IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALSIT REPUBLIC OF SRI LANKA

Speed Pharma Distributors (Pvt.) Ltd.
No. 30, Peterson Lane
Dehiwala

PLAINTIFF

C.A. 372/1998 (F)
D.C. Moratuwa Case No. 183/94/M

Vs.

Astron Limited
No. 688, Galle Road,
Ratmalana.

DEFENDANT

And Now

Speed Pharma Distributors (Pvt.) Ltd.
No. 30, Peterson Lane
Dehiwala

PLAINTIFF-APPELLANT

Vs.

Astron Limited
No. 688, Galle Road,
Ratmalana.

DEFENDANT-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: Saman Liyanage for Plaintiff-Appellant

A.R. Surendran P.C., with N. Kandeepan for the Respondent

ARGUED ON: 17.11.2011

DECIDED ON: 10.01.2012

GOONERATNE J.

An application was made in this appeal for acceleration of this appeal. The then Hon. President of this court by order 21.09.2005 directed the Registrar to call for brief fees and list this appeal in due course. Whatever reason, it appears that in a practical sense there was no acceleration of the appeal, but this court listed the matter for argument and on 17.11.2011 both learned counsel argued the appeal and court reserved its judgment for 10.01.2012 (having given the parties the opportunity to file written submissions on or before 16.12.2011).

This was an action filed in the District Court of Moratuwa claiming damages in a sum of Rs. 500,000/- from the Defendant-Respondent for terminating the contract where Defendant appointed the Plaintiff to sell it's products. The Plaintiff-Appellant's complaint was that by document marked P9 dated 4.12.1992 the contract was terminated which is contrary to the agreement, illegal and unlawful. Parties proceeded to trial on 15 issues. Plaintiff's witness the Managing Director of Plaintiff Company gave evidence and when Plaintiff's witness was under cross-examination Defendant made an application to the District Judge to try issue No. 14 as a preliminary issue. Since it is an issue which goes to the root of the case, Plaintiff did not object to such application (proceedings of 23.7.1997). The said issue reads thus:

14(අ) පැමිණිලිකරු ගිවිසුම අවසන් කිරීම පිලිබඳව ප්‍රශ්ණ කිරීමෙන් හෝ විරුද්ධ වීම සම්බකන්ධයෙන් ප්‍රතිබන්ධනය වී ඇත්ද?

(අ) එසේ නම් පැමිණිලිකරුට මෙම නඩුව පවරා පවත්වා ගෙන යා හැකිද?

In evidence the Plaintiff's witness confirmed that agreement marked P4, P6 & P7 were valid for a period of 1 year. (from date specified in schedule the agreement valid for 1 year). In P4 schedule, the date of

commencement is 01.01.1988. P6 is dated 01.01.1989. In oral evidence of witness it is stated the agreement P7 ended by 2.12.1991. Thereafter parties had an oral agreement which ended by 3.12.1991(as recorded). I think this date is incorrect and should be 3.12.1992, in view of witnesses previous answer in cross-examination. In further cross-examination witness admit that he wrote letter V1 to Defendant, and V1 was written after oral agreement ended. V1 is a request by Plaintiff to enter into a fresh agreement. The last two questions and answers recorded as follows, demonstrate the position very clearly.

ප්‍ර: වි1 න් ඔබ ඉල්ලා සිටියා වත්තිකාර සමාගමට නව ගිවිසුමකට ඇතුල් වන ලෙසට ඉල්ලිමක්ද?

උ: ඔව්

ප්‍ර: වි1 න් ඔබ ඉල්ලා සිටියා එම ගිවිසුම අවසන් වුන නිසා නැවත නව ගිවිසුමකට ඇතුලත් වන ලෙසට

