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

CHAMBER SUMMONS NO. 674 OF 2015
IN
SUIT NO. 783 OF 2007

Arjo Wiggins Chartham Ltd. .. Applicant/
Orig. Deft.No.1

In the matter of :

M/s. Gateway Park Paper Industries & Ors. .. Plaintiffs
Vs.
Arjo Wiggins Chartham Ltd. & Anr. .. Defendants

Mr.Mohan Bir Singh for plaintiff.

Mr.Rohan Rajadhyakshya a/w. Mr.Ram Kakkar and Ms.Bhavna Mohan i/b AZB Partners for defendant no.1-applicant.

CORAM : K.R.SHRIRAM, J.
RESERVED FOR ORDERS ON : 29.10.2015
PRONOUNCED ON : 20.11.2015

P.C.

1 The defendant No.1 has taken out this chamber summons applying for rejection of the plaint under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (CPC).

2 This suit was lodged on 17.02.2007 after the plaintiffs obtained leave under Clause 12 of the Letters Patent. The written statement was filed on 3.02.2009. Issues were settled on 10.09.2014. The evidence of the plaintiffs'

first witness in lieu of examination in chief was recorded on 27.10.2014 and the Commissioner to record evidence was also appointed. When the issues were settled, the first issue was the issue of jurisdiction. Thereafter this Court decided the issue of jurisdiction as to whether this Court has territorial jurisdiction to try the suit of plaintiff nos.1, 2 and 3. By an order dated 31.03.2015, this Court came to a conclusion that the plaintiff no.2 cannot sue in this Court and the trial of plaintiff no.2 was separated from the trial of plaintiff nos. 1 and 3. Against this order, the plaintiffs have preferred an appeal.

3 It is the case of the defendants- applicants that after plaintiff no.2 is struck off, on a bare reading of the plaint, there are no material facts whatsoever stated in the plaint that show any privity of contract between plaintiff nos.1 and 3 on the one side and the defendants on the other side. It is also submitted that plaintiff nos.1 and 3 have no cause of action against the defendants and on a meaningful reading of the plaint it would appear that the same is manifestly vexatious and merit-less and does not disclose a clear right to sue accrued in favour of the plaintiff nos.1 and 3 against the defendants. It is the case of the defendants that by clever drafting the plaintiffs have attempted to create an illusion of cause of action against the defendants. According to the defendants, therefore, the plaint is required to

be rejected under Order VII, Rule 11 of the CPC. The counsel for the defendants relied on the following judgments :

1) ***T. Arivandandam Vs T. V. Satyapal & Another*[1]*;***

2) ***I.T.C. Limited Vs. Debts Recovery Appellate Tribunal & Ors.*** [2]***;***

3) ***Church of Christ Charitable Trust & Educational Charitable Society represented by its Chairman Vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee*[3]*.***

Relying on these judgements, the counsel for the defendants submitted that (a) power under Order VII, Rule 11 can be exercised at any stage even after issues are framed and the suit is posted for evidence; (b) The Court has to read the plaint meaningfully and not just formally and if it is manifestly vexatious and merit-less in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII, Rule 11 of the CPC; (c) The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court; (d) ritually repeating that the plaintiffs were the agents of the defendants when in reality only the plaintiff no.2 was, would not give cause of action.

1 1977(4) SCC 467
2 (1998) 2 SCC 70
3 (2012) 8 SCC 706

4 The counsel for plaintiff nos.1 and 3 relied upon a judgement of the Apex Court in ***P.V. Guru Raj Reddy, Rep. by GPA Laxmi Narayan Reddy & Anr. Vs. P. Neeradha Reddy & Ors. etc.***[4] to submit that it is only averments in the plaint which are required to be considered and the stand of the defendants in the written statement cannot be looked into. It was also submitted that it is only if the averment in the plaint ex-facie does not disclose the cause of action or on a reading thereof, the suit appears to be barred under any law, the plaint can be rejected and in all other situations, the claims will have to be adjudicated in the course of the trial. The counsel also submitted that the rejection of the plaint under Order VII, Rule 11 of CPC is a drastic power and the condition precedent to the exercise of power under Order VII, Rule 11 are stringent. It was also submitted that while rejecting the plaint, the Court should assume that whatsoever is stated in the plaint is true.

5 The counsel for plaintiff nos.1 and 3 also relied on the order of this Court passed on 31.03.2015 in the present suit on the issue of jurisdiction to submit that the Court has held that plaintiff nos.1 and 3 are not barred from suing in this Court and the suit as far as plaintiff nos.1 and 3 is concerned, must be allowed to proceed.

