

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

**APPEAL NO. 157 OF 2016
IN
SUMMONS FOR JUDGMENT NO. 20 OF 2014
IN
SUMMARY SUIT NO. 166 OF 2014
WITH
APPEAL NO. 160 OF 2017
IN
SUMMONS FOR JUDGMENT NO. 40 OF 2014
IN
SUMMARY SUIT NO. 166 OF 2014**

M/s.Electrosteel Steels Ltd.
801 Uma Shanti Apartments, Kanke Road,
Ranchi, Jharkhand 834 008. ... Appellant
(in both Appeals)

V/s.

M/s.Polycab Wires Pvt. Ltd.
Polycab House, 771, Mogul Lane,
Mahim (West), Mumbai- 400 016. ... Respondent
(in both Appeals)

Mr.Mustafa Doctor, Senior Advocate with Mr.Gaurav Mehta, Ms. Kathleen Lobo, Mr.Sairam Subramanian i/b M/s. Khaitan and Co For appellant.

Mr.Mayank Bagla with Mr.Alok Bagla and Mr.Ramesh K. Tiwari i/b M/s. Bagla and Associates for the respondent in APP/157/2016.

Mr.Pravin Samdani, Senior Advocate with Mr.Mayank Bagla, Mr.Alok Bagla and Mr.Ramesh K. Tiwari i/b M/s. Bagla and Asso. for the respondent in APP/160/2016.

CORAM : A.S.OKA AND A.A.SAYED, JJ.

RESERVED ON : 21st April 2017

PRONOUNCED ON : 28th September 2017

JUDGMENT : (Per A.S.Oka, J.)

These two appeals were taken up for final hearing together and, therefore, are being disposed of by a common judgment and order. The appeals are preferred by the original defendant.

2. A summary suit was filed by the respondent claiming a decree in a sum of Rs.10,94,85,494/- with an interest thereon of Rs.3,92,92,142/-. After the plaint was lodged, an office objection was raised by the registry on 6th February 2014 regarding the failure to obtain a leave under clause XII of the Letters Patent. Though the advocate for the respondent while removing office objections recorded that a leave under clause XII was not necessary, on 17th February 2014 after lodging number was assigned to the suit, a petition was filed by the respondent for grant of leave under clause XII of the Letters Patent. On 18th February 2014, the Registry admitted the Plaint. A leave under clause XII was granted by the learned single Judge on 11th March 2014. It appears that on 23rd April 2014, a summons for judgment was taken out in the said suit by the respondent. Within the time provided by law from the date of

service of summons for judgment, the appellant did not apply for grant of leave to defend. By the judgment and order dated 18th June 2015, the learned single Judge made the summons for judgment absolute by passing a decree as prayed for. In addition to amount of Rs.14,86,87,636/-, the learned single Judge ordered and decreed the appellant to pay interest at the rate of 18% per annum on the principal amount of Rs.10,94,85,494/- from 22nd November 2013 till the payment. Appeal No.157/2016 takes an exception to the judgment and order dated 18th June 2015 by which the suit was decreed. In the same appeal, the appellant has also challenged the order dated 11th March 2014 granting leave under clause XII. However, a separate appeal being Appeal No.160/2017 has been preferred by the appellant- defendant for taking an exception to the order granting leave under clause XII of the Letters Patent.

3. The learned senior counsel appearing for the appellant relied upon the decision of the Division Bench of this Court in the case of **Quadricon Pvt. Ltd. v. Shri Bajrang Alloys Ltd.**¹ in support of his submission that in view of the language used by clause XII of the Letters Patent, the plaint could not have been instituted. He submitted that grant of leave under clause XII is a condition precedent for institution of the suit. He also relied upon the decision of the learned single Judge in the case of **Quadricon Pvt. Ltd. v. Shri Bajrang Alloys Ltd.**² He relied upon the decision of the Division Bench of this Court in the case of **Devidatt Ramniranjandas v. Shriram Narayandas**³. He submitted that the

1 2009 (5) Bom.C.R. 345

2 2008 (3) Mh.L.J. 407

3 Vol.XXXIV Bom L R 236 -1931 SCC OnLine Bom 37

parties by consent cannot waive the condition of obtaining a leave under clause XII of the Letters Patent. He would urge that even section 21 of the Code of Civil Procedure, 1908 (for short “the said Code”) has no application to the question of jurisdiction arising in a suit filed on the Original Side. He submitted that the suit itself ought not to have been entertained. He submitted that the suit was entered in the register of the suit on 18th February 2014 and, therefore, the order dated 11th March 2014 granting leave under clause XII is completely illegal. He submitted that therefore, the decree deserves to be set aside after setting aside the order dated 11th March 2014.

