

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 28TH DAY OF AUGUST 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No. 4810 of 2017
in
C.S.No. 369 of 2017

Messrs SRL. Advisors LLP
Rep.by its Designated Partner Ms.Shaily Lal
Flat No.5 & 6, 2nd Floor,
Ajit Arcade
Kailash Colony,
Lala Lajpat Rai Marg
New Delhi 110 048. :Plaintiff

VS

Messrs Renault Nissan Automotive India Pvt. Ltd.,
Having its Corporate Office at:
ASV Ramana Towers, 3rd Floor,
No.37 & 38, Venkatnarayana Road,
T.Nagar, Chennai 600 017. :Defendant

A.No. 4810 of 2017:

Messrs Renault Nissan Automotive India Pvt. Ltd.,
Having its Corporate Office at:
ASV Ramana Towers, 3rd Floor,
No.37 & 38, Venkatnarayana Road,
T.Nagar, Chennai 600 017. :Applicant/Defendant

-Vs.-

Messrs SRL. Advisors LLP
Rep.by its Designated Partner Ms.Shaily Lal
Flat No.5 & 6, 2nd Floor,
Ajit Arcade
Kailash Colony,
Lala Lajpat Rai Marg
New Delhi 110 048. :Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased
to reject the plaint in C.S.No.369 of 2017 under Order VII
Rule 11 of the CPC.

This Application coming on this day before this court for hearing the court made the following order:-

There is a sole plaintiff and a lone defendant in the main suit. Lone defendant in the main suit is the applicant in the instant application and the sole plaintiff in the main suit is the lone respondent in the instant application.

2. For the sake of convenience and clarity, parties in this application are referred to by their respective ranks in the main suit.

3. Instant application has been taken out by defendant under Order VII Rule 11 of 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity).

4. Instant reject the plaint application is predicated on the primary ground that the plaintiff ought to have obtained leave to sue under Clause 12 of Letters Patent. It is also predicated on the ground that the plaintiff not having obtained leave to sue is fatal to this suit and therefore, the plaint is liable to be rejected, as being barred by Clause 12 of Letters Patent.

5. Before I advert to the merits of this application, it may be necessary to set out a thumb nail sketch of the

facts in the main suit for the limited purpose of appreciating this order.

6. The case of the plaintiff is that in the usual course of business, defendant company had sought the services of the plaintiff in respect of accounting related services being Reconciliation and Resolution of Accounts payable, more specifically relating to Vendors on an ongoing basis and for this purpose entered into an agreement dated 02.11.2012. To be noted, there are two sets of agreements of even date and they are plaint documents 6 and 7. While one agreement is styled as agreement between plaintiff and defendant relating to Vendors, the other agreement is styled as agreement between plaintiff and defendant relating to tax support. Obviously, these agreements constitute the fulcrum of this lis.

7. It is the case of the plaintiff that they have rendered aforesaid accounting services, but the defendant has not paid for their services. On this basis, suit has been laid claiming Rs.6,96,05,926/-. Suffice to say that this suit has been laid claiming over Rs.6.96 crores.

8. As mentioned supra, considering the very narrow scope of this application, it would suffice to set out a thumb nail sketch of facts in the main suit, which I have done.

9. Reverting to merits of this application, as alluded to supra, the primary ground on which, the application turns is that the defendant, at no point of time, had a Corporate office at ASV Ramana Towers, 3rd Floor, Nos.37 and 38, Venkatnarayana Road, T.Nagar, Chennai - 600 017. To be noted, this is the address of the defendant as given in the short and long cause titles in the plaint.

10. As mentioned supra, it is the case of the defendant that the plaintiff ought to have obtained leave to sue as only a part of the cause of action has arisen within the territorial jurisdiction of this Court.

