

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 06TH DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.4755 of 2018

in

A.No.2672 of 2017

in

C.S.No.399 of 2017

M/s.Acme Commodities Pvt. Ltd.,
No.10 (plot No.17),
Perumal Nagar First Street,
Nanganallur,
Chennai-600 061.
represented by its General Manager
(Administration & Commercial),
V.Sriraman

...Applicant/Plaintiff
(in A.No.2672 of 2017)

-vs-

1.The Oriental Insurance Co. Ltd.,
Regional Office,
UIL Building, Fourth Floor,
4, Esplanade,
Chennai-600 108.
represented by its Deputy General Manager,
Mr.Ajit Kumar

2.The Oriental Insurance Co. Ltd.,
Divisional Office,
173, J.N.Road,
Thiruvallur-602 001
represented by its Senior Divisional Manager,
Mrs.Karpaga Amudha

...Respondents/Defendants
(in A.No.2672 of 2017)

A.No.4755 of 2018

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UIL Building, Fourth Floor,
4, Esplanade,

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173, J.N.Road,
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...Applicants/Respondents/Defendants
VS

M/s.Acme Commodities Pvt. Ltd.,
No.10 (plot No.17),
Perumal Nagar First Street,
Nanganallur,
Chennai-600 061.
represented by its General Manager
(Administration & Commercials),
V.Sriraman

....Respondent/Applicant/Plaintiff

Application praying that this Hon'ble Court be
pleased to revoke the leave granted application No.2672 of
2017 on 27.04.2017.

These Applications coming on this day before this
court for hearing, the court made the following order:

This suit pertaining to an insurance claim arising
out of voyage of a Vessel which goes by the name 'MV
Grandway Star' (originally voyage was scheduled to be in
'M.V. Golden Endurance') from the Atlantic Coast of Guinea
Bissau Port to the Coromandel Coast of Tuticorin, ought not
to have been filed in this Court (incidentally and
ironically, this Court stands on the Coromandel coast) is
the prayer in the instant application, i.e., A.No.4755 of
2018. Technically speaking, i.e., in legal parlance, this
is an application to revoke the leave to sue granted by
this Court on 27.04.2017 in A.No.2672 of 2017.

2 There are two defendants in the main suit.

Defendants 1 and 2 are applicants 1 and 2 respectively in
the instant application. There is a sole plaintiff in the

main suit. The sole plaintiff in the main suit is the lone respondent in the instant application. The parties in the instant application are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3 Considering the scope of this application, a thumbnail sketch of facts will suffice.

4 Facts necessary for understanding and appreciating this order (as they unfurl from the pleadings and submissions before me) are that the plaintiff is in commodity trade, plaintiff entered into a contract with an entity having offices in Dubai and Singapore for purchase of dried raw cashew nuts in shell, plaintiff shipped the said consignment from Guinea Bissau Port, a Port in Western Africa to Tuticorin in India, Tamil Nadu, plaintiff took an insurance policy being Voyage policy dated 3.7.2014 for Rs.33 Crores for this shipment, the voyage ran into rough weather necessitating change of voyage, the voyage ultimately commenced on 09.10.2014 in the vessel M.V.Grandway Star from Guinea Bissau, reached Tuticorin on 05.11.2014, but there was loss / damage for the consignment, plaintiff raised a claim for such loss / damage, such insurance claim was repudiated / rejected by the insurance company, i.e., defendants amongst other dates on 25.1.2017, resulting in the instant suit against the insurance company being filed on 26.04.2017.

5 The journey of this suit that commenced on 26.04.2017 is now at a stage where pleadings have been completed (defendants have filed written statement). At this stage, defendants have filed the instant application with a prayer to revoke the leave to sue granted to the plaintiff vide order dated 27.04.2017 in A.No.2672 of 2017 at the time of inception of the suit.

instant revocation application is predicated is that no part of cause of action arose within the territorial jurisdiction of this court and therefore, leave deserves to be revoked. Elaborating on the submissions made by defendants in this application, it can be said that it is the specific case of the defendants that the voyage policy dated 03.07.2014 (hereinafter referred to as 'suit policy' for the sake of convenience and clarity) was issued only by second defendant and there is no dispute or disagreement that the second defendant is carrying on business outside the territorial jurisdiction of this Commercial Division.