4. The learned senior counsel appearing for the respondent and the learned counsel for the respondent submitted that as an office objection was raised regarding the failure to obtain a leave under clause XII, on 17th February 2014, a petition for grant of leave was filed by the respondent. However, on 18th February 2014, the office of the Original Side admitted the plaint and entered the same in the register. It was submitted that the appellant was served with the copy of leave petition on 3rd March 2014. On 17th April 2014, advocate for the appellant filed his Vakalatnama. The summons for judgment was served on 23rd April 2014. However, the appellant failed to file any reply to the summons for judgment and seek leave to defend. Therefore, on 8th June 2015, the learned single Judge granted time to the appellants to file a reply to the summons for judgment by imposing costs of Rs.10,000/-. However, the appellant failed to file a reply and, therefore, the suit was decreed on 18th June 2015 in terms of the provisions of Rule 6 of Order XXXVII of the said

Code. It is pointed out that on 28th October 2015, the advocate for the appellant countersigned the draft of the decree. The submission is that the leave under clause XII was sought prior to the admission of the plaint and it is only because of the mistake of the Registry that the plaint was admitted even before the petition for leave was placed before the Court. Placing reliance on the decision of the Apex Court in the case of *Uday Shankar Triyar v. Ram Kalewar Prasad Singh and another*⁴, a submission was made that the respondent cannot be allowed to suffer for the procedural mistake. He also relied upon the decision of the Apex Court in the case of *Shaikh Salim Haji Abdul Khayumsab v. Kumar and others*⁵.

5. The second limb of the argument of the learned senior counsel appearing for the respondent is that in fact, on plain reading of the plaint, a leave under clause XII of the Letters Patent was not at all necessary and, therefore, the order granting leave is of no consequence. He invited our attention to the averments made in the plaint. He pointed out that though the appellant company may have its registered office at Ranchi in Jharkhand, it is having a local branch in Mumbai as disclosed in the cause title. He invited our attention to the relevant paragraphs of the plaint. He pointed out that the meetings were held in the registered office of the respondent- plaintiff at Mumbai. The purchase orders were signed, accepted, executed and received at Mumbai. The bank guarantees were also given by the respondent of the banks at Mumbai. The payment

4 (2006) 1 SCC 75

5 (2006) 1 SCC 46

of many tax invoices was received by the plaintiff at Mumbai. The goods were supplied from Daman at the site of the appellant- defendant at Bhokaro site.

6. The learned counsel appearing for the respondent invited our attention to the decision of the Apex Court in the case of *State of Uttar Pradesh and another v. M/s.Janki Saran Kailash Chandra and another*⁶. He also invited our attention to the observations made by the learned single Judge in the case of *Hindustan Organic Chemicals Ltd. v. ICI India Ltd.*⁷. The submission in short is that even if the order granting leave is set aside, the decree cannot be touched.

7. We have given careful consideration to the submissions. Clause XII of the Letters Patent reads thus:

“12. Original jurisdictions as to suits. - And We do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such

6 AIR 1973 SC 2071

7 Leave Petition No.5/16 in Suit No.3079/06 decided on 27.01.2017

limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, or the Bombay City Civil Court.”

(emphasis added)

The procedure regarding lodging of the plaint has been laid down in Rule Nos.45, 46 and 47 of the High Court (Original Side) Rules which read thus:

“R.45. Plaint to be lodged before presentation. - A plaint in which leave of the Court is to be applied for shall, except in cases of special urgency, be lodged for examination with the officer attending on the Judge in Chambers before 4.15 p.m. on the day previous to its being presented to the Judge and the plaintiff or his Advocate on record shall attend before the Judge at the time of presentation.

