

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-03-2018

CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.2744 of 2016

1.M/s.Lucas TVS Ltd.,
Represented by Power Agent/Subrogee,
M/s.United India Insurance Co. Ltd.,
By their Principal Officer/Asst.
Divisional Manager, V.Padmavathy

2.M/s.United India Insurance Co. Ltd.,
By their Principal Officer/Asst.
Divisional Manager, V.Padmavathy

... Appellants

Vs

M/s.TVS Logistics Services Ltd.,
Registered Office at No.190, Defence Officers Colony,
Ekkattuthangal Off Nandambakkam, Chennai 97,
Branch Office at No.58, Eldams Road,
Teynampet, Chennai 18. ... Respondent

PRAYER: Civil Miscellaneous Appeal filed against the order dated 16.02.2016 passed in O.S.No.2863 of 2011 by the VI Additional District City Civil Judge, Chennai.

For Appellant : Mr.N.Venkat Raman
for M/s.Nageswaran

For Respondent : Mr.T.K.Baskar

J U D G M E N T

The right of action or cause of action is the main issue in this case. The plaintiffs are the appellants, who are aggrieved by the order passed by the trial Court, deciding the preliminary issue that there is no cause of action for the suit and returned the plaint to be presented before the proper forum, have come before this Court.

2.The facts of the case are as follow:

The 1st appellant consigned Automobile components from

Padi to their consignees viz., M/s.Tata Motors Ltd., and Tata Cummins Ltd., at Jamshedpur and Jharkhand respectively through invoices dated 20.03.2018. The said consignment was entrusted to the respondent carrier with condition of safe carriage and delivery to the consignee at Jamshedpur and Jharkhand respectively. The consignment was insured with the 2nd appellant by the 1st appellant. While transporting the consignment, an accident occurred enroute at Andhra Pradesh and consequently, the goods in damaged condition were delivered to the consignees. The surveyor assessed the loss suffered by the 1st appellant and determined at Rs.20,35,793/-. After issuing statutory notice for loss, both the appellants filed Suit before the City Civil Court at Chennai, against the respondent/transporter. In the said suit only, an application has been taken out (i.e., I.A.No.10903 of 2014) to decide about the territorial jurisdiction of the Court to try the suit as a preliminary issue. After evidence, the trial Court came to the conclusion that the Court at Chennai has got no jurisdiction and passed an order dated 11.10.2014, allowing the said application, which is challenged before this Court.

3.Mr.R.Venkat Raman, learned counsel appearing for the appellants/plaintiffs would submit that cause of action for the Suit arose at Chennai, where the Insurance policy was taken by the 1st appellant from the 2nd appellant and where the letter of subrogation was executed by the 1st appellant to the 2nd appellant. Moreover, the branch office of the respondent is situated at Ekkatuthangal and therefore, the Suit is maintainable for recovery of loss, due to the damages caused to the consigned goods. He would further submit that the Suit has been filed as early as in the year 2011, written statement has been filed, issues have been framed and thereafter only an application has been filed questioning the jurisdiction. At this stage, there is no necessity for deciding the preliminarily issue and the matter could be disposed of finally, wherein the jurisdiction point could also be dealt with as one of the issues. He would rely upon the judgments in Patel Roadways Ltd., Vs. Indo Matsushita Applicants C. Ltd., reported in 2000 (2) LW 751, Bond Food Products Private Ltd., and another vs. M/s.Planters Airways Ltd., reported in 2004 (2) LW 663 and two single judge judgments in A.Abdul Kareem Vs. National Insurance Co. ltd., Coimbatore, reported in 1996 LW 709, M/s.Ravichandran Transports Vs. United India Insurance Company Limited, reported in 2002 (LW) 770. By relying upon those judgments he would submit that the cause of action arose partly as far as Section 20(C) of the CPC is concerned. Hence, he seeks to set aside the order passed by the trial Court.

4.On the other hand, Mr.T.K.Baskar, learned counsel appearing for the respondent would submit that other than the

two documents, which have been executed, viz., the insurance policy and letter of subrogation, there is nothing for filing the Suit before this Court. He would submit that in both the documents, the respondent is not a party and therefore, those documents cannot give cause of action to file the suit against the respondent. He would further submit that the 1st appellant company's head office is at Madurai and goods were consigned at Padi (Chennai) and they were to be delivered at Jamshedpur and the accident occurred at Andhra Pradesh and therefore, absolutely there is no cause of action. He would rely upon the judgment of the Hon'ble Supreme Court in A.B.C. Laminart Pvt. Ltd., and another Vs. A.P.Agencies, Salem, reported in 1989 (2) SCC 163 and another judgment in South East Asia Shipping Co. Ltd., Vs. Nav Bharat Enterprises Pvt. Ltd., and another reported in 1996 (3) SCC 443 and another judgment of Hon'ble Justice M.M.Sundresh, in DRS Logistics Private Limited Vs. Blue Star Limited and Ors. reported in MANU/TN/1740/2017. Relying upon the aforesaid judgments, the learned counsel for the respondent would submit that the trial Court rightly returned the plaint to be presented before proper forum. As there is no cause of action, he seeks dismissal of the appeal.