11. Today, Mr.Kalyan Jhabakh, learned counsel of M/s.Surana and Surana [Law Firm] is before this Commercial Division on behalf of defendant (applicant in this application) and Mr.K.Harishankar, learned counsel on record is before this Commercial Division on behalf of plaintiff (sole respondent in the instant application). As mentioned supra, parties are being referred to by their respective ranks in the main suit.

12. With regard to Clause 12 of Letters Patent and the language in which it is couched, it is not in dispute before me that this case does not pertain to a suit for

land or other immovable property. In other words, this is a suit, which will fall under the expression 'in all other cases' occurring in Clause 12 of Letter Patent. In a suit, which falls under this category, 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 territorial jurisdiction of this Court, the suit can be laid. Further Clause 12 also goes on to say that if the defendant at the time of commencement of the suit shall dwell or carry on business or personally work for gain within the territorial jurisdiction of this Court, such leave is not necessary. In other words, in cases other than suits for land, when only part of cause of action has arisen within the territorial jurisdiction of this Court leave is imperative if the defendant is outside the territorial jurisdiction of this Court. There is no dispute or disagreement before me regarding this interpretation of Clause 12 of Letters Patent.

13. In the light of the aforesaid undisputed interpretation of Clause 12, the only question that falls for consideration for deciding the instant application is whether the defendant was carrying on business/working for gain at the aforesaid T.Nagar address. Further to be noted, it is not in dispute that the aforesaid T.Nagar address falls within the territorial jurisdiction of this

Court. From the suit file placed before me, it is clear that the suit was presented on 21.04.2017. Therefore, the question is whether the defendant was carrying on business at the aforesaid T.Nagar address on 21.04.2017. Before I embark upon the exercise of finding an answer to the aforesaid question, it may be necessary to set out with clarity the well established and well settled principle for deciding an application for rejection of plaint under Order VII Rule 11 of C.P.C. There can be no dispute or disagreement that such an application for rejection of plaint has to necessarily be tested on a demurrer. In fact, it has to be tested on an extreme demurrer. To elaborate, it has to be tested on the uncontraverted averments in the plaint and at best admitted plaint documents if any. In other words, no documents outside of the uncontraverted averments in the plaint and admitted plaint documents if any can be looked into. As mentioned supra, it has to be tested on a demurrer meaning it should be tested assuming plaint averments to be true and correct. This position of law has been reiterated and repeatedly laid down in a line of authorities and it would suffice to refer to the recent judgment of the Supreme Court in ***Kuldeep Singh Pathania V. Bikram Singh Jaryal*** reported in **(2017) 5 SCC 345**, where Hon'ble Supreme Court highlighted the well settled ratio that in Order VII Rule 11 of C.P.C., the Court should only look at the plaint and nothing else.

It was specifically laid down by the Supreme Court that the Court can only see whether the plaint or rather the pleadings of the plaintiff constitute a cause of action. Pleadings in the sense, where even after the stage of written statement and if there is a replication filed in a given situation, the same can also be looked into to see if there is any admission. In other words, under Order VII Rule 11 of C.P.C., the Court has to take a decision looking at the pleadings of the plaintiff.

14. Therefore, I tested this application by applying the aforesaid principle laid down by the Supreme Court in Kuldeep Singh's case supra.

15. Prior to the aforesaid agreements dated 02.11.2012 (two agreements) which I had described as constituting fulcrum of this lis, there was an agreement dated 29.10.2012 between the plaintiff and the defendant relating to manpower agreement. This agreement dated 29.10.2012 also forms part of this lis and that has been filed as Plaint Document No.5 along with the plaint. This is an admitted document, as the same was pressed into service even in the hearing of this application today. Emboldened by this agreement (plaint document No.5) being pressed into service by learned counsel for defendant in the hearing of this application today, learned counsel for plaintiff submitted that it becomes an admitted document and