All other plaints shall be lodged with such officer as the Prothonotary and Senior Master may direct.

R.46. Plaint to be properly stamped.- The plaint and documents therewith, when so lodged, shall be properly stamped with uncanceled stamps ready for filing.

Rule 47. Endorsement on admission. - When a plaint is admitted in words "Admitted this day" shall be endorsed thereon and signed by the Prothonotary & Senior Master or by one of his assistants, the words "written statement" being added when such statement is required.”

Rule 1 of Order IV of the said Code deals with institution of the suits. The provisions of the said Code refer to the institution of the suits. Rule 45 of the High Court (Original Side) Rules provides for lodging of the plaint. In case of a plaint in which leave of the Court under clause XII is required, the plaintiff or his Advocate on record shall attend before the Judge at the time of presentation so that an application for grant of leave can be considered. Rule 47 provides for admission of the plaint by making endorsement thereon which is required to be signed by the Prothonotary or one of his assistants. The interpretation of clause XII is no longer *res integra*. In the case of *Devidatt Ramniranjandas v. Shriram Narayandas (supra)*, the Division Bench of this Court dealt with the issue. After referring to clause XII, a Division Bench observed that whether condition of obtaining leave under clause XII is a matter of procedure or not is required to be decided. Beaumont C.J (as he then was) held thus:

“In my judgment the words of clause 12 of the Letters Patent are quite clear and make the obtaining of leave a condition precedent to the entertainment by this Court of a suit in which the cause of action arises in part outside the jurisdiction, and the condition is not one which it is competent for a Court to ignore or for the parties to waive. I think, therefore, that we ought not to follow the case of *King v. Secretary of State for India* [(1908) 35 Cal. 394.] and we should treat *Shamchandra v. Bhikamchand* [(1908) 35 Cal. 394.] as overruled upon this point. The hardship pointed out by Mr. Justice Fletcher in *King v. Secretary of State for India*, [(1908) 35 Cal. 394.] that if the obtaining of

leave cannot be waived a defendant may take the point at any time even up to judgment, is one which cannot affect our judgment and which should not arise in practice. **As pointed out by Lord Justice Davey in *Forquharson v. Morgan*, [[1894] 1 Q.B. 552 at p. 563.] it is the duty of every Judge to ask himself, when he is invited to exercise a limited statutory jurisdiction, whether the case falls within the defined ambit of the statute and it is his duty to decline to make an order as Judge, if and so far as the matter is outside his jurisdiction. The Court, therefore, is bound to take the point of want of jurisdiction at whatever stage that point may be brought to its attention, and usually the point will not be received unless leave has been obtained. I should add that I am satisfied that section 21 of the Civil Procedure Code has no application to this case.”**

(emphasis added)

Ranganekar, J (as he then was) held thus:

“ As far back as 1868 the Madras High Court dealing with this question held that the leave under this clause is a condition precedent to jurisdiction (*DeSouza v. Coles* [(1868) 3 Mad. H.C. 384.] . The same view was taken by the Calcutta High Court in 1874 in *Hajee Ismail Hajee Hubbeeb v. Hajee Mahomed Hajee Joosub*, [(1874) 13 Beng. L.R. 91.] and by Telang, J. in *Rampurtab Samruthroy v. Premeesukh Chandamal*. [(1890) 15 Bom. 93.] **In the last mentioned case Mr. Justice Telang held that the leave under clause 12 affords the very foundation of the jurisdiction and hence it must be obtained before the institution of the suit—an opinion in which I respectfully agree and which has been consistently followed in our Courts.**

.....

