

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE  
and  
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.No21 of 2011

Codexis Inc,  
200, Penobscot Drive,  
Redwood City,  
California 94063,  
USA.

.. Appellant

vs

1.Shasun Chemicals and Drugs Limited,  
Shasun House,  
3, Doraisamy Road,  
T.Nagar, Chennai-600 017,  
rep. by its Company Secretary  
Mr.V.Parthasarathi.

2.Arch Pharma Labs Ltd.,  
'H' Wing, 4<sup>th</sup> Floor,  
Tex Centre, off Saki Vihar Road,  
Chandivali, Andheri (E),  
Mumbai 400 072.

.. Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side Rules  
read with Clause 15 of Letters Patent against the order dated  
03.11.2010 made in A.No.289 of 2009 on the file of this Court.

For Appellant .. Mr.Vijay K Sondhi

For Respondent .. Mr.T.Ravichandran for R1

\* \* \* \* \*

**JUDGMENT**

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The first respondent is the original plaintiff in the suit, while the appellant is the first defendant. The original plaintiff is located in Chennai, while the appellant is located in USA, whereas the second respondent being the second defendant is located in Mumbai.

2. It is the case of the plaintiff in the suit that being one of the largest producers of Ibuprofen worldwide and one of the major producers of Ranitidine and Nizatidine, the plaintiff is exporting to countries across the world and has tied up with multinational companies, more specifically for developing and supplying the products to the United States market. In the course of the business, the plaintiff entered into an agreement with the first defendant/appellant on 09.05.2005 for technology transfer to manufacture Hydroxynitrile, whereby the plaintiff was granted exclusive right to manufacture and supply Hydroxynitrile to the appellant. There was exclusivity in the contract. The initial obligations are stated to have been performed by the original plaintiff by virtue of deposit of US Dollars Two Hundred and Fifty Thousands and thereafter, it was the obligation of the appellant to demonstrate the process of manufacturing of Hydroxynitrile to the plaintiff's facility by providing the initial

specifications. It is the allegation of the original plaintiff that the appellant failed to do so. But on the other hand, vide notice dated 08.07.2008, the appellant terminated the agreement dated 09.05.2005 alleging that the original plaintiff had failed to achieve the "First Process Date". It is the case of the original plaintiff that since the appellant had not demonstrated the mode of manufacture of Hydroxynitrile in terms as provided for under the agreement, the occasion for the original plaintiff to achieve the First Process Date did not arise. Thereafter, some further letters were exchanged.

3. The original plaintiff alleges in the plaint that the deposit made of US Dollar Two Hundred and Fifty Thousands was not even refunded and thus, there could not be any termination of the agreement. The relief prayed for is permanent injunction against the appellant from acting in derogation of the agreement dated 09.05.2005 and against the second respondent, who sought to take the place of the original plaintiff from dealing with the appellant.

4. Leave to sue application filed by the original plaintiff vide A.No.289 of 2009 was allowed after contest as per the impugned order dated 03.11.2010.

5. The original second defendant being the second respondent herein preferred an appeal against that order, being O.S.A.No.420 of 2010. The appellant has preferred the present appeal slightly later in 2011 and this appeal was admitted on 27.01.2011 with notice to the respondents, to be taken up along with O.S.No.420 of 2010. However, the two appeals were not taken up together and this matter was not tagged, as the appellant did not care to take steps to serve the original plaintiff/first respondent. Thus, O.S.A.No.420 of 2010 came to be dismissed vide a detailed judgment of the Division Bench of this Court on 12.03.2014. In O.S.A.No.420 of 2010, the appellant was the second respondent. But it failed to appear, despite service. The original plaintiff/first respondent herein was unaware of the pendency of this appeal, as service was not effected. We are highlighting these facts only to show that the consequence of one appeal being decided out of the two appeals filed against the same order arose out of the gross negligence of the appellant in not appearing in the proceedings filed by the original second defendant and not taking steps in its own appeal to serve the first respondent.