7 Defendants also make specific reference to paragraphs 12, 13, 14, 22 and 23 of the plaint to demonstrate that the cause of action for this suit has arisen outside the territorial jurisdiction of this Commercial Division.

8 Before I advert to the response of the plaintiff to the aforesaid arguments put forth by the defendants in the instant application, it is necessary to have clarity on the basis of which this application is to be tested. In other words, the test which has to be applied for deciding this application has to be set out. An application of this nature has to necessarily be tested on the basis of uncontraverted averments in the plaint. In other words, this application has to be tested by reading the plaint without adding or subtracting to the same. To be very precise and to put it in the legal parlance, this application has to be tested on an extreme demurrer qua plaint averments. This principle has been very clearly laid down in a long line of authorities.

9 Two judgments which in my considered opinion are most relevant in this regard are ***Uttar Pradesh Cricket Association Vs. Board for Control of Cricket in India*** rendered by a Division Bench of our High Court reported in <https://hcservices.ecourts.gov.in/hcservices/> (2012) 5 MLJ 276 (DB) and ***Indian Mineral & Chemicals Co.***

Vs. Deutsche Bank reported in (2004) 12 SCC 376 rendered by a Two Judges Bench of Hon'ble Supreme Court.

10 In **Uttar Pradesh Cricket Association** case, a Division Bench of this Court has held that for testing an application of this nature the plaint is very important and the court need not go into the correctness of facts in the plaint. It was also held that revocation of leave cannot be justified on the ground that only a part of cause of action has arisen within the territorial jurisdiction of the court concerned.

11 In **Deutsche Bank** case, Hon'ble Supreme Court has held that a revocation of leave plea has to be ascertained by assuming the plaint averments to be true. It was also laid down by Hon'ble Supreme Court in **Deutsche Bank** case that questions which present difficulties, more particularly factual difficulties, cannot be dealt with in an application for revocation of leave under Clause 12 of Letters Patent. Therefore, this application has to be tested by perusing uncontraverted averments in the plaint as part of the exercise to search if any part of cause of action has arisen within the territorial jurisdiction of this Court.

12 Before looking at the response of the plaintiff, one more aspect of the matter needs to be looked into and that is to have clarity about what is 'cause of action'.

13 'Cause of action' has not been defined in 'The Code of Civil Procedure, 1908' ('CPC' for brevity). For that matter, it has not been defined in any statute. It is not a term of art anywhere. Therefore, in search of an answer for what is 'cause of action', one has to look at the long line of authorities / case laws in this regard. For the purpose of this case, I find that two judgments in this regard are relevant. One is a Division Bench judgment

Ltd., reported in (2014) 4 MLJ 1. In this case law, particularly in paragraph 29, it has been held that cause of action would necessarily mean the circumstances forming infraction of the right or immediate occasion for action. It has also been laid down that whether cause of action has arisen at a given place is a question of fact. To put it pithily, cause of action means that bundle of facts which give rise to a right or liability.

14 Another case law in this regard is **Nawal Kishore Sharma v. Union of India** reported in (2014) 9 SCC 329, where Two Judges Bench of Hon'ble Supreme Court held that cause of action is a bundle of facts that plaintiff needs to prove to succeed in the suit.

15 It is also well settled that cause of action may not necessarily mean every facts in the chain of facts, but it is those facts which have to necessarily be proved or in other words, those which are imperative that they are proved for plaintiff to be entitled to a decree.

16 Now that I have set out the test to be applied for determining this application, as also what is 'cause of action' as laid down in a long line of authorities, we can look at the submissions of the plaintiff.

