

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION NO.4 OF 2018

M/s.APL (India) Pvt. Ltd & anr. ... Applicants

Vs.

M/s.VHCL Industries Ltd. & Ors. ... Respondents

Ms.Damayanti Sen i/b Bose & Mitra & Co. for the Applicants
Ms.Deepa Hate i/b Gajria & Co. for Respondent No.2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 25, 2018**

P.C. :

1. Learned Counsel for respondent No.2 is present and submits that respondent No.2 is not a party to the suit No.3168 of 2014 filed by respondent No.1 herein for damages before the City Civil Court.
2. None appears for respondent No.1. Pursuant to the order dated 22.2.2018, time was given to respondent No.1 to file reply.
3. Pursuant to the order dated 26.3.2018, this Court had granted time to respondent No.1 by way of last chance to file reply. Today, when the matter is called out, none is present for respondent No.1.

4. By this application, it is submitted that this application u/s 24 of the Civil Procedure Code and also under Clause XIII of the Bombay High Court (Letters Patent) Act, 1866 and in view of the provisions of Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015, the applicants, who are the plaintiffs, pray that the Suit No.3168 of 2014 filed by respondent No.1 before the Bombay City Civil Court to this High Court where the applicants have filed Commercial Suit No.72 of 2017, for damages and that both the suit be clubbed and tried together.

5. Suit No.3168 of 2014 is filed by the present respondent No.1 before the City Civil Court, Mumbai claiming damages of Rs.42,49,770/-. Suit No.72 of 2017 is filed by the present applicants against respondent No.1, where respondent No.1 is the defendant No.1 and respondent Nos.2 and 3 are the defendant Nos.2 and 3. The suit is filed for damages of Rs.29,05,06,723/- with interest and also for indemnity. The learned Counsel for the applicant submits that both the suit are for damages and in respect of one and the same transaction where the applicant / company is in the business of transporting goods through containers and

respondent No.1 company is in the business of import and export and the claims are in respect of the same transaction where the cause of action has arisen in both the Suits in September, 2013, which initially started in May, 2013.

6. Considered the complaints in both the suits. As both the parties are the same and the issues involved in both the suits are identical and the same, there is a possibility of passing conflicting orders by two different Courts having original jurisdiction. Thus, in view of the uncontroverted submissions, the Suit filed before the City Civil Court i.e., Suit No.3168 of 2014 is hereby transferred to the High Court, where the Commercial Suit No.72 of 2017 is pending and both the suits are hereby clubbed together.

7. Miscellaneous Civil Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)