

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LEAVE PETITION NO.9 OF 2015

IN

SUIT NO.4782 OF 1997

Airports Authority of India	...	Petitioners
Vs.		
East West Travel & Trade Links Ltd.		
& Ors.	...	Respondents

Mr. Anoshak Daver, Adv. a/w. Ms. Radha Bhandari, Adv. i/b. M/s. M V Kini & Co. for petitioners.

Mr. Chirag Dave, Adv. i/b. Dutt Menon Dummorrsett for defendant No.3.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 2nd February, 2015.

P.C. :

1. This petition is filed for obtaining leave to sue in this Court under clause XII of the Letters Patent upon the petitioner's case that a part of the cause of action has arisen in this Court. The suit has been filed for recovery of various charges by the petitioner for the aircrafts which landed in various airports of India and for which the petitioner rendered several services such as parking facility etc. to those aircrafts as shown in the list Exh.B to the plaint.

2. Certain aircrafts which landed in Mumbai and incurred charges in Mumbai are shown at Sr. No.1 in the list Exh.B. Certain other charges are for aircrafts which landed at various other airports and obtained services of the petitioner at those airports. .

3. In an earlier application taken out by the respondents (defendants) for dismissal of the suit on the ground that the cause of action consists of services rendered by the petitioner (plaintiff) even outside the territorial limits of the Court which is filed without obtaining leave of the Court under Clause XII of the Letters Patent, the Court considered that the plaintiff's claim with regard to item at Sr. No.1 was the claim in respect of which the entire cause of action had arisen in Mumbai. This court alone would have territorial jurisdiction to decide that claim. The Court, therefore, held that the suit could not be dismissed for recovery of that claim under Sr.No.1 of Exh.B to the plaint. The Court, however, observed that with regard to the recovery of the charges at Sr. Nos.2 to 9 of Exh.B it was seen that part of cause of action had arisen outside the territorial limits of this Court's jurisdiction; it had arisen at various airports in various cities. Consequently the Court observed that leave having not been granted, the suit with regard to that claim could not be tried by this Court and hence the plaintiff's suit with regard to that part of the claim had to be returned to proper Court for filing. Those would be the various Courts where the various airports in those various cities would be. The Court also observed that since a consolidated suit has been filed for recovery of all the charges from the defendants for the services rendered by the plaintiff at various airports including Mumbai, this plaint itself physically could not be returned to the plaintiff, the claim at Sr. No.1 being maintainable and triable only by this Court. Hence Court allowed the plaintiff to file fresh suits with regard to the causes of action which occurred outside the territorial limits of this Court's jurisdiction in other cities for the services rendered in those cities.

4. This was upon the judgment of the Division Bench of this Court in the case of ***Rhoda Jal Mehta & Ors. Vs. Homi Framroze Mehta & Ors., AIR 1989 Bombay 359***, the judgment holding that the Court would not be empowered to receive a plaint and admit or register it without leave if part of the cause of action occurs outside its jurisdiction as in such a case the Court be without jurisdiction.

5. The plaintiff has not filed fresh suits in the various Courts in which the various aircrafts of the defendants had landed and availed of the plaintiff's services for the recovery of the charges under Sr. Nos. 2 to 9 of Exh.B to the plaint. The plaintiff has sought leave of this Court to sue in this very Court itself. This application is filed 18 years after the suit was filed. Therefore, this Court would have to consider whether when the plaint has been returned for presentation to proper Court or after the plaintiff has been directed to file a fresh plaint in proper Court can leave to sue be granted if part of the cause of action had occurred within the territorial limits of this Court?

6. This question has been answered by this Court itself in the case of ***Huntsman Advanced Materials Vs. Kiri Dyes & Chemicals Ltd., in Leave Petition No.652 of 2009 in Suit No.2169 of 2009 dated 15th October, 2009***. In this case the plaintiff sought leave after seeking return of the plaint under Order 7 Rule 10 of the CPC for presentation in the Court in which the suit should have been instituted. Hence the plaintiff had sued in the Court in which only a part of the cause of action had arisen. Yet the plaintiff obtained leave under Clause XII of the Letters Patent. The suit could not be admitted by this Court. The Court had observed that it would be appropriate to

return the plaint. The plaint was returned for presentation to proper Court. Immediately thereupon the plaintiff applied for leave to sue in this Court. That leave came to be granted.

7. The only difference in this case is the difference of time and degree. Whereas in that suit the plaintiff almost immediately applied for leave upon return of the plaint, in this case the plaintiff has done so after 18 years. The legal position would not change with the passage of time. If leave cannot be granted after a suit is filed and accordingly cannot be granted even after the plaint is returned for being presented to proper Court and is once again brought back, it could not be granted even after the delay of one minute for that purpose. That would be two technical view even if it was a matter of the Court's jurisdiction.

8. The aspect of the jurisdiction of the Court is only the territorial jurisdiction of the Court. If the suit proceeds to hearing when the Court does not have territorial jurisdiction, the defendant cannot thereafter raise plea for want of territorial jurisdiction of the Court. The defendant may allow a suit to proceed in the Court not having territorial or even pecuniary jurisdiction. The position in law with regard to the lack of inherent jurisdiction of the Court is different. Even with the consent of the defendant if the suit is tried by the Court not having inherent jurisdiction the decree would be a nullity. That is not so with regard to territorial and pecuniary jurisdiction of the Court. It is, therefore, that in the case of *Huntsman (Supra)* this Court granted leave even though the suit was filed, lodged and registered without obtaining leave, was returned for

presentation to proper Court and thereafter was sought to be filed in this Court with leave.