17 Plaintiff contended that it is not their case that the entire cause of action has arisen within the territorial jurisdiction of this court. Plaintiff submits that a part of cause of action has arisen within the territorial jurisdiction of this Court. On this basis, the plaintiff submitted that a reference to various plaintiff paragraphs by defendants is of no avail as it is the plaintiff's specific case that a part of cause of action

has arisen within the territorial jurisdiction of this Court. On this basis, learned counsel for plaintiff referred to various paragraphs in the plaint. Learned counsel referred to paragraph 13 of the plaint where it has been averred that the plaintiff furnished all material information regarding Cargo voyage and vessel for consideration of the defendant much before the Cargo loading commenced at the Port of origin on 29.6.2014.

18 Learned counsel placed strong reliance on paragraphs 47 and 52 of the plaint which read as follows :

"47.As the situation became unbearable, the Plaintiff sent a legal notice on 04.10.2016 to the Defendants (Ex: P243-257) and then a complaint to the Insurance Regulatory Authority on 09.09.2016 seeking their intervention in the matter (Ex:P258-259). Finally, the Defendants, dashing the hopes of the Plaintiff, repudiated their claim through their letter dt.25.01.2017 on most frivolous and totally unsustainable grounds.

52.The Plaintiff was called for discussions by the 1st Defendant as follows :-

Date	Name of the person the Plaintiff met at the 1st Defendant Office
03.12.2014	Mr.Kohli, DGM, Mr.Varadharajan, RM, Mr.Gowrishankar, Dy.Mgr. Ms.Amudha, Sr.DM
11.03.2015	Mr.Gowrishanker, Dy.Mgr and Ms.Amudha, Sr.DM
24.06.2015	Mr.Ajit Kumar, DGM,

Date	Name of the person the Plaintiff met at the 1st Defendant Office
	Mr.Parthiban, RM & Ms.Amudha, Sr.DM
18.08.2016	Mr.Ajit Kumar, DGM, Mr.Parthiban, RM & Ms.Amudha, Sr.DM

19 With regard to paragraph 47, plaintiff's counsel contended that a letter dated 11.04.2017 vide which the insurance company reiterated its repudiation of the claim is one of the important parts of the fulcrum of this lis. It was pointed out that such reiteration of repudiation of plaintiff's claim is the basis for the suit. Therefore, this letter dated 11.04.2017 is a very vital aspect of cause of action in his say. On this basis, it was pointed out that a letter dated 25.1.2017 has been filed as plaint document No.37 along with plaint. More importantly, it was submitted that even after this document, plaintiff was pursuing with hope that defendant will reconsider the repudiation. In other words, plaintiff was actively pursuing the matter. Ultimately, the aforesaid letter dated 11.4.2017 was sent by defendants to plaintiff in which it was categorically stated that defendants reiterate their decision on 25.1.2017. This document / letter dated 11.4.2017 has been filed as plaint document No.38 along with the plaint. This document is as follows :



20 A perusal of the aforesaid letter / document reveals that it has been sent by defendant No.1 which is within the territorial jurisdiction of this Court. Moreover, it has been clearly mentioned that the first appellate authority in this regard is at Esplanade which is within the territorial jurisdiction of this Court.

21 Be that as it may, it was submitted that the plaintiff had several discussions with the first defendant prior to aforesaid 25.1.2017 / 11.4.2017 repudiation / reiteration and that all such discussions took place in the office of the first defendant which is admittedly

within the territorial jurisdiction of this Court / Commercial Division. According to plaint averments, there are at least four specific meetings that were held on 03.12.2014, 11.3.2015, 24.6.2015 and 18.8.2016. Learned counsel for plaintiff points out that details of these meetings with specific reference to the officers of the insurance company, who were present have been adumbrated with specificity in paragraph 52 of the plaint. To be noted, paragraph 52 of the plaint has been extracted supra. It is the specific case of learned counsel for plaintiff that it has been categorically averred in paragraph 52 that all the aforesaid four meetings took place in the office of the first defendant which is undisputedly within the territorial jurisdiction of this Court / Commercial Division.