6. Now, turning to the order of the Division Bench dated 12.03.2014 in O.S.A.No.420 of 2010, the issue raised was of the

location of the office of the appellant therein/second defendant being outside jurisdiction of this Court, apart from the fact that they were not parties to the original agreement dated 05.03.2005 and that subsequently, four agreements dated 21.08.2008 were entered into between the appellant herein and the appellant therein, being the second defendant in the suit, post termination of the agreement dated 05.03.2005. The Appellate Court also took the plea that the Law governing the agreement as per Clause 24 of the agreement was of the State of California.

7. The aforesaid plea has however been negated by the Division Bench. In paragraph 15 of that judgment, it has been noted that the two defendants in the suit are located in USA and Mumbai respectively. But that agreement between the appellant and the original plaintiff was signed at Chennai and the amount was also paid at Chennai, through the foreign exchange. The situs of the contract being at Chennai, the cause of action being bundle of facts and for the purpose of leave of the Court to be granted, it was found sufficient that the plaintiff should be able to maintain the suit keeping in mind the provisions of Clause 12 of the Letters Patent and Order III, Rule 1 of Rules of the High Court of Madras, Original Side, 1956.

8. The specific plea of the Laws of California applying has also been considered observing that it does not take away the jurisdiction of this Court, where part of cause of action has arisen within the jurisdiction of this Court.

9. The learned counsel for the appellant, faced with the aforesaid position, had sought to contend before us on 24.10.2016 that the judgment in O.S.A.No.420 of 2010 does not affect the appeal in the present case, as the present appeal has been filed on different grounds. The learned counsel today also seeks to plead that if two cognate appeals against the same judgment, which are required to be taken up together are decided separately, the judgment will not merge in view of the observation made in ***Commissioner of Sales Tax, U.P., Lucknow v. M/s.Vijai Int. Udyog G.T. Road, Sikandrarao Hatheras, (1984) 4 SCC 543***, as statutory right of one party cannot be negated by another party having exercised that right.

10. It is also the contention of the learned counsel for the appellant once again, that keeping in mind the principle of forum conveniens which is applicable for grant of leave under Clause 12 of the Letters Patent [2014 (4) CTC 577 (FB) (Duro Flex Private Limited

v. Duro Flex Sitings System] and the fact that the Californian Law would apply, the Courts at Chennai are not forum conveniens for adjudication of the controversy in question.

11. We may also note that in ground No.19 alone, the plea was raised that it is appropriate that the matter should be first mediated. The learned counsel for the original plaintiff pointing out so, the learned counsel for the appellant stated that there is no purpose in any mediation after so many years.

12. Turning to the plea of the learned counsel for the appellant, we have already found that the non-hearing of two appeals together was a direct consequence of the negligence of the appellant.

13. Be that as it may, we have also heard the learned counsel for the appellant on merits, as noticed above, by referring his pleas.

14. We are in agreement with the view taken by the learned Single Judge that the location of the appellant is within the jurisdiction of this Court, the agreement having been signed within the jurisdiction

of this Court and the payments having been made at Chennai through foreign exchange are the three facts, which are sufficient giving jurisdiction to this Court in so far as grant of leave under Section 12 of the Letters Patent is concerned. The mere fact that Californian Law would apply would not *ipso facto* make the forum at Chennai, a forum non-conveniens, apart from the fact that this very plea has been dealt with by the Co-ordinate Bench of this Court in favour of the original plaintiff, where the present appellant chose to stay away despite service. We have to keep in mind that we are not dealing with the finding of the issue pre or post trial, but only dealing with the aspect of leave to be granted for the purposes of suing.

15. We thus find no merit in this appeal.

16. The appeal is dismissed, leaving the parties to bear their own costs.

(S.K.K., CJ.) (R.M.D.,J.)  
23.11.2016

Index : Yes/No  
Internet : Yes/No  
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To

The Sub Assistant Registrar,  
Original Side, High Court, Madras.

The Hon'ble Chief Justice  
and  
R.Mahadevan, J.

bbr

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