

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

**NOTICE OF MOTION NO.2208 OF 2009
IN
SUIT NO.3079 OF 2006**

Hindustan Organic Chemical LimitedPlaintiffs

V/s.

ICI India LimitedDefendants

Mr. Nikhil Mehta i/b. KMC Legal Venture for the plaintiffs.

Mr. Rahul Narichania, Senior Advocate i/b. HBA Associates for the defendants.

**CORAM : K.R.SHRIRAM,J
DATE : 19th October, 2015**

P.C.:-

1 Though the relief in this notice of motion is for dismissal of the suit for want of jurisdiction under Order VII Rule 11 of the Code of Civil Procedure, the counsel for the applicants at the outset submitted that the submissions that he would make is basically for return of the plaint to the plaintiffs due to the plaintiffs not having obtained Leave under clause XII of the Letters Patent before lodging the plaint and second point assuming for the sake of argument, the court holds that this court has jurisdiction or no leave was necessary then for dismissal of the suit on the ground of limitation. The contract entered into between the parties provides as under :-

***“Contract Price Rs/PMT (bulk) Ex-Rasayani –
36,500/- PMT”.***

2 The plaintiffs have also filed an additional affidavit affirmed by one D.G. Anvekar on 16th October, 2015. In that also the entire basis of the plaintiffs' case is that the plaintiffs had to keep the material available for the defendants to pick up from their factory at Rasayani, District Raigad, Maharashtra. Rasayani or Raigad District is outside the ordinary original civil jurisdiction of this court when one considers Rule 26 of the Bombay High Court (O.S) Rules.

3 Though the counsel for the plaintiffs submitted that as reflected in the minutes of the meeting held between the plaintiffs and the defendants, the contract was entered into at Mumbai, the plaintiffs' office is in Mumbai and the payments under the invoices raised towards to be made in Mumbai, the indisputable fact was the performance of the contract viz., supply of goods to the defendants, i.e., part of the cause of action was to physically take place at Rasayani, outside the original jurisdiction of this court.

4 Mr. Narichania, counsel for the defendants did concede that part of cause of action indeed arose within the ordinary original civil jurisdiction of this court though in the affidavit in support the applicants have stated no part of cause of action arose within Mumbai. As only part of the cause of action arose within the

jurisdiction of this court, Leave of this court under Clause XII of Letters Patent was necessary which the plaintiffs had not taken.

5 After going through the documents and considering the submissions made by the defendants' counsel, Mr. Mehta, counsel for the plaintiffs in fairness stated that the plaintiffs should have obtained Leave under clause XII of the Letters Patent before the suit was lodged.

6 In view thereof, the plaint is return to the plaintiffs for filing in the appropriate court.

7 In view of the above, I am not making any observation on the issue of limitation. For the sake of clarification, I have not adjudicated upon the ground of limitation raised by the applicants.

8 The notice of motion accordingly stands disposed with no order as to costs.

(K.R.SHRIRAM,J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**