

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
LEAVE PETITION NO. 284 OF 2016
IN
COMMERCIAL SUIT (L) NO. 174 OF 2016

Kishore Khanna & Ors	... Plaintiffs
<i>Versus</i>	
Swiber Offshore (India) Pvt Ltd & Ors	...Defendants

Ms Rohini Naik, *i/b Khare Legal Chambers for the Plaintiffs.*
Mr Arjun Gupta, *i/b Nishith Desai Associates for Defendants Nos. 2 and 3.*

CORAM: G.S. PATEL, J
DATED: 2nd February 2017

PC:-

1. The Plaint in this commercial Suit and the Clause XII Leave Petition were both lodged simultaneously on 26th September 2016. It seems that an application was made for urgent ad interim reliefs on 7th October 2016. There is a detailed order and judgment of that date. I am told that the matter was carried in Appeal and has since been remanded. In all this time, the Clause XII Petition remained pending.

2. This is a situation very like the one came up before this Court in *Caribjet Inc v Air India Ltd*.¹ There again it happened that leave was granted at a later date although the application was made along with the presentation of the Plaint. This Court held that this did not amount to an application for *post facto* leave and that leave could properly be granted in such a situation. It drew a distinction between this kind of a case and one where the Plaint is lodged without an accompanying application for leave under Clause XII of the Letters Patent, the Suit is numbered and registered and it is only thereafter that an application for leave under Clause XII is made. That, being an application clearly *post facto*, was not maintainable. The Division Bench decision in *Caribjet* and the later decision in *Quadricon Pvt Ltd v Bajrang Alloys Ltd*² are unequivocal that there is no question of grant of *post facto* leave in those circumstances. The earlier view expressed by a Single Judge that a Plaint cannot be presented to the authorised officer without prior leave under Clause XII of the Letters Patent has been held by both Division Benches as being incorrect. In fact, in *Caribjet Inc*, the Division Bench of AP Shah & SJ Vazifdar, JJ (as they then were) in terms held that earlier decisions of Single Judges holding that leave was necessary before presentation to the authorised officer were decisions *per incurium*.

3. In paragraph 36 of the present Plaint, there is a categorical statement that with leave granted under Clause XII of the Letters Patent this Court would have jurisdiction because a material part of the cause of action has arisen in Bombay, although Defendants Nos. 2 and 3 are outside Mumbai.

1 2005 (3) BomCR 94.

2 AIR 2008 Bom 88.

4. Hence there is no impediment to the grant of leave.
5. Leave granted. The Petition is disposed of in these terms.

(G. S. PATEL, J.)