4 AIR 2015 SC 2485

6 The suit originally was filed by three plaintiffs. Plaintiff no.1 is a partnership firm. Plaintiff No.2 is a Company registered under the Companies Act, 1956. Plaintiff no.3 is the partner of plaintiff no.1 and director of plaintiff no.2. The defendant no.1 is a Company based in United Kingdom manufacturing different kinds of papers. As averred in paragraphs nos.3 and 4 of the plaint, plaintiff no.2 was appointed as exclusive selling agent of the defendants within India. The first appointment was pursuant to an agreement dated 30.01.1978, the second pursuant to an agreement dated 1.10.1989 and the third is pursuant to an agreement dated 1.01.1999. The first and second agreements appear to have come to an end by virtue of efflux of time and it is the third agreement which is the subject matter of this suit. The defendants terminated this agreement and the plaintiffs claimed to have suffered loss by virtue of termination. Though in paragraphs 2, 3 and 4 of the plaint, the plaintiffs have stated that it was the original plaintiff no.2 who was the exclusive agent under the agency contract, from paragraph 5 onwards, it is stated that it is the plaintiffs, i.e., plaintiff nos.1, 2 and 3 who were acting as the agents and the plaintiffs had invested a lot of time, money and efforts in promoting the brand name and sales of the products of the defendants, the plaintiffs had hired premises and workers, managers and staff who all of a sudden became surplus and redundant and would have to be retrenched and retrenchment compensation had to be paid

to those retrenched staff and the plaintiffs suffered losses. It is this loss that is being claimed in the suit which the plaintiff nos.1, 2 and 3 claim to have suffered. Averments relating to cause of action and relating to losses can be found in paragraphs 7, 8 and 9 of the plaint. If wherever the word 'plaintiffs' is used in these paragraphs is substituted, by virtue of order dated 3.03.2015, with the words “plaintiff nos.1 and 3”, the averments would be that the plaintiff nos.1 and 3 invested a lot of time, money and efforts in promoting the brand name and sales of the products of the defendants, plaintiff nos.1 and 3 have to pay compensation and/or termination dues to these staff etc. The counsel for the defendants stated that if we read the whole plaint holistically, no foundation has been made as to how and why defendant nos.1 and 3 had to expend money or be liable to people on behalf of the defendants. Relying on the judgment of the Apex Court in ***Sopan Sukhdeo Sable & Ors. Vs. Assistant Charity Commissioner & Ors.***[5], the counsel for the defendants submitted that there cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. He submitted that the plaint has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation and the pleading has to be construed as it stands without addition or subtraction or words or change

5 (2004)3 SCC 137

of its apparent grammatical sense. The counsel submitted that the intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole and if the plaint is read in this manner, it would be quite obvious that plaintiff nos.1 and 3 have no cause of action whatsoever against the defendants and in the plaint by clever drafting an attempt is made to create an illusion of cause of action.

7 There is no argument on the preposition submitted by the counsel for the defendants. At the same time, rejection of the plaint under Order VII, Rule 11 of the CPC is a drastic power conferred in the Court to terminate the civil action at the threshold. This Court in a recent judgment of ***Euro Glass Limited Vs. Gutul Trading (India) & Anr.***[6] had rejected a plaint under Order VII, Rule 11. It was rejected under the facts and circumstances of that case. For the purpose of deciding the application under Order VII Rule 11, the Court has to presume the facts stated in the plaint are correct. Deciding whether the plaint discloses cause of action or not, the Court has to see only the averment in the plaint and the accompanying documents relied in the plaint. In this case, plaintiff nos.1 and 3 have averred in paragraphs 7, 8 and 9, that they have spent money, time and efforts on the defendants in promoting the brand name and sales of the products of the

6 Notice of Motion No.9 of 2011 in Suit No.1846 of 2009 dt.29.10.2015

defendants and that they had hired premises and workers, managers and staff. The plaintiff nos.1 and 3 have also stated that they have spent more than Rs.60 lakhs for this purpose. It is also stated that the act of the defendants lead to loss of image and reputation of the plaintiffs which the plaintiff nos. 1 and 3 on a conservative estimate expected to be about Rs.25 lakhs. From the claims in the plaint it appears that plaintiffs no.1 and 3 and original plaintiff no.2 are all aggrieved by the notice of termination of the agreement dated 1.1.1999 and are claiming relief based upon such termination.

