

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.192 OF 2015
IN
LEAVE PETITION NO.150 OF 2015
IN
SUIT NO. (L) NO. 516 OF 2015

Vivanti Private Limited and Others. .. Appellants
Vs
S.E. Investment Limited and Another. .. Respondents

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Rashmin Khandekar along with Shri Ravi Suryawanshi and Shri Vicky Pahuja i/b Naik Naik & Co for the Appellants.
Ms. Deepali Jadhav for the Respondents.
Shri Gaurav Chaubey, Vice President of the Respondent No.1.

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CORAM : A.S. OKA & G.S.KULKARNI, JJ
DATED : 8TH MARCH 2016

PC.

1. Heard learned counsel appearing for the Appellants. The challenge in this Appeal is to the order dated 16th July 2015 passed by the learned Single Judge by which the Application made by the Appellants for grant of leave under Clause XII of the Letters Patent has been rejected. The learned counsel appearing for the Appellants submits that a liberty may be granted to the Appellants to present the Plaint to the appropriate Court as set out in Clause (7) of the impugned order. The learned counsel appearing for the Respondents submits that the arbitration proceedings are pending and therefore, a suit will not be maintainable.

2. From the above submission, it appears that in this Appeal, the Appellants are unable to assail the finding in the impugned order which records that the leave under Clause XII of the Letters Patent cannot be granted to the Appellants. Clause (7) of the impugned order reads thus:

“7. Even if the singular statement of the plaintiffs is taken as true, the plaintiffs cannot be granted leave to sue in the Court specifically not having jurisdiction in view of the conformation of the jurisdiction under the loan agreements exclusively to Delhi Courts, despite the execution of the debit notes in Mumbai, which are executed for part payments made under the loan agreements annexed to the plaint.”

3. It is obvious that in view of rejection of the Application for grant of leave under Clause XII of the Letters Patent, the Appellants can always present the Plaint in the appropriate Court having jurisdiction in the light of what is observed in the impugned order. At this stage, we need not go into the contention raised by the Respondents about the maintainability of the suit as the Respondents are entitled to raise all permissible objections if at all a suit is filed by the Appellants.

4. Subject to what is observed above, the Appeal is disposed of .

5. Notice of Motion No.145 of 2016 does not survive and the same is disposed of.

(G.S. KULKARNI, J)

(A.S. OKA, J)