උ: ඔව්

At this point of this judgment I wish to observe that, Plaintiff-Appellant did not object to raising issue No. 14. Perusal of the proceedings I find that good part of Plaintiff's case had been elicited by way of evidence. At least two days of proceedings indicate the bulk of evidence led by the Plaintiff and Plaintiff's witness who was the main witness (Managing Director) gave oral and produced documentary evidence inclusive of about

twenty documents. If one read the entire proceedings of the case, it is very easy to understand the case of each party. When I consider the nature of the case and the relief sought, I see no reason to hold with the views of the Plaintiff-Appellant as narrated in the written submission since no prejudice would be caused to either party. Even if the Appellant complains at the appeal stage regarding some form of irregularity at the trial, I would rule that such irregularity (if could be identified) has not prejudiced the substantial rights of parties or occasioned a failure of justice. In this regard I fortify my views with article 138(1) proviso of the present Constitution. The cases cited by the Appellant under Section 147 of the Civil Procedure Code have been considered by this court and also matters on novation of contracts. I am unable to accept those submissions in the way it has been submitted to this court.

In victor and another vs. Cyril de Silva 1998(1) SLR pg 42.

Per Weerasuriya J. ....

> "The learned District Judge was in obvious error when she failed to evaluate the evidence, in terms of S. 187, Civil Procedure Code, the failure to comply with the imperative provisions of S. 187, has not substantially prejudiced the rights of the defendant-appellants or has not occasioned a failure of justice to the defendants-appellants, as it is evident on a close examination of the totality of the evidence that the learned District Judge is correct in pronouncing judgment in favour of the plaintiff-respondent".

In Gunasena Vs. Kandage & Others 1997(3) judgment. SLR 393 at 400..

> It is clear on a close examination of the totality of the evidence that the learned District Judge is correct in entering judgment for the plaintiffs-respondents as prayed for in the plaint. However, she was in error for failing to adduce reasons for her findings. Nevertheless, the question that has to be examined is whether or not such failure on her part had prejudiced the substantial rights of defendant-appellant or has occasioned a failure of justice. Having considered the totality of the evidence, it seems to me that no prejudice has been caused to the substantial rights of the defendant-appellant or has occasioned a failure of justice by this error, defect or irregularity of the judgment.

When I consider the order/judgment of the learned District Judge which finally concluded the matter between parties the following points emerge.

(a) Agreement P4, P6 & P7 operate for a period of 1 year each and date of commencement and termination is clearly stated therein.

(b) The termination clause in the above agreement (P7) very clearly state as follows. (which need no further interpretation)

16(a) This agreement may without prejudice to any right of action or remedy of either party against the other in respect of any matter or thing arising hereunder be terminated by either party by giving to the other thirty (30) days notice in writing

(c) After last written contract (P7), parties entered into a verbal agreement on the same conditions for a period of 1 year (evidence in proceedings of 23.7.1997, pg 8)

(d) Plaintiff's own admission oral contracts terminated on 3.12.1992 (same days proceedings). Letter D1 explain the position. (Pg 9 of proceeding of 23.7.1997)

(e) No. contract exists after 3.12.1992

(f) Letter of 4.12.1992 by Defendant to Plaintiff effectively gives the reasons to terminate and the breach of contract as 1 – 3in the said letter.

The evidence led at the trial is more then enough to decide on issue No. 14. I have considered the oral and written submissions of appellant as well as Respondent. Appellant cannot have a legally acceptable right to enter into another agreement or to contest that termination is illegal, in view of his own evidence of admitting termination of contract. Trial Judge has correctly considered issue No. 14. In fact Plaintiff does not have a valid cause of action to sue the Defendant. There is sufficient representations by Plaintiffs witness in his evidence in court about termination of contract. Plaintiff cannot take a different position in law having accepted termination.

The doctrine of Estoppel

> An estoppel will arise where the person who makes the representation so conducts himself that a reasonable man would take the representation to be true and believe that it was intended to be acted upon. 16 NLR at 125; 25 NLR at 206. To establish an estoppel it must be proved that the action taken by the party seeking to establish the estoppel was directly connected with the false impression caused by the representation or conduct of the party sought to the estopped. The representation or the conduct must be, in effect, an invitation to the party affected by it to do a particular act. But it need not be proved that the party sought to be estopped. But it need not be proved that the party sought to be estopped knew the truth about the facts which he by his statement or his conduct misrepresented. 21 NLR 360.

In all the above circumstances I do not wish to interfere with the order of the learned District Judge. This court affirm such order. Appeal dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL