Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3127 of 2009

Universal Petro Chemicals Ltd. .... Appellant(s)

Versus

B. P. PLC and Others …. Respondent(s)

W I T H

Civil Appeal No.3128 of 2009

J U D G M E N T

L. NAGESWARA RAO, J.

1. The Appellant – Universal Petro-Chemicals Ltd. in Civil Appeal No.3127 of 2009 (for the sake of convenience, hereinafter referred to as 'the Appellant') filed a suit for specific performance of a collaboration agreement dated 01.11.1994 as modified by the supplementary agreements dated 01.03.1995 and 27.12.2002. The Plaintiff further prayed for a declaration of perpetual injunction. The learned Single Judge of the High Court of Calcutta refused to grant a

decree of specific performance of the agreement. However, a decree of injunction as prayed for was granted. Aggrieved thereby, the Appellant had filed an appeal questioning the judgment of the learned Single Judge to the extent that no relief was granted. The Appeal was dismissed by a Division Bench of the High Court of Calcutta by a judgment dated 18.02.2008 which is impugned in the Civil Appeal No.3127 of 2009. Respondent No.3 – Aral Aktiengesellschaft in Civil Appeal No.3127 of 2009 has also filed an appeal against the judgment of the Division Bench questioning the judgment relating to the perpetual injunction granted in favour of the Appellant.

2. The Appellant entered into a collaboration agreement with Respondent No.3, which is a German company, on 01.11.1994 by which the Appellant had to manufacture lubricants using the formulation of Aral and market the same in India (hereinafter referred to as the "Collaboration Agreement"). By the Collaboration Agreement the Appellant was given exclusive licence regarding the distribution, blending, rebranding and marketing of Aral lubricants in India. Subsequent to the Collaboration Agreement, necessary approvals were obtained from the Reserve Bank of

India under the Foreign Exchange Management Act, 1973 on 25.11.1994 which was incorporated in the Collaboration Agreement *vide* a supplementary agreement dated 03.01.1995.

3. In the year 2002, Veba Oil, the holding company of Respondent No. 3 was acquired by the Respondent No. 1 – BP Plc., a UK entity, who was also the holding company for Respondent No. 2 – Castrol India Ltd. As the approval granted by the Reserve Bank of India was lapsing, the Appellant applied to the Ministry of Commerce & Industry, Government of India for approval with respect to the royalty, extension of duration of the contract etc. On 13.11.2002, the Government approved the request of the Appellant and extended the approval of the Reserve Bank of India dated 25.11.1994. However, in the letter dated 13.11.2002, it was specified that the royalty was payable from 01.01.2003 to 31.12.2009 and that the duration of the extended Collaboration Agreement would be from 01.01.2003 to 31.12.2009. This approval dated 13.11.2002 was also made an integral part of the Collaboration Agreement by execution of yet another supplementary agreement dated 27.12.2002 (hereinafter referred to as the “Supplementary Agreement”).

4. A termination notice was issued by Respondent No.3 on 14.04.2004 on the ground that the Collaboration Agreement would come to an end on 31.10.2004 as per Clause 5 of the Collaboration Agreement and that there would be no extension thereafter. Against this termination notice, the Appellant filed Civil Suit No.214 of 2004 praying for the following reliefs: -

> *"The plaintiff prays for leave under Clause 12 of the Letters Patent and claim :*
> *a) Perpetual injunction restraining the defendants No. 1 and 2 from marketing in India any lubricant and in particular finished automotive and industrial lubricant under the brand name of 'Aral' or by using the design of 'Aral' ;*
> *b) Perpetual Injunction restraining the defendant No. 3 and/or its servants and/or its agents from allowing or permitting anybody other than the plaintiff to market finished automotive and industrial lubricant in India under the trade mark 'Aral' or design of 'Aral' ;*
> *c) Declaration that the collaboration agreement dated November 1, 1994, read with supplementary agreements dated January 3, 1995 and December 27, 2002 incorporated therein and agreement upon trade mark and design, copies whereof are annexed hereto are operative, subsisting and binding upon the defendant No. 3 and its associates including the defendants No. l and 2 herein till December 31, 2009 ;*
>
> *d) Declaration that letter of termination dated April 14, 2004, a copy whereof being annexures "G" hereto, be*