22 This takes us to the cause of action paragraph in the plaint. Paragraph No.54 of the plaint is the cause of action paragraph. A perusal of the cause of action paragraph reveals that it will inter-alia be necessary for the plaintiff to prove the aforesaid documents dated 25.1.2017 / 11.4.2017 as well as meetings which took place in the office of the first defendant to be entitled to a decree. On this basis, it was submitted that a part of cause of action for the suit has arisen within the territorial jurisdiction of this Court.

23 Learned counsel for plaintiff pressed into service **Deutsche Bank** case. I have already referred to **Deutsche Bank** case supra with regard to how to test a revoke leave application. Learned counsel for plaintiff pressed into service this judgment and referred to paragraph 5 to say that when a part of cause of action has arisen within the territorial jurisdiction of this Court, the suit can be maintained by obtaining prior leave under Clause 12 of Letters Patent.

and another reported in **(2008) 1 SCC 618** was pressed into service and my attention was drawn to paragraphs 45 and 46 to say that territorial jurisdiction of this Court has to be ascertained on the basis of principles laid down in CPC.

25 Learned counsel also pressed into service a Division Bench judgment of Calcutta High Court being **Secretary of State Vs. Golabrai Paliram** reported in **1931 SCC OnLine Cal 88 : AIR 1932 Cal 146** and **Hajee Adam Abdul Shakoor Vs. Ali Mahomed Ebrahim Shakoor and others** reported in **44 CWN 460**. Division Bench judgment of Calcutta High Court was relied on to say that territorial jurisdiction should be raised by way of written statement and only in exceptional clear cases, recourse should be taken to revoke. **Hajee Adam Abdul Shakoor** case was also relied on for the same principle.

26 In the instant case, as already alluded to supra, defendants have completed pleadings by filing written statement and it is not in dispute that territorial jurisdiction issue has been raised by defendants in the written statement.

27 There is no difficulty in applying the principle laid down in the case laws pressed into service by learned counsel for plaintiffs.

28 Learned counsel for defendants pressed into service three case laws. The first case law is a judgment of a Division Bench of this Court reported in **AIR 1984 Mad 212** being **S.Nagaraj Vs. S.Govindaswamy and another**. This case law is for the principle that cause of action for the purpose of an application for revocation of leave should be ascertained from the averments in the plaint and not from the averments in the affidavit for revocation of leave. This principle / canonical rule has been followed and applied in the instant case as cause of action for the purpose of this leave revocation application has been tested only on the basis of plaint averments.

29 Second case law pressed into service is a judgment rendered by a learned Single Judge of Delhi High Court in **Hindustan Fertilizer Corporation Ltd. Vs. Great Eastern Shipping Co. Ltd.** reported in **1998 (74) DLT 82**. This is a case where on facts, an attempt was made to create jurisdiction by issuing notice from one's own head office. This was repelled by holding that nobody can confer jurisdiction on a Court which otherwise does not have jurisdiction over the matter by just issuing notice from one's own head office. Therefore, this case law and the principle in this case law does not help defendants in the instant case.

30 Third case law pressed into service is **Sonic Surgical v. National Insurance Co. Ltd.**, reported in **(2010) 1 SCC 135 : AIR 2010 SC (Supp) 283**. In this case, a two Judges Bench of Hon'ble Supreme Court agreed with the view taken by Calcutta High Court in **IFB Automotive Seating and System Ltd. v. Union of India** reported in **AIR 2003 Cal 80**. **IFB Automotive Seating and System Ltd.** case was authored by Hon'ble Mr. Justice A.K. Ganguly when His Lordship was a Judge of Calcutta High Court. Subsequently, while being a part of Two Judges Bench in Hon'ble Supreme Court in this **Sonic Surgical** case, Supreme Court while agreeing with the principles in **IFB Automotive Seating and System Ltd.** Case, it was held that a mere non granting and denial of utilisation of credit in the pass book is not sufficient to confer jurisdiction on a Court. This judgment was rendered in the light of amendment to Section 17 of the Consumer Protection Act, 1986. The rules and procedure applicable to consumer fora are very different. However, without going into that aspect of the matter and leaving that aspect of the matter open, it is clear as day light that this case law also does not help defendants as it is clearly

https://hcservices.ecourt.gov.in/hcservices/... is not sustainable on facts. The instant case is one where there is specific pleadings in the plaint which go beyond

a mere denial / rejection of the claim of the insured.