With the utmost respect to the learned Judge I am unable to agree. If the leave under clause 12 is a condition precedent and to use the words of Telang, J. affords the very foundation of the Court's jurisdiction, then the fact that the plea was not raised by the written statement seems to be immaterial. **In the absence of leave where necessary the judgment of the Court would be a nullity, and I think it is the duty of the Court to consider the point whenever raised even if it is not noticed by the Court itself in the first instance. In this view it is not necessary to refer to section 21 of the Civil Procedure Code, but, speaking for myself, I think, having regard to the wording of that section and the position it occupies in the Civil Procedure Code, I am inclined to hold that it was not intended to apply to the High Court in its ordinary original civil jurisdiction."**

(emphasis added)

8. In the case of *Quadricon Pvt.Ltd. v. Shri Bajrang Alloys Ltd.(supra)*, the same view was reiterated by the Division Bench. In paragraph-11, the Division Bench held thus:

"11. Thus, on a proper analysis what we find is that only in respect of the suits of which the cause of action has partly taken place within the ordinary original jurisdiction of the High Court requires a prior permission or a leave to institute the suit. All other suits excepting the suits which can be entertained by Small Cause Court or Bombay City Civil Court can be instituted straight away in the High Court which do not require prior permission or a leave to institute such suits. **Thus, what emerges is that in respect of**

the suits wherein partly the cause of action has arisen within the ordinary original jurisdiction of the High Court, the High Court gets a jurisdiction to entertain such a suit only after the plaintiff seeks a leave of the High Court. In the absence of such a leave, the High Court does not possess jurisdiction to receive, try and determine such suits. In short, the vesting of jurisdiction depends upon the fact as to whether the High Court has granted leave to institute such a suit. If the High Court grants leave to institute the suit of such nature, the High Court gets a jurisdiction to entertain and decide the said suit. However, if the High Court refuses such leave, such a suit cannot be entertained and decided by the High Court.”

(emphasis added)

In paragraph- 15, the Division Bench dealt with the procedure followed on the original side of the High Court starting from the lodging of the plaint, which reads thus:

“15. What is important to be noted is that the thrust of the argument of the learned Counsel for the appellant is on Sub-rule (3) of Rule 1 Order IV CPC. The said provision states that the plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2) of Rule 1 Order IV. Sub-rule (1) requires that the suit shall be instituted by presenting a plaint in duplicate either to the court or such officer as it (the court) appoints in this behalf. Therefore, in Sub-rule (1) there are only two requirements viz. the plaint shall be in duplicate and secondly that it shall be presented either to the court or an officer appointed by the court in this behalf. In the present matter, so far as the submission of the plaint in duplicate is concerned, there is no issue

involved to that effect. The plaint, in the present matter, has been lodged with the officer as directed by the Prothonotary & Senior Master as provided in Rule 45 of the Original Side Rules. What is to be noted is that if the plaint required a leave of the court, as contended by both the sides, then the plaint should have been lodged with the officer attending on the Judge in Chambers before 4.15 p.m. on a day previous to its being presented to the Judge. It is nobody's case before this Court that the plaint was presented in a special urgency and, therefore, we are not considering that aspect of the matter, but the fact remains on record that the plaint was not lodged for examination before the officer attending on the Judge in Chambers before 4.15 p.m. on the day previous to its being presented to the Judge. **On the contrary, since the cause of action stated in the plaint showed that the cause of action has wholly arisen within the ordinary original jurisdiction of the High Court as pleaded in paragraph 48 of the plaint, the plaint was lodged with the officer as directed by the Prothonotary & Senior Master viz. with the officer who accepts or before whom the lodging of the plaints which do not require leave under Clause 12 of the Letters Patent. Thereafter the plaint was admitted by making an endorsement as required under Rule 47 of the Original Side Rules. Thus, what is important to be noted is that the procedure in respect of the plaint which does not require a leave of the court under Clause 12 of the Letters Patent has been followed in respect of the present plaint and the special procedure which is applicable to the plaints which require leave of the court as provided in Rule 45 was not followed. On reading Order IV Rule 1 along with Rule 45 of the Original Side Rules, we record our finding that when the plaint was presented it was presented as if it does not require the leave of the court and the procedure**