directed to be delivered up so that the same may be adjudged void and cancelled ;

e) Perpetual injunction restraining the defendant No. 3 and their associate, affiliate or agents from taking any step or from giving any effect to the letter of termination dated April 14, 2004 in any manner whatsoever;

f) Perpetual injunction restraining the defendant No. 3. from acting in any manner contrary to or in breach of the collaboration agreement dated November 1, 1994 as modified by supplementary agreements dated January 3, 1995 and dated December 27, 2002 and the agreement upon trade mark and design being annexures "A", "B", "D" and "F" hereof and the defendants No. 1 and 2 from procuring breach thereof or acting contrary thereto in any manner whatsoever ;

g) Decree for specific performance of the said collaboration agreement and agreement upon Trade Marks dated November 1, 1994 as modified by the supplementary agreement dated January 3, 1995 and December 27, 2002 executed by and between the plaintiff and the defendant No. 3;

h) Perpetual injunction restraining the defendant No. 3 and/or its servants and/or its agents from interfering with the right of the plaintiff to market its products of finished automotive and industrial lubricants under the trade mark 'Aral' and by use of 'Aral' design ;

i) Receiver;
j) Injunction;
k) Costs;
I) Further and other reliefs."

5. In this Suit, the High Court by an interim order dated 19.08.2004, restrained the Respondents from giving effect to the termination notice dated 14.04.2004 and from interfering with the Appellant's usage of 'Aral'. The interim order was extended on three occasions and was vacated thereafter by the Single Judge in its order 10.01.2005. However, a stay in the operation of the judgment was granted for 10 days, i.e., till 20.01.2005. In an appeal filed against the said order of the Single Judge, the Division Bench passed an interim order directing the continuation of the interim order of the Single Judge. However, the appeal filed by the Appellant was dismissed by the Division Bench on 30.03.2005. Questioning the correctness of the orders passed by the Division Bench, the Appellant filed Special Leave Petition which was disposed of by this Court on 24.08.2005 with the direction for an expedited hearing in the suit. There was an interim order which subsisted during the pendency of the Special Leave Petition as well.

6. In the civil suit, the learned Single Judge framed the following issues for consideration: -

> *"1. Is the suit maintainable?*
> *2. Does this Court have jurisdiction to try and determine this suit?*

3. Whether the applicable law for construing the collaboration agreement dated lst November 1994 would be the law of Germany or it would be the Indian law?
4. Having regard to the approval given by Reserve Bank of India in respect of the Collaboration Agreement what would be the duration of the contract?
5. Whether the Agreement dated lst November 2004 is terminable by six months' notice and whether the letter of termination as alleged in paragraph 44 of the plaint is legal and valid or is the contract valid till 31st December, 2009?
6. Did the defendant Nos. 1 and 2 conspire together, as alleged in the plaint for the purpose of procuring breach and, consequential termination of the contract between the defendant No. 3 and the plaintiff?
7. Whether having regard to the status of the contract the plaintiff is entitled to exclusive right of use of the brand 'Aral' in India?
8. Whether the plaintiff has any right to sell lubricants under the brand name 'Aral' with 'Aral' design in India?
9. To what reliefs, if any is the plaintiff is entitled to?"

7. Issues No.4 and 5 pertaining to the termination of the agreement were considered together. The contention of the Plaintiff (Appellant herein) in the suit was that the agreements stood extended till 31.12.2009 in view of the Supplementary Agreement dated 27.12.2002. The Supplementary Agreement was entered into between the parties pursuant to the letter dated 13.11.2002 of the Government of India by which the Reserve Bank of India's approval was extended till the duration of the Collaboration

Agreement from 01.01.2003 to 31.12.2009. As against this, the Respondents contended that the Collaboration Agreement subsisted only till December, 2004 and the approval granted by the RBI in which the date of 31.12.2009 was mentioned was only for the purpose of remitting royalty in the foreign exchange. According to the Respondents, Clause 5 of the original agreement is relevant for the purpose of determining the date of expiry of the Collaboration Agreement, which provided that after the expiry of 3 years, the Agreement could be terminated by either party by giving a termination notice six months prior. After a careful examination of the Collaboration Agreement and the Supplementary Agreement, the learned Single Judge was of the opinion that Respondent No.3 was not entitled to terminate the agreement before 31.12.2009 and that the letter of termination dated 14.04.2004 was issued in violation of the terms agreed between the parties.

