

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.7.2016

Coram:

The Hon'ble Mr. Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

O.S.A.Nos.253 and 254 of 2011

Commonwealth Bank of Australia
Sydney Trade Services
Level 3, 120 Pitt Street
Sydney N.S.W. 2000

.. Appellant in both Appeals/Defendant

Vs.

M/s. R K Industries
A Registered Partnership Firm
No.15, Race Course Road
Guindy, Chennai - 600 032
Represented by its partnership
Mr. Ajay Agarwal

.. Respondents in both Appeals/Plaintiff

Original Side Appeals preferred under Clause 15 of Letters Patent read with Order XXXVI Rule 9 of Original Side Rules against the order of this Court made in Application Nos.579 and 580 of 2010 in C.S.No.550 of 2009 dated 28.7.2010.

For Appellant : Mr. P.S. Raman, Senior Counsel
in both Appels for M/s. AZB and Partners

For Respondents : Mr. R. Subramanian
in both Appeals

COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY A.SELVAM, J.)

These Original Side Appeals are directed against the orders passed in Application Nos.579 and 580 of 2010 in C.S.No.550 of 2009 by the learned Single Judge of this Court.

2. The respondent herein, as plaintiff, has instituted C.S.No.550 of 2009 on the file of this Court for getting a money decree wherein the present appellant has been shown as sole defendant. During the pendency of the same, the defendant as applicant has filed application No.579 of 2010, so as to revoke

the leave already granted for instituting C.S.No.550 of 2009. Likewise, another application has been filed in Application No.580 of 2010 under Order 7 Rule 11 of the Code of Civil Procedure for rejecting the plaint. The learned Single Judge after considering the contentions put forth on either side has dismissed both the applications by way of passing the impugned common order and against the impugned common order, these Original Side Appeals have been preferred at the instance of the applicant/defendant.

3. The learned counsel appearing for the appellant/applicant has contended with great vehemence to the effect that with regard to business transaction mentioned in the plaint no privity of contract has been in existence between the plaintiff and defendant and in the plaint, it has been specifically mentioned to the effect that cause of action has partly arisen in Chennai and nothing has happened as averred in the plaint. Under the said circumstances, the defendant as applicant has filed application No.579 of 2010, for revoking the leave already granted and also filed application No.580 of 2010 for rejecting the plaint. But the learned Single Judge without considering the contentions put forth on the side of the applicant/defendant has erroneously dismissed the application Nos.579 and 580 of 2010 and therefore, the impugned common order passed by the learned Single Judge is liable to be set aside and the application Nos.579 and 580 of 2010 are liable to be allowed.

4. As a repartee to the contentions put forth on the side of the appellant/defendant, the learned counsel appearing for the respondent/plaintiff has also equally contended that for the purpose of showing privity of contract between the appellant/defendant and respondent/plaintiff, so many documents have become emerged and the learned Single Judge after considering those documents has given a finding to the effect that cause of action has arisen partly at Chennai and ultimately, dismissed both the applications and therefore, the common order passed by the learned Single Judge does not call for interference.

5. In fact on the side of the respondent/plaintiff, the following documents are relied upon.

(1) On 19-01-2007, a communication has been made between the respondent/plaintiff and its Bank wherein the name of the defendant is mentioned.

(2) On 20-10-2006, a Bill of Lading has come into existence wherein also the name of the defendant is found place.

Further, it is seen from the records that a communication has become emerged between the respondent/plaintiff and its Bank on 23-01-2007 wherein it has been clearly mentioned the name of the defendant. Further, it is seen from the records that a communication has become emerged between the plaintiff and its Bank on 21-02-2007, wherein also the name of the defendant is mentioned.

6. On the basis of the documents mentioned supra, the Court can easily deduce that the applicant/defendant has acted as a Consignee for the business alleged to have been done by the plaintiff. Since the applicant/defendant has acted as Consignee of the plaintiff and since some communications have become emerged in Chennai, this Court is of the view that for filing the suit, cause of action has partly arisen in Chennai and the learned Single Judge, after considering the documents filed on the side of the plaintiff has rightly rejected the applications and this Court, has not found any force in the contentions made by the learned Senior Counsel for the applicant/defendant and altogether, these Original Side Appeals are liable to be dismissed.

In fine, these Original Side Appeals are dismissed without costs. The common order passed by the learned Single Judge in Application Nos.579 and 580 of 2010 in C.S.No.550 of 2009 is confirmed.

However, it is made clear that whatever the observations/findings given in this order need not be taken into consideration at the time of trial and the parties are entitled to adduce both oral and documentary evidence on the basis of their contentions in the suit.

glp

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

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

+ 2 ccs to Mr.R.Subramanian, Advocate SR 40877

+ 1 cc to Mr.Suraj govindaraj, Advocate SR 41606

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