requiring the leave of the court was not followed by the appellant. This is in respect of Order IV Rule 1(3) of the CPC and Rules 45 and 47 of the Original Side Rules. Sub-rule (3) of Rule 1 of Order IV deals with non-compliance of Sub-rule (2). The said Sub-rule (2) states that every plaint shall comply with the rules contained in Orders VI and VII of the CPC so far as they are applicable. Thus reading sub-rules (2) and (3) it follows that whenever there is non compliance of the Rules contained in Orders VI and VII so far as they are applicable, the plaint shall not be deemed to be duly instituted unless it complies with the requirement specified in Sub-rule (2). On reading these provisions what we find is that Sub-rule (2) requires compliance of Order VI and VII of the CPC. Order VI is in respect of the pleadings generally and, therefore, it applies to the plaint and written statement generally as stated in Rule 1 of Order IV. Order VII is in respect of plaint specifically. However, before this Court it is nobody's case that the appellant has not complied with Order IV or Order VI. Both these Orders do not speak about the compliance of Clause 12 of the Letters Patent and/or suits which generally require a leave of the court before presentation under any of the provisions of law. Order VII Rule 1(f) requires that the plaint shall contain the particulars of facts showing that the court has jurisdiction. However, in the present matter, this clause has been complied with by the appellant by incorporating paragraph 48 in the plaint. **Therefore, on the date of presentation of the Plaint as per the plaintiffs own contention there was a compliance of Orders VI and VII. In short, what we find is that the plaint, as it was presented as per the pleadings in the plaint, was in compliance with Order IV CPC and Rules 45 and 47 of the Original Side Rules. Therefore, the office of the Prothonotary & Senior Master cannot be blamed to admit the plaint under Rule 47 of the Original Side Rules. The defect in the**

plaint has been brought about by the respondent-defendants when the defendants, for the first time, raised an objection when he filed Notice of Motion No. 745 of 2005 which, as stated above, was finally disposed of by the Division Bench in Appeal No. 896 of 2006 with a liberty to the defendants to make an application for rejection of the plaint under Order VII Rule 11, CPC. Thereafter, the said objection has been raised by the defendants by filing a Notice of Motion No. 467 of 2007. What is important to be noted is that Notice of Motion No. 745 of 2005 brought on record, the defect in the plaintiff-appellant's case and the appellant admitted the said defect and made an application for leave under Clause 12 of the Letters Patent on 27th March, 2006, as stated earlier. Therefore, the plaintiff-appellant is trying to cure the defect in the presentation of the plaint requesting this Court to grant leave at the stage when the plaint has been admitted under Rule 47 of the Original Side Rules read with Order IV Rule 1 CPC. The question, therefore, is whether leave under Clause 12 can be granted by the court after the presentation of the plaint viz. the admission of the plaint under Rule 47 of the Original Side Rules. Therefore, in order to show that the plaint was not duly instituted and it shall not be deemed to be duly instituted, the appellant is relying upon Sub-rule (3) of Order IV Rule 1 CPC.”

(emphasis added)

In paragraph- 30, the Division Bench dealt with the argument based on the fact that the petition for grant of leave under clause XII was filed by the plaintiff along with the suit and that the Court committed mistake in not passing the order on the said petition. The Division Bench reiterated that the objection in respect of non-compliance of the leave under clause XII can be raised at any stage of the proceeding and Section 21 of the said

Code will not be attracted in respect of such objection raised under clause XII.

9. At this stage, we may also note the observation made by the learned single Judge in the case of *Quadricon Pvt.Ltd. (supra)*. The learned single Judge referred to the decision of another single Judge in the case of *Rhoda Jal Mehta & Ors v. Home Framroze Mehta*⁸ He also referred to the decision of the Division Bench of this Court in the case of *Caribjet Inc. v. Air India Ltd.*⁹. He observed that in the case of *Caribjet Inc.*, the suit was numbered only after leave under clause XII was granted. The learned single Judge in paragraphs- 25 and 26 observed thus:

“25. The judgment in *Rhoda Mehta's* case AIR 1989 Bom 359 and *Noorjahan's* case holding that the leave is required prior even to presentation of the plaint, obviously therefore, implied that the leave was also required prior to the plaint being admitted. The judgments have been held to be per incuriam by the Division Bench in *Caribjet Inc. vs. Air India Ltd.* That however, is only in so far as the judgments held that the leave was required even prior to presentation of the plaint to the authorized officer. The Division Bench did not deal with a case where the plaint had already been admitted and entered in the register of this Court.

26. The effect of the above judgments therefore is that leave may be obtained after the plaint is presented to the proper officer but not after the plaint is admitted and entered in the register. The

8 AIR 1989 Bombay 359

9 2005 (3) Bom.C.R. 94

application for leave is therefore rejected on this ground alone.”