8. Coming to the issue of whether or not the defendants were guilty of committing tort of conspiracy or procuring breach of the contract between the Appellant and Respondent No. 3 herein, the Single Judge rejected the contention of the Plaintiff. The Single Judge concluded that no

case of either criminal conspiracy or procuring breach of contract was made out as the Respondents herein had adduced sufficient evidence to show that the object behind the termination was predominantly economic and loss to the Appellant was in the nature of a collateral damage. No intention could be ascertained to injure the Appellants specifically.

9. Insofar as the issues with respect to the relief are concerned, the High Court held that the relief of specific performance could not be granted in view of the bar in Section 14 (1) (b) of the Specific Relief Act, 1963. The High Court observed that the contract involves performance of future unspecified obligations and duties and it would not be possible for the Court to enforce specific performance of the material terms of the contract. The High Court further held that it was an open-ended agreement involving continuous flow of technology for innovating and overhauling the products which are upgraded from time to time to meet world class standards. Therefore, though the termination agreement was found to be not in accordance with law but the specific performance of the contract was not granted. However, a decree of injunction was passed against

Respondent No.3 and its subsidiaries and affiliates restraining them from marketing or distributing in India, 'Aral' products till 31.12.2009.

10. The findings recorded by the Division Bench need not be dealt with in detail as the Division Bench upheld the judgment of the learned Single Judge on all counts. Notice was issued in the Special Leave Petition filed by the Appellant on 21.07.2008. Thereafter, leave was granted on 25.03.2009.

11. Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the Appellant submitted at the outset that the relief of specific performance of the Collaboration Agreement cannot be granted by this Court as the Collaboration Agreement expired on 31.12.2009. He submitted that the Appellant is entitled for damages for the period from 24.08.2005 till 31.12.2009. He relied upon the judgments of this Court in ***Jagdish Singh v. Natthu Singh***[1]***, Urmila Devi & Ors. v. Deity, Mandir Shree Chamunda Devi***[2] and ***Sukhbir v. Ajit Singh***[3] and argued that the Appellant is entitled for damages even though such a relief was not specifically sought for either in the suit or in the appeal. He referred to

1 (1992) 1 SCC 647
2 (2018) 2 SCC 284
3 (2021) 6 SCC 54

the proviso to Section 21 (5) of the Specific Relief Act to contend that the Appellant should be allowed to seek compensation at any stage of the proceeding. He further submitted that the Appellant is entitled for compensation due to the breach of contract under Section 73 of the Indian Contract Act, 1872. Mr. Dwivedi relied upon a letter dated 03.07.2003 written by the Finance Director, Castrol India Limited to state that the amount of compensation to be awarded to the Appellant can be gathered from this letter wherein the profit margins of Respondent No. 3 were discussed.

12. It was submitted that specific performance of the agreement was a relief that could have been granted at the time when the Appellant approached this Court in 2008 but cannot be done at this point of time. Therefore, the Appellant is entitled for damages, especially after the Appellant succeeded before the High Court which declared the termination notice as illegal.

