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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO. 241 OF 2018
IN
LEAVE PETITION NO. 259 OF 2017
IN
COMMERCIAL SUIT NO. 789 OF 2017**

Prescience Techno Pvt Ltd (PTPL)	...Applicant
<i>In the matter between</i>	
Anchor Offshore Services Ltd	...Petitioner
<i>Versus</i>	
Prescience Techno Pvt Ltd (PTPL)	...Defendant

Ms Alisha Lambay, *i/b Lambay & Company, for the Petitioner.*
Mr Suhas Joshi, *i/b Legal Logic Consulting, for the Applicant /*
Defendant.

CORAM: G.S. PATEL, J
DATED: 15th June 2018

PC:-

1. The application is by the Defendant for revocation of leave granted under Clause XII of the Letters Patent (KK Tated J) on 21st August 2017. That order reads thus:

. Heard learned Counsel for Petitioner.

2. The learned Counsel for Petitioner submits **that the entire cause of action is arising within the jurisdiction of this Court except the Defendants have their office at Calcutta.** To that effect he has made averments in Para Nos. 1 and 2 of the Petition.

3. Considering the submission made by the learned Counsel for Petitioner and the averments made in Para Nos. 1 and 2 of the Petition, I am satisfied that Petitioner has made out the case for allowing this Petition. Hence, the following order.

ORDER

(a) Petition is allowed in terms of prayer clause – (a) which read thus:-

“That leave under Clause XII of the Letters Patent be granted to the Petitioner to file the aforesaid suit in this Hon’ble Court against Prescience Techno Pvt Ltd (PTPL).”

(b) Petition stand disposed of accordingly.

(Emphasis added)

2. The emphasized portion above shows that the Court proceeded on the footing that the only reason required for grant of leave was that the Defendants were outside the jurisdiction of this Court and were in Calcutta, while the *entire* cause of action arose with the jurisdiction of this Court.

3. Clause XII of the Letters Patent reads thus:

12. Original jurisdiction as to Suits.– And we do further ordain that the said High Court of Judicature at Madras,

[Fort William in Bengal], [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 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 Madras, [Bombay], [Calcutta], in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees.

(Emphasis added)

4. The clause contemplates different situations and different categories of cases. Admittedly, this is not a suit for land or other immovable property, so that portion of Clause XII does not concern us. We are concerned with the remaining portion i.e. “all other cases”, that is to say cases other than those for land or immovable property. The present case would fall in that category. In such “other cases” if the entire cause of action has arisen within the jurisdiction of this Court, then this Court has the jurisdiction to entertain the Suit and no question of seeking leave then arises. Leave is required where the cause of action arises partly in the jurisdiction of the Court, and that is the plain meaning of the emphasized phrase in the extract above. In other words if, as the

order of 21st August 2017 held, the entire cause of action had arisen within the jurisdiction of this Court, then there was no question of any leave even being necessary. That leave became necessary because the cause of action was partly within the jurisdiction of this Court. If no part of the cause of action arises within the jurisdiction of this Court — as the present Defendants allege — *and* the Defendants are also outside the jurisdiction of the Court, then this Court has no jurisdiction and leave cannot be granted. For leave to be necessary, and as a condition precedent to its grant, at least a part of the cause of action must be shown to have arisen within the jurisdiction of this Court.

5. The pleading however in the Clause XII Petition was *not* that the entire cause of action had arisen within the jurisdiction of this Court. I have seen the Petition itself and it clearly states in paragraph 2 that not only do the Defendants have their office in Calcutta but that a *part* of the cause of action (and not the whole of it) has arisen in Mumbai. It is true that the Clause XII Petition does not set out the body of the plaint or particulars of the cause of action, but these can be gauged from the plaint itself. The suit is for recovery of an excess amount that the Plaintiff say they paid the Defendants under various work orders as also certain further amounts. In brief, the Plaintiffs were contracted to carry out some work in relation to the ship building by a third party and these works were to be executed in Kolkata. The Plaintiffs in Mumbai placed an order on the Defendants in Kolkata to provide, as the plaint says, support for the execution by the Plaintiffs of some of their obligations under their contract with the third party. The Plaintiffs made periodic payments to the Defendants. It seems from invoices

shown to me today that those payments were made in Kolkata although the Plaintiffs made those payments from Mumbai. There are demand notices and letters from the Plaintiffs in regard to the case of alleged over payment and the claim for other amounts. These demands were also made from Mumbai as is evident from the correspondence including e-mail correspondence annexed to the Plaint. The letter at Exhibit "D" at page 194 from the Plaintiff requests a meeting to discuss the claim and various issues raised by the Plaintiff. It was sent from Mumbai. Exhibit "I-6" at page 216 is the letter in which the Plaintiffs in Mumbai made their claim of excess payments about Rs. 43 lakhs and requested a meeting in Mumbai. The purchase orders were also issued from Mumbai and although it may not be correct to say that the contracts were therefore "made" in Mumbai, it is also not possible to hold that *no* part of the cause of action arose in Mumbai. For instance had the Defendants accepted that on a reconciliation of accounts *inter se* some amount was repayable to the Plaintiffs, that repayment would have had to be made in Mumbai.

6. It is equally true that the Plaintiffs ought to have approached the Court with an application for Speaking to the Minutes to correct only a few words in paragraph 2 of the order of 21st August 2017 i.e. to say that a *part of the cause of action had arisen* within the jurisdiction of this Court instead of the phrase used, viz., that *the entire cause of action* had arisen within jurisdiction of this Court. Having regard to an unambiguous statement in the Leave Petition itself, it seems to me that what is noted in paragraph 2, though uncorrected, could only have been an inadvertent error or a typographical error on the part of the Court, for the simple reason

that on an application that itself said that only a *part* of the cause of action had arisen in Mumbai, neither could Counsel have contended, nor the Court noted a submission that the *entire* cause of action had arisen in Mumbai. As it happens, I find that the entire cause of action did not arise within the jurisdiction of this Court; but that a part of the cause of action can be said to have so arisen within this Court's jurisdiction.

7. I do not believe that there is sufficient ground for the revocation of leave.

8. The Chamber Summons is dismissed. No order as to costs.

(G. S. PATEL, J)