31 Totality of the narrative supra leads this Court to the inevitable conclusion that the plaintiff has certainly made averments in the plaint which are to the effect that a part of cause of action has arisen within the territorial jurisdiction of this Court and plaint documents in this regard have been filed. In other words, such plaint averments have been made with supporting documents. Therefore, if the test for deciding a leave revocation (to sue) application is applied, the plaint passes the test and the leave does not deserve to be revoked. Therefore, it would be appropriate to leave the parties to have an issue framed regarding territorial jurisdiction in the main suit which in turn can be decided within the strict time lines as there is no dispute or disagreement that the suit qualifies to be heard by the Commercial Division. In other words, stiff time lines can be laid down in Case Management Hearing and the suit can be decided expeditiously.

32 For the purpose of abundant clarity, it is made clear that the result in this revocation of leave application will not preclude defendants from insisting an issue being framed with regard to territorial jurisdiction in the main suit. Such a course is permissible as plaint averments and supporting documents may have to pass the test of being proved in a manner known to law.

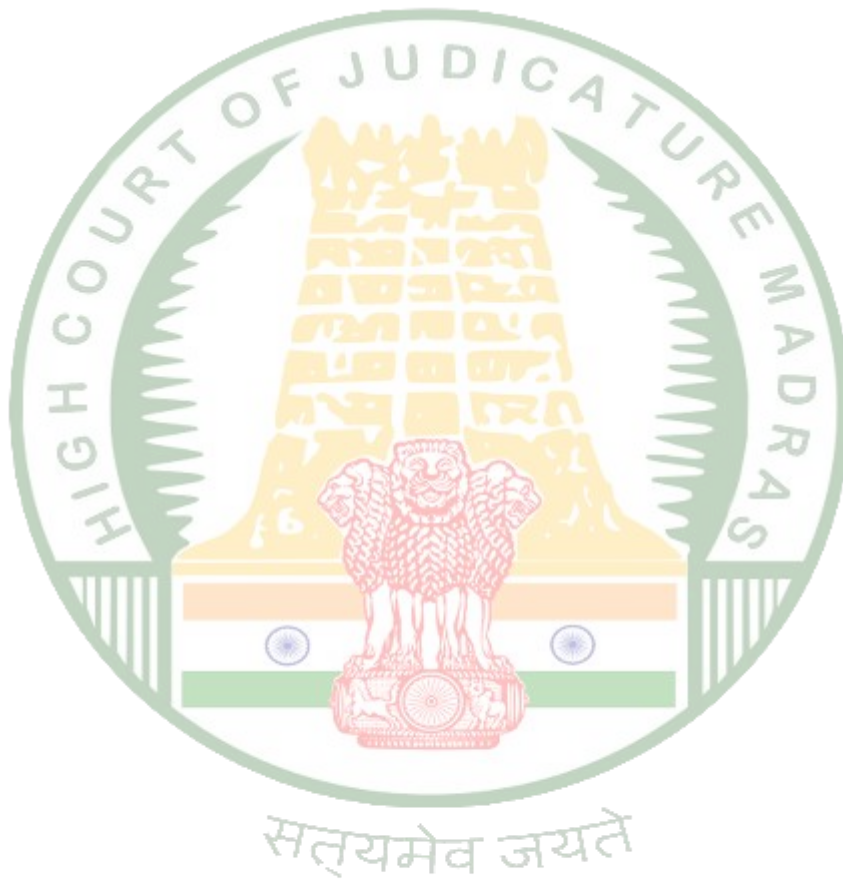
33 In the result, the application for revocation of leave fails and the same is dismissed, reserving the rights and contentions of defendants in this regard to be agitated in the main suit. Considering the nature of the matter, parties are left to bear their respective costs.

Dated this the th day of 2018.

KY/24.09.2018

COURT OFFICER

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



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