13. Ms. Debolina Roy, learned counsel appearing for the Respondent countered the submission of Mr. Dwivedi by contending that the judgments cited by the Appellant pertained to award of compensation under Land Acquisition

Act wherein the manner of calculation of compensation was either ascertainable or expressly agreed upon between the parties, and are not applicable to the facts of this case. She submitted that the Appellants failed to plead relief for damages either in the Civil Court, before the High Court or even before this Court. She submitted that even assuming that the Collaboration Agreement expired on 31.12.2009, the Appellant did not raise this ground or seek to amend the relief during the pendency of this appeal for the past 13 years. Ms. Roy referred to the Email dated 03.07.2003 relied upon by the Appellant and submitted that the amount mentioned in the Email is only an estimate of profits. She further referred to another Email dated 07.04.2004 and submitted that the amounts mentioned are different. Therefore, no reliance can be placed on the Emails dated 03.07.2003 and 07.04.2004 for coming to a conclusion about the compensation/damages to which the Appellants are entitled to. She referred to a judgment of this Court in ***Shamsu Suhara Beevi v. G. Alex and Another***[4] to contend that the plaintiff who has been remiss in expressly seeking the relief of damages under Section 21(5) of the Specific Relief Act, is not entitled for any such relief. The

4 (2004) 8 SCC 569

further contention of the Respondents is that damages can only be granted for the loss suffered and not for the loss of profits as per Section 73 of the Indian Contract Act.

14. Respondent No.3 has contended in its appeal that the approval granted by the Reserve Bank of India and the Government of India related only to payment of royalty which did not impinge on the power of the parties to terminate the Agreement as provided under Clause 5 of the Collaboration Agreement. According to Clause 5 of the Collaboration Agreement, either party could terminate the agreement by giving a notice six months prior, after the expiry of initial three years of the term. It was contended that since a termination notice which was issued on 15.04.2004 was in accordance with Clause 5, it was valid and therefore, the Collaboration Agreement expired on 28.10.2004. The Judgment of the trial Court relating to the injunction was found fault with on the ground that no reasons have been given.

15. The judgment of the learned Single Judge is after considering the Collaboration Agreement, and the Supplementary Agreements which were entered into by the parties. As the parties have agreed to extend the agreement

till 31.12.2009 and have voluntarily incorporated such terms in the Collaboration Agreement, it cannot be said that there is any error committed by the High Court in setting aside the termination notice. The High Court has given cogent reasons for grant of injunction. Therefore, the appeal filed by the third Respondent deserves to be dismissed.

16. The only point that arises for our consideration is whether the Appellant is entitled for damages for the period between 24.08.2005 and 31.12.2009. The relevance of 24.08.2005 is that the Supreme Court disposed of the SLP on that date vacating the interim order granted in favour of the Appellant. Since there was an interim order operating in favor of the Appellant, damages are sought only from 24.08.2005 till 31.12.2009. The Appellant admits that no relief for damages or compensation was claimed in the suit. Admittedly, such a relief was not sought for either before the Division Bench or before this Court. No steps were taken by the Appellant to amend the appeal even after the date of expiry of the Collaboration Agreement, i.e., 31.12.2009.

17. The Appellant is relying on Section 21 (5) of the Specific Relief Act to buttress his contention for awarding of damages

in lieu of specific performance of the Collaboration Agreement. Section 21(5) reads as follows: -

> *"**21. Power to award compensation in certain cases. –** (1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach in addition to such performance.*
> *(2) If, in any such suit, the court decided that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.*
> *(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.*
> *(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).*
> *(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:*
> *Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation."*

18. In order to overcome the limitation posed by Sub-Section (5), Mr. Dwivedi has relied upon certain judgments in

support of his submission that even if a relief for damages has not been specifically sought for, this Court can still award damages to the Appellant. In ***Jagdish Singh v. Natthu Singh*** (supra), the Respondents' suit for specific performance of an agreement for conveyance of certain properties was dismissed by the Civil Court and the judgment of the Civil Court was upheld in appeal. As the High Court reversed the findings of the First Appellate Court, the defendant filed an appeal before this Court. The contention of the Appellant in that case was that the contract itself became incapable of specific performance as a proceeding for compulsory acquisition of suit properties was initiated during the pendency of the second appeal. It was not clear as to whether compensation in lieu of specific performance was sought by the plaintiff in the suit. However, on a finding that there is no difficulty in assessing the quantum of compensation for the subject property which was ascertainable by determination of market value, this Court permitted amendment of relief to do complete justice.