5.This Court has considered the rival contentions. There is no doubt with regard to consignment of goods from Padi to Jamshedpur. Admittedly, Padi is located outside Chennai. Though, the 1st appellant company is located at Chennai, the cause of action for the suit starts from the consignment of goods from Padi to Jamshedpur and enroute, at Andhra Pradesh the accident occurred and goods got damaged and damaged goods were delivered at Jamshedpur and there are material factors, which would constitute cause of action. Merely because the plaintiffs' office is situated at Chennai, that will not give rise to cause of action. As rightly pointed out the cause of right is a bundle of facts and each and every fact cannot be dissected and cannot be take as a cause of action. No part of cause of action had taken place at Chennai to file the Suit. As a whole, the cause of action has to be decided as pointed out by the Apex Court in A.B.C. Laminart Pvt. Ltd., and another Vs. A.P. Agencies, Salem, reported in 1989 (2) SCC 163, paragraph 12 is usefully extracted as follows:

"A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possible accrue. It is not limited to the actual infringement of the right sued on but includes all the

material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment much be part of the cause of action. But it has not relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

From the above it is clear that the cause of action must include some act done by the defendant to give rise to cause of action. In this case, there is no act done by the respondent/defendant at Chennai to give rise to cause of action. The respondent is in no way connected to the Chennai jurisdiction, as the consignment was sent from Padi to Jamshedpur and Jharkhand and delivered at the said places. There is no cause for the respondent either to cross Chennai or to do any act at Chennai, which would give rise to cause of action for the appellants to file the Suit. Other judgment of the Hon'ble Supreme Court in South East Asia Shipping Co. Ltd., Vs. Nav Bharat Enterprises Pvt. Ltd., and another reported in 1996 (3) SCC 443, reads as follows:

"It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a Court of law. The cause of action means, therefore, every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. In view of the admitted position that contract was executed in Bombay. i.e., within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done within the jurisdiction of the Bombay High Court; merely because bank guarantee was executed at Delhi and transmitted for performance to Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original side of the Delhi High Court. The contention that the Division Bench was right in its finding and that since the bank guarantee was executed and liability was enforced from the bank at Delhi, the Court got jurisdiction, cannot be sustained."

6. In view of the above said judgments, the question of considering two judgments of single Judge and the other

judgments of the Division Bench does not arise. No doubt the Division Bench subsequently dealt with the case under Crimes act. In those cases also, suits have been filed based on the letter of subrogation and the two Division Bench judgments in 2000 (2) LW 751 and 2004 (2) LW 663 specifically stated that the execution of letter of subrogation would give rise to cause of action. Paragraph 13 of 2000 (2) LW 751 is extracted as follows:

"13. We should not lose sight of the subrogation agreement. The learned single Judge has considered this aspect and held that the defendant has not proved that the subrogation agreement took place either at Cholvaram or at Bombay, otherwise meaning that the subrogation was at Madras. A reference to pages 55 to 65 contain in the typed set viz., letter of subrogation would show that the letter of subrogation was executed at Madras. The last portion of the agreement reads thus:

"In witness of we have executed this document and have set our hands and seal hereunto to Madras this 25th day of 1991" "

Paragraph 14.10 of 2004 (2) LW 663 is extracted as follows:

"In its literal sense, subrogation is the substitution of one person for another. The doctrine of subrogation confers upon the insurer the right to receive the benefit of such rights and remedies as the assured has against third parties in regard to the loss to the extent that the insurer has indemnified the loss and made it good. The insurer is, therefore, entitled to exercise whatever rights the assured possess to recover to that extent compensation for the loss, but it must do so in the name of the assured, vide Oberai Forwarding Agency v. New India Assurance Co. Ltd., (2000) 2 SCC 407"

7. Further, what has to be seen in the Insurance Policy as well as letter of subrogation, executed between the 1st appellant and the 2nd appellant, is that the respondent is a foreigner to the said document. The two documents which the appellants relied upon cannot bind the respondent and therefore, employing those documents, the suit cannot be filed before the Civil Court at Chennai. In the above documents, if the respondent is a party, then definitely it would give rise to the cause of action as a party and the respondent would be bound by that. Therefore, the two documents cannot be relied upon by the appellants to file the suit before the Civil Court at Chennai. As rightly pointed out by the Hon'ble Justice.M.M.Sundresh in the reported judgment in Manu/TN1740/2017, documents merely give a right to the 2nd appellant to step into the shoes of the 1st

appellant to file a Suit. The dictum laid down by Justice. M.M.Sundresh is squarely applicable to the facts of the present case. By the said documents only, right of action is given to the 2nd appellant to initiate or prosecute the suit against the respondent and that right cannot be exercised at Chennai, where there is no jurisdiction at all. Therefore, there is no territorial jurisdiction for the claim of the appellants to be filed before the City Civil Court at Chennai.

8.The right to sue is always available and it should be exercised before the forum, where it has cause of action and the appellants cannot make use of the policy and the letter of subrogation entered between themselves to sue a third party like the respondent. Therefore, the order of the trial Court is sustainable. Appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

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To

The VI Additional District Judge,
City Civil Court,
Chennai.

+lcc to Mr.Nageswaran & Narichanio, Advocate SR.No.20136

+lcc to Mr.T.K.Bhaskar, Advocate SR.No.20048

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C.M.A.No.2744 of 2016

CP(CO)

GN(29/06/2018)

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