to the illegal use and occupation of the Schedule-B property.

5. After about seven months, the appellant filed a commercial suit before the Madras High Court registered as C.S. No.914 of 2015 against the respondent and also Small Industries Promotion Corporation of Tamil Nadu for the relief of declaration that the respondent had given only 1,03,522 sq. ft. area of the factory shed and not

1,50,000 sq. ft. under the Leave and License agreement dated 25.11.2008.

6. On 24.11.2015, the respondent filed an application under Order II Rule 2(3) read with Section 151 CPC in its pending O.S. No.101 of 2015 seeking leave to sue the appellant by way of a separate suit claiming arrears of storage charges, warehouse charges and damages for illegal use and occupation beyond the period allowed in the notice dated 27.11.2014. The said application registered as IA No.2001 of 2015, was allowed by the District Munsif Court on the same day. However, the High Court, upon revision by the appellant, set aside the said order and remanded the matter back to the Trial Court for a fresh decision after affording due opportunity of hearing to the defendant to the suit i.e. the appellant. This order was passed by the High Court on 28.01.2016. After remand, the District Munsif Court, by a detailed reasoned order dated 15.04.2016, again granted leave under Order II Rule 2(3) CPC to

the respondent to file a separate suit against the appellant. Aggrieved, the appellant challenged the same before the High Court under Article 227 of the Constitution, which was registered as CRP (PD) No.1872 of 2016.

7. In the meantime, the respondent filed a Commercial Suit No.323 of 2016 before the Madras High Court against the appellant for recovery of arrears of storage charges, warehouse charges and damages for an amount of Rs.8,42,88,761/-. In the said C.S. No.323 of 2016, the appellant filed an application being IA No.3666 of 2016 under Order VII Rule 11(d) read with Order II Rule 2 of CPC for rejection of the said claim. This application was filed on 21st July, 2016.
8. The civil revision as also the application under Order VII Rule 11 CPC were heard together by the High Court and vide judgment and order dated 24.11.2016, the High Court dismissed both the civil revision as also the application. Aggrieved by the

same, the present appeal has been filed.

9. In the meantime, the appellant vacated the warehouse and handed over the keys to the respondent on 30th September, 2016. Accordingly, the respondent on 11.04.2017 withdrew its O.S. No.101 of 2015 as possession had already been delivered to it.
10. Further, the appellant filed another Commercial Suit No.160 of 2017 before the Madras High Court claiming refund of security deposit, additional deposit, penalty paid to the University Board, cost of improvements and damages amounting to Rs.5,77,03,621/- against the respondent.
11. From the above, it is noticeable that both the sides preferred two suits each, however, one of the suits i.e. Suit No.101 of 2015 has already been withdrawn by the respondent and, as such, three suits remain pending which are all commercial suits pending before the Madras High Court *inter se* parties.
12. It would be worthwhile to mention here before

proceeding any further that the Trial Court as also the High Court had found that both the suits were filed based upon different causes of action. The High Court had further found that the respondent had taken leave for instituting the second suit against the appellant under Order II Rule 2(3) CPC. It also found that the respondent had specifically stated in the plaint of the first suit that there were claims for damages and warehouse charges to be recovered for which, it reserved its claim for recovery of the same. At no stage had the respondent given up its claim, nor was there any omission to claim the relief of recovery. It was neither a case of relinquishment of claim or omission. The High Court has dealt with in great detail the object of Order II Rule 2(3) CPC. It has also discussed the law on the point. It had thereafter arrived at the conclusion that neither there was infirmity in the order of the Trial Court granting leave to file the second suit for recovery of arrears, nor was there any merit in the application

under Order VII Rule 11 CPC filed by the appellant.

13. We have heard Sri Shyam Divan, learned Senior Counsel for the appellant and Sri Aditya Kumar Choudhary, learned counsel appearing for the respondent and have also perused the material on record.

14. The submissions advanced on behalf of the appellant by the learned Senior Counsel are summarized as under:

(i) The commercial suit bearing C.S. No.323 of 2016 was clearly barred by Order II Rule 2(2) CPC.

(ii) The Courts below failed to distinguish between relinquishment of claims and omissions of relief. The High Court wrongly relied upon the Full Bench Judgment of the Bombay High Court in the case of **Shankar Lal Laxminarayan Rathi and Ors. Vs. Gangabisen Manik Lal Silchi and another**¹ as the said judgment had no applicability in the facts of the

¹ AIR 1972 Bom.326 (FB)

case.

15. On the other hand, Shri Choudhary, learned counsel for the respondent submitted that the judgment and order of the High Court does not suffer from any infirmity warranting any interference by this Court. Further, strong reliance was placed upon a judgment of this Court in the case of **Bharat Petroleum Corporation Ltd. And another Vs. ATM Constructions Pvt. Ltd²**., wherein under similar facts, this Court held that a second suit for arrears of rent and damages would not be barred under Order II Rule 2 CPC.
16. Para 18 of the above said judgment is reproduced hereunder:

“18. In view of the enunciation of law, as referred to above, suit for possession and suit for claiming damages for use and occupation of the property are two different causes of action. There being different consideration for adjudication in our opinion, second suit filed by the respondent claiming damages for use and

² 2023 SCC Online SC 1614

occupation of the premises was maintainable. The application filed by the appellants for rejection of the plaint was rightly dismissed by the Courts below. However, the appellants are well within their right to raise the issue, if any part of the claim in the suit is time-barred but the entire claim cannot be said to be so.”

17. The case in hand stands on a better footing, inasmuch as, the plaintiff-respondent had specifically reserved its rights in the first suit regarding claim against warehousing charges, damages for illegal use and occupation etc. and further had applied for leave before the Trial Court for filing a separate suit, which leave had been granted. There was neither any relinquishment at any stage, nor omission to claim relief. Both the causes of action being separate, the second suit was clearly maintainable. The appellant, who is facing recovery of more than Rs.8 crores, is unnecessarily trying to delay the progress in the suit, which is pending since 2016.

18. In view of the above discussion, we are of the firm view that the impugned order does not suffer from any infirmity. The judgment in the case of **Bharat Petroleum Corporation Ltd. (supra)** relied upon by the respondent squarely applies in the facts of the present case and we do not find any reason to take a different view.

19. The appeal lacks merit and is, accordingly, dismissed.

20. Pending applications, if any, are disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(PRASANNA BHALACHANDRA VARALE)

NEW DELHI
JULY 10, 2024