19. In ***Urmila Devi & Ors. v. Deity, Mandir Shree Chamunda Devi*** (supra), this Court was concerned with the modification of the decree of specific performance of an agreement to sell granted by the Courts below by the High

Court into a decree directing the Respondents therein to pay a sum of Rs. 90,000/- with interest from the date of filing of the suit as the suit property was acquired. Referring to the judgment of this Court in ***Jagdish Singh v. Natthu Singh*** (supra), this Court held that compensation can be awarded in lieu of specific performance under Section 21 of the Specific Relief Act when a contract has become impossible to be performed. In the facts of the said case the amount of compensation which already stood determined was distributed amongst the parties.

20. The contention of the Appellant in ***Sukhbir v. Ajit Singh*** (supra) that no compensation shall be awarded under Section 21, unless the plaintiff has claimed such compensation in his plaint was rejected by this Court by relying upon the judgment of this Court in ***Jagdish Singh v. Natthu Singh*** (supra) and ***Urmila Devi & Ors. v. Deity, Mandir Shree Chamunda Devi*** (supra) as the case was in relation to an agreement to sell and the amount of compensation was already determined by the parties therein. This Court held that a decree of compensation was passed as an alternate decree in lieu of the decree of specific performance.

21. The scope of Section 21 (4) and (5) was examined by this Court in ***Shamsu Suhara Beevi v. G. Alex and Another*** (supra). This Court referred to the Law Commission of India's recommendation that in no case the compensation should be decreed, unless it is claimed by a proper pleading. However, the Law Commission was of the opinion that it should be open to the plaintiff to seek an amendment to the plaint, at any stage of the proceedings in order to introduce a prayer for compensation, whether in lieu or in addition to specific performance. In the said case no claim for compensation for breach of agreement of sale was claimed either in addition to or in substitution of the performance of the agreement. Admittedly, there was no amendment to the plaint asking for compensation either in addition or in substitution of the performance of an agreement of sale. In such background, this Court held as follows.

> *"In our view, the High Court has clearly erred in granting the compensation under Section 21 in addition to the relief of specific performance in the absence of prayer made to that effect either in the plaint or by amending the same at any later stage of the proceedings to include the relief of compensation in addition to the relief of specific performance. Grant of such a relief is in the teeth of express provisions of the statute to the contrary is not permissible. On equitable consideration*

court cannot ignore or overlook the provisions of the statute. Equity must yield to law."

On a careful consideration of the judgments of this Court relied upon by learned Senior Counsel for the Appellant and the learned counsel for the Respondents, we are of the view that the Appellant is not entitled to claim damages for the period between 24.08.2005 and 31.12.2009.

22. The learned Single Judge expressly mentioned in his judgment that the Appellant did not claim any relief for damages. Even in the appeal filed by the Appellant, no relief for damages was claimed by the Appellants. In fact, it was a specific submission on behalf of the Appellant before the Division Bench that no relief in the nature of damages and/or compensation could be granted. It was submitted that it was difficult to quantify such damages/compensation as neither the anticipated loss of business nor estimated value of the goodwill could be prospectively assessed. It might be true that the Appellant was interested in the relief of specific performance of the Collaboration Agreement when he filed the Special Leave Petition in 2008 as the collaboration agreement subsisted till 31.12.2009. However, even thereafter no steps were taken by the Appellant to specifically plead the relief of damages or compensation.

The judgments relied upon by the Appellant are not applicable to the facts of this case. Though, the claim in ***Shamsu Suhara Beevi v. G. Alex and Another***'s case pertained to grant of compensation in addition to the relief of specific performance, this Court considered the point relating to the relief of compensation in substitution of the performance of the agreement as well.

23. We are afraid that the request of the Appellant for grant of damages cannot be accepted.

24. For the aforementioned reasons no relief can be granted to the Appellant. Civil Appeal No. 3127 of 2009 is disposed of. Civil Appeal No. 3128 of 2009 is hereby dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

New Delhi,
February 18, 2022.