therefore, referred to Plaint Document No.5. Taking me through plaint Document No.5, learned counsel drew my attention to Clause 14 of the said document, wherein it has been clearly covenanted that the jurisdiction will be in Chennai. The obtaining position is clear as daylight that parties by agreement cannot confer jurisdiction on a Court which otherwise does not have jurisdiction and the very fact that in an admitted document, the parties have agreed that jurisdiction qua this Commercial Division would be Chennai necessarily means that there can be no dispute or disagreement about cause of action having arisen in Chennai. However, the crucial question is whether the defendant was carrying on business at the aforesaid T.Nagar address on the date of presentation of this suit i.e., on 21.04.2017. For this purpose, reliance was placed on termination notice from the plaintiff to the defendant. This termination notice is dated 24.07.2014 and the same has been filed as plaint document No.11. A perusal of the envelope in which termination notice was sent reveals that the notice has been sent from the above said T.Nagar address. Termination notice is also an admitted document. However, there is some inter-leniation in the envelope and this is pointed out by learned counsel for defendant.

16. Considering that this is a rejection of plaint application, it may not be possible to embark on those

issues. More importantly, as screen shot of the defendant's office address taken from a commercial directory, which goes by the name <Sulekha.com> was also placed before this Commercial Division. The same shows T.Nagar address of the defendant. This does not have a date and this may have to be tested only in trial. However, this, unlike the termination notice, is not a plaint document and therefore applying the principle to test the reject the plaint application, it may not be absolutely safe to look into the document to decide the reject the plaint application one way or the other. Therefore, the safest course is to look into the averments in the plaint and that takes me to the cause of action paragraph of the plaint at paragraph 20 of the plaint. Relevant portion of the cause of action paragraph reads as follows:

'20. The cause of action for the suit arose at Chennai within the jurisdiction of the Hon'ble Court where the defendant carries on business and has its corporate office at T.Nagar, where on various dates the agreements between the parties were extended and the agreement stipulated that they were subject to jurisdiction of courts within the city of Chennai.....'

17. Therefore, there are positive averments in the plaint that the cause of action for the suit arose within

the territorial jurisdiction of this Commercial Division in the aforesaid T.Nagar Corporate office. This averment is very specific and categoric in the cause of action paragraph. It has also been specifically averred that there is an agreement between the parties and it has been covenanted therein that lis if any, is subject to the jurisdiction of Courts in City of Chennai. I have already referred to Clause 14 in the man power agreement, which has been filed as plaint document No.5 and that is an admitted document.

18. Therefore, there is a positive averment in the plaint that the cause of action arose within the territorial jurisdiction of this Commercial Division and particularly it has arisen at the aforesaid T.Nagar office address of the defendant. What is cause of action is not defined in any statute. Therefore, in search of a definition or description of what is cause of action, one has to necessarily look at case laws, as it is not a term of art in any statute. Though there are long line of case laws in this regard, it would suffice to refer to **Nawal Kishore V. Union of India reported in (2014) 9 SCC 329**, where it was held that cause of action is a bundle of facts that plaintiff needs to prove so that the plaintiff can succeed. The aforesaid averments in the cause of action paragraph of the plaint, which have been extracted supra, have to be proved and if they are proved by the plaintiff,

the plaintiff is entitled to a decree.

19. In the light of the narrative supra it may be appropriate to leave the issue i.e., the issue as to whether the defendant was actually carrying on business at the aforesaid T.Nagar address on the date of presentation of plaint i.e., 21.04.2017 to be decided in the trial after oral and documentary evidence being let-in.

20. Leaving this question open, it may be appropriate to dismiss this application.

21. Owing to all that have been set out supra, this application is dismissed. Though obvious, it is made clear that the dismissal of this reject the plaint application will not impede or come in the way of the defendant raising this very issue in the trial of the main suit about which I have alluded to supra.

22. Application is dismissed with the above caveat. In the facts and circumstances of the case and in the light of the trajectory of the hearing today, parties are left to bear their respective costs.

Sd/-M.S.J
28.08.2018

//Certified to be a true copy//

Dated this the day of 2018
JJ 17/12/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.