9. If the Court had do so soon after the filing of the suit, it can do so even after years.

10. Counsel on behalf of the defendant No.3 has also drawn the Court's attention to the judgment of the Division Bench of this Court in the case of ***Devidatt Ramniranjandas Vs. Shriram Narayandas, AIR 1932 Bombay 291*** in which also it is urged that the expression "empowered to receive" under clause XII of the Letters Patent was held to be important so that the Court would have no jurisdiction even to receive the plaint where only a part of the cause of action arose within the limits of its jurisdiction unless leave was first obtained.

This judgment, however, does not consider the position in law when the Court has not received the plaint and has in fact returned the plaint for presentation to appropriate Court or directed the plaintiff to file a fresh suit in such Court and then the plaintiff once again applies for leave showing the Court the part of the cause of action that has arisen in this court's jurisdiction. It is an application posterior to what has been held in the judgment of the Division Bench which is required to be considered in this leave petition.

11. Similarly counsel on behalf of the defendant No.3 has relied upon the judgment in the case of ***Noorjahan wd/O Altaf Ahmed & Ors. Vs. Sadrunnisa wd/o Haji Fatehulla Khan & Ors, 1993 (1) Bom C R 501*** which dealt the various earlier judgments

with regard to leave under Clause XII of the Letters Patent. In the case of *Rhoda (Supra)* it was held that leave had to be obtained prior to lodging of the plaint. In the case of *Devidatt (Supra)* this aspect was considered to be related to the jurisdiction of the Court, so that the court was not empowered to receive the plaint but must necessarily return the plaint. It would have no jurisdiction without the leave having been granted. Consequently the Court held that the obtaining leave under clause XII of the Letters Patent was the condition precedent to entertaining the suit where a part of cause of action would have arisen outside the Court's territorial limits which could not be ignored or waived. The Court, therefore, returned the plaint to the plaintiff.

This judgment also is anterior to the position that prevails in this case. In line with this judgment the earlier order came to be passed in this suit itself directing the plaintiff to file a fresh suit for the various causes of action which occurred outside the Court's territorial limits in the airports in various other cities where aircrafts of the defendants were parked. This judgment does not go further to hold what would be the legal position if after the plaint was returned to the plaintiff, the plaintiff once again presented the plaint by applying for leave.

12. That aspect has been considered by this Court only in the case of *Huntsman (Supra)*.

13. The plaintiff has sought leave to sue for the reliefs under item Nos. 2 to 9 of Exh.B to the plaint in this Court itself. Counsel on behalf of the plaintiff contended that the plaintiff sued in this Court without leave bonafide believing that the Court would have

jurisdiction. The Court did not have territorial jurisdiction. The plaintiff, therefore, prosecuted the suit for the last 18 years in this Court which is the Court not having jurisdiction. The period of time for such prosecution would be required to be excluded under Section 14 of the Limitation Act, 1963 for the plaintiff to sue, if the plaintiff was to file a fresh plaint in any of the Courts where the aircrafts landed as shown in item Nos. 2 to 9 of Exh. B to the plaint. The plaintiff would be entitled to have such exclusion of time in this Court also as this Court previously had no territorial jurisdiction for want of its leave to sue.

14. Hence now the question of grant of leave to sue must be considered on merits. The Courts to sue in would be the Courts where a part of the cause of action would arise. That cause of action would be upon the aircrafts of the defendants having landed in the airports in those cities. The other part of cause of action was the requirement of the payment of money for the services rendered by the plaintiff. The plaintiff's office is in Mumbai. The service though is rendered at various places. The plaintiff would be required to be paid for those services in Mumbai. This is upon the simple salutary principle that the debtor must seek his creditor. The plaintiff is not expected to claim amounts for services rendered at various places. The payment of price is the material part of the cause of action. That material part of the cause of action has arisen in Mumbai. The plaintiff can, therefore, sue in Mumbai. The plaintiff would require leave under Clause XII of the Letters Patent to sue in Mumbai. It is that leave which has been applied for in this petition.

15. Even the order of this Court dated 30th October, 2014 makes a specific mention of this fact. Paragraph 8 of the said order shows that only because the plaintiff has sued for charges that arose even outside Mumbai at various other stations, leave of the Court was required and which was not granted though that part of the cause of action had arisen elsewhere. It was only because then leave was not obtained that part of the plaintiff's claim was not entertained. The plaintiff can yet file a fresh suit in Mumbai itself for claiming amounts under item Nos.2 to 9 of Exh. B by applying for leave. Instead of filing a fresh suit the plaintiff has chosen to prosecute this very suit. Hence the plaintiff has applied for leave in this very suit. If the plaintiff would be entitled to file a fresh suit the plaintiff must be entitled to leave in this suit itself. It would be too hyper technical to hold that whilst the Court in a fresh suit would have jurisdiction upon leave being granted, it would not have jurisdiction in this suit upon leave being granted. Leave can be granted because of the exclusion of time which must be allowed to the plaintiff suing under Section 14 of the Limitation Act, 1963. Hence any which way one looks at the application of the plaintiff, the plaintiff cannot be non-suited.

16. In fact allowing this application would avoid multiplicity of litigation.

17. The leave is required to be granted because a part of the cause of action has arisen in Mumbai within territorial limits of this Court's jurisdiction since the amounts are payable in Mumbai and some of the defendants have their offices outside Mumbai.

18. The contention of counsel on behalf of the defendant that no particulars have been given and the bold statements are made cannot be accepted in view of the admitted place of business of the plaintiff.

19. Thus seen leave is required to be and is granted to the plaintiff under Clause XII of the Letters Patent to sue in this Court in this suit itself for recovery of amounts under item Nos. 2 to 9 of Exh.B to the plaint.

20. The leave application is disposed of accordingly.

(ROSHAN DALVI, J.)