This view has been confirmed in the decision discussed in paragraph-8 above.

In the case of *Hindustan Organic Chemicals Limited* (supra), the learned Single Judge held thus:

“16. The consistent view is that ex post facto leave under clause 12 cannot be sought. It must be sought before the plaint is numbered (but not before the plaint is presented to the authorized officer).”

(emphasis added)

10. Coming to the facts of the case, it appears to be an admitted position that after the plaint was lodged, an objection was raised by the Registry regarding the failure to obtain leave under clause XII. On 17th February 2014, a petition seeking leave under clause XII was filed, which was granted on 11th March 2014. In the meanwhile, on 18th February 2014, the suit was admitted by the Registry. The respondent did not follow the procedure laid down in the first part of Rule 45 of the Original Side Rules. Hence, the Registry cannot be blamed for admitting the plaint. Moreover, the application for leave was filed after the plaint was lodged and presented as per the second part of Rule 45. In this case, a leave under Clause XII was granted after the plaint was admitted. Therefore, the

order granting leave under clause XII cannot be sustained at all and will have to be set aside.

11. We may note here that there is a specific averment in the petition filed by the respondent for seeking a leave under clause XII that a part of cause of action arises within the jurisdiction of this Court. In fact, in paragraph-11 of the plaint, it is the specific contention that “substantial part of the cause of action” has arisen at Mumbai. After applying for and obtaining a leave under clause XII, now the contention of the respondent is that the leave was not necessary. If in a given case, a leave under clause XII is necessary and if the leave is not granted before the plaint is admitted, the action of admitting the plaint is nullity in as much as in such a case, the plaint cannot be admitted in accordance with Rule 47.

12. In the present case, the order granting leave under clause XII was illegal and without jurisdiction as it was granted after the plaint was admitted. In view of clause XII of the Letters Patent, if a suit is not in respect of an immovable property and if entire cause of action does not arise within the Ordinary Original Jurisdiction of this Court, the plaint cannot be admitted unless leave is granted as required by the said clause. In the present case, so long as the averment in paragraph-11 of the plaint stands which admits that only a part of cause of action has arisen within the Ordinary Original Jurisdiction of this Court, in absence of leave under clause XII, the impugned decree cannot be sustained. The suit admittedly is not in respect of an immovable property. The requirement of the grant of leave cannot be waived even by the consent of the parties as repeatedly

held by this Court. Unless the plaint is amended, the respondent cannot argue contrary to averments in paragraph-11. Hence, we cannot decide the question whether the cause of action has wholly arisen within the Ordinary Original Jurisdiction of this Court. There is no option but to set aside the impugned order granting leave and the impugned decree. The suit will have to be relegated to the stage at which it stood on 10th March 2014.

13. The respondent can always apply for grant of permission to withdraw the suit with liberty to file a fresh suit after obtaining a leave under clause XII. The respondent, if permissible in law, can apply for the amendment of paragraph-11 for contending that the entire cause of action has arisen within the Ordinary Original Jurisdiction of this Court. If such applications are made, the learned Single Judge will decide the same in accordance with law.

14. Hence, we pass the following order:-

- (a) The impugned order dated 11th March 2014 granting leave under clause XII and the impugned judgment and decree passed in the suit are hereby quashed and set aside;
- (b) The Summary Suit No.166/2014 is hereby remanded to the learned single Judge who will deal with the suit in accordance with law in the light of findings recorded in this judgment and order;

(c) It will be open for the respondent to apply for grant of permission to withdraw the suit with liberty to file a fresh suit after obtaining a leave under clause XII. The respondent, if permissible in law, can apply for the amendment of paragraph 11 for contending that the entire cause of action has arisen within the Ordinary Original Jurisdiction of this Court. If such applications are made, the learned Single Judge will decide the same in accordance with law;

(d) We make it clear that no adjudication has been made on merits of the suit:

(e) The appeals are partly allowed on above terms:

(f) There shall be no order as to costs.

(g) Pending Notices of Motion are disposed of.

(A.A. SAYED, J.)

(A.S.OKA, J.)