

For Petitioner : Mr.R.Neethi Perumal

**ORDER**

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 21.07.2015 in I.A.No.98/2013 in O.S.No.148/2011 on the file of the District Munsif at Tambaram.

2. The petitioner are defendants and the respondents are plaintiffs in the suit in O.S.No.148 of 2011 on the file of the District Munsif Court, Tambaram. The respondents filed the above suit for declaration to declare that the agreement dated 10.12.2010 entered between the 1<sup>st</sup> petitioner and the petitioners 2 to 5 as null and void, unenforceable, ineffective and not binding upon the respondents. The petitioners 2, 3 and 4 filed written statement on 19.07.2012 and also filed I.A.No.98 of 2013 on 14.02.2013 to reject the plaint filed by the respondents in O.S.No.148 of 2011 filed under Order VII Rule 11 CPC.

3. According to the petitioners 2, 3 and 4, the respondents developed a software product named after "GINGER" for the purpose of communicating simultaneously in multiple modes, such as video conferencing, video calling, instant messaging, etc., for use in Mobile

Phones and Personal Computers. The 1<sup>st</sup> petitioner and the respondents negotiated for marketing the said business. Number of negotiations were held at Belgium. All the respondents have participated in the negotiations and the terms were agreed upon. The respondents 1 to 3 authorised the first petitioner to act on their behalf and the first petitioner signed the agreement on 10.12.2010 on behalf of all respondents. The respondents did not comply with the terms of the agreement and petitioners initiated legal proceedings in Commercial Court in Belgium and the said Court passed judgment on 03.06.2011 and the same is binding on the respondents. No cause of action has arisen within the jurisdiction of Sub Court, Tambaram and to create cause of action, the respondents 1 to 3 have made the first petitioner as first defendant in the suit. The suit is hit by principles of resjudicata in view of the judgment of Belgium Court.

4. The respondents 1 to 3 filed counter affidavit and submitted that when the negotiations are going on, before arriving conclusion of the same, the first petitioner, without any consent and authority from the respondents, had signed the agreement dated 10.12.2010. Even though the respondents 1 to 3 are shown as parties to the agreement,

dated 10.12.2010, they did not sign the same and is not binding on them. They came to know the same only when the first petitioner handed over the copy of the said agreement to the respondents at East Tambaram. When the respondents contacted the petitioners 2 to 4, they informed by e-mail dated 06.01.2011 and admitted the illegality of agreement. A part of cause of action has arisen in East Tambaram when the agreement was handed over to the respondents by first petitioner and on 06.01.2011 when they received the e-mail from the petitioners 2 to 5. In view of the same, Sub Court, Tambaram has jurisdiction to entertain the suit.

5. The learned Judge, considering the materials on record, averments in the plaint, documents filed alongwith the plaint and e-mail dated 06.01.2011, dismissed the application filed by the petitioners, under Order VII Rule 11 CPC.

6. Against the order of dismissal dated 21.07.2015 made in I.A.No.98 of 2013 in O.S.No.148 of 2011, the petitioners have come up with the present Civil Revision Petition.

7. The learned counsel for the petitioners submitted that no cause of action has arisen within the jurisdiction of Sub Court, Tambaram and entire cause of action has arisen only in Belgium. The terms and conditions were agreed and the respondents 1 to 3 signed Memorandum of Understanding dated 02.03.2010 and the same was accepted by all the parties in Belgium. The learned Judge dismissed the application only on the ground that Document No.2 shows that the respondents never signed the agreement which they are seeking to declare as null and void and failed to see that the respondents filed only a copy of email but did not file the original e-mail for the Court to consider the same. The learned Judge did not examine the plaint in entirety and did not examine the cause of action for the suit. The learned Judge failed to see that the respondents, in collusion with the first petitioner, making him as first defendant, had filed the suit before Sub Court, Tambaram where no cause of action has arisen.

8. Heard the learned counsel for the petitioners and perused the materials available on record.

9. The plaint can be rejected on the ground mentioned under

Order VII Rule 11 CPC. One of the ground is that when plaint discloses no cause of action, the court can reject the plaint. Similarly, when the suit is barred by any law, the plaint can be rejected. In the present case, the petitioners are seeking to reject the plaint on the ground that the entire cause of action has arisen within the jurisdiction of Court in Belgium and no cause of action has arisen within the jurisdiction of Sub Court, Tambaram and the suit is hit by principles of resjudicata as the petitioners have obtained a decree from a competent court in Belgium and it is binding on the respondents. While considering the application filed under Order VII Rule 11 CPC for rejection of plaint, the Court has to consider only the averments in the plaint and documents filed alongwith the plaint. The averments in the written statement, the documents relied on by the defendant or the contention, cannot be taken into consideration at this stage. The question of resjudicata will arise only when the same issue has been decided on merits between the same parties. In the present case, admittedly, the decree passed by the Commercial Court, Belgium is exparte as the respondent did not contest the case. The said order is not on merits and therefore the claim of the petitioners that the suit is hit by principles of resjudicata is without any merits.

10. As far as cause of action is concerned, the respondents, in Para 18 of the plaint have stated that they came to know about the illegal agreement dated 10.12.2010 only when the first petitioner handed over the same at their residence at Tambaram and when they received the e-mail dated 06.01.2011, wherein the petitioners have admitted the illegality of agreement and where the first petitioner is residing at Tambaram. Whether the cause of action as alleged by the respondents have arisen giving the jurisdiction to the Court at Tambaram or not can be decided only by appreciating the evidence let in by the parties during the trial. The cause of action as mentioned in Para 18 of the plaint is part of cause of action or not can be decided only after completion of trial. The learned Judge has considered all the above facts and dismissed the application filed under Order VII Rule 11 CPCP. There is no illegality or irregularity in the impugned order impugned passed by the learned Judge, warranting interference by this Court.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

28.06.2017

Speaking/Non-speaking order  
Index : Yes  
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V.M.VELUMANI, J.

rgr

To

The District Munsif,  
Tambaram.

C.R.P.(PD)No.1797 of 2017

28-06-2017

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