8 Whether plaintiff nos.1 and 3 will succeed in the relief sought in the suit, can be seen only in trial of the suit. It cannot also be stated that plaintiff nos.1 and 3 are total strangers because plaintiff nos.1 and 3 are also claiming to be agents of the defendants. There is another suit pending in this Court which is filed by the defendants being summary suit no.2547 of 2005 where plaintiff nos.1 and 3 are the defendants. Plaintiff no.2 is not a party thereto. Reading Exh.'F' and Exh.'G' of the plaint, *prima-facie* indicates that there is an inter-se relationship between all the plaintiffs on one side and the defendants on the other side.

9 The correspondence between the parties annexed to the plaint also shows email address of plaintiff no.1 and the correspondence is with plaintiff no.3. Therefore, this is not a case where one could claim that there is no cause of action disclosed whatsoever in the plaint. This Court, in its order of 31.03.2015 has also made observations that whether or not plaintiff nos.1 and 3 are entitled to any relief under the agreement dated 1.01.1999 would be seen in the suit. This Court has also held that though plaintiff no.2 cannot sue, it does not mean plaintiff nos.1 and 3 are debarred from suing in this Court, the suit as against plaintiff no.2 cannot proceed but the suit against plaintiff nos.1 and 3 must be allowed to proceed. Paragraphs 32 and 33 read as under :

> *32 Considering that plaintiff No.2 cannot sue in this Court and plaintiff Nos.1 and 3 are not debarred from suing in this Court, the suit against plaintiff No.2 cannot proceed but the suit against plaintiff Nos.1 and 3 must be allowed to proceed. Hence this is a fit case to separate the trials by exercising powers of Court under Order 2 Rule 6 of the CPC since the joinder of the causes of action in favour of plaintiff Nos.1 and 3 which is not under the agreement dated 1st January, 1999, Exh.C to the plaint is different from the cause of action in favour of plaintiff No.2 which is under the agreement dated 1st January, 1999, Exh.C to the plaint and which cannot be filed in this Court and this Court would restrain itself from exercising jurisdiction under that agreement in favour of plaintiff No.2 who has submitted to the jurisdiction of English Courts.*
>
> *33 Hence the following order :*

> *1 The issue of territorial jurisdiction in favour of plaintiff No.2 is answered in the negative holding that this Court has no jurisdiction to try the suit of plaintiff No.2.*
>
> *2 The issue of jurisdiction in favour of plaintiff Nos.1 and 3 is answered in the affirmative holding that this Court has jurisdiction to try the suit of plaintiff Nos.1 and 3.*
>
> *3 The trial of plaintiff No.2 is separated from the trial of plaintiff Nos.1 and 3.*
>
> *4 The suit shall proceed as a suit of plaintiff Nos.1 and 3. The averments in the plaint shall be read accordingly. The trial has commenced. The witness of the plaintiff has to be cross examined. The cross examination shall continue as directed in the suit. The issue of jurisdiction as directed by the Division Bench is answered accordingly.*
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> *5 Written Statement is filed. Suit is adjourned to 19th June, 2015 for framing issues.*
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> (emphasis supplied)

In paragraphs 33(4), the Court has concluded that the suit shall proceed as a suit of plaintiff Nos.1 and 3 and the averments in the plaint shall be read accordingly.

This chamber summons is only an attempt by the defendants to prolong the trial and frustrate the plaintiffs.

10 In the circumstances, the chamber summons is, therefore, dismissed with costs. The applicants-defendants to pay a sum of Rs.25,000/- to each of the plaintiffs no.1 and 3 by way of cheque drawn in favour of the advocate on record for the plaintiffs and this amount has to be paid within four weeks.

11 The plaintiffs' first witnesses' examination in chief is over. The trial has commenced. The cross-examination shall be commenced within two weeks and the Commissioner shall fix preferably three simultaneous dates. As stated earlier, the suit was lodged on 17.02.2007, written statement was filed on 3.02.2009- two years later, issues were settled after 7 years on 10.09.2014, examination in chief later of PW-1 was taken on record on 27.10.2014 more than one year ago. Therefore, the Commissioner is directed not to grant any adjournment to any party on any ground whatsoever unless the situation is so grave that hearing cannot take place. The Commissioner also to ensure that the cross-examination of PW-1 is complete on or before 31.01.2016.

Liberty to apply.

(K.R. SHRIRAM, J.)