

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO.1207 OF 2018

IN

SUIT NO.557 OF 2017

Capgemini India Pvt. Ltd.)....Applicant

IN THE MATTER BETWEEN :

Kundana Kumar Lal)....Plaintiff

V/s.

Capgemini India Pvt. Ltd. & Ors.)....Defendants

Ms.Shruti Anurag I/by M.M.Legal Associates for plaintiff.

Mr.Prathamesh Kamat a/w Ehetesham A.Thauer I/by ALMT Legal
for defendant no.1/applicant.

CORAM : K.R.SHRIRAM,J

DATE : 26.2.2019

P.C.:-

1. This Chamber summons is for striking out the name of defendant nos.2 to 22 in exercise of powers under Order 1 Rule 10 of the Code of Civil Procedure, 1908. According to the applicant, defendant nos.2 to 22 have been improperly added and are not proper or necessary parties to the suit.

2. In paragraph-5 of the affidavit-in-support it is also stated that plaint discloses no cause of action whatsoever against any of the

aforesaid defendants and plaintiff has made general and vague allegations against defendant nos.2 to 22 without a single specific averment disclosing any cause of action against defendant nos.2 to 22.

3. Mr.Kamat for the applicant relies on judgment of this Court in ¹*Rushab Ship International LLC Vs. The Bunkers Onboard the Ship M.V.African Eagle and others* to submit that a formal application for rejection of plaint under Order 7 Rule 11(a) is not required and the averments in the affidavit-in-support itself are enough. Mr.Kamat also submits, relying upon judgment of the Apex Court in ²*T.Arivandandam Vs. T.V.Satyapal* that by clever drafting, plaintiff cannot create an illusion of a cause of action and the Court should read the entire plaint and come to a conclusion that there is no cause of action disclosed against defendant nos.2 to 22. Mr.Kamat also submitted that in any event, defendant nos.3, 6, & 8 to 14 are foreign nationals living abroad, outside the jurisdiction of this Court and plaintiff not having taken leave of the Court under clause-XII of the Letters Patent, the suit in any event, against these defendants has to be dismissed.

¹ 2014 (4) Bom.C.R.269

² (1977) 4 SCC 467

4. Ms.Shruti Anurag for plaintiff in fairness conceded that no leave under clause-XII has been obtained or even applied for leave to sue as against defendant nos.3, 6 & 8 to 13.

5. Ms.Anurag for plaintiff submitted that there are innumerable E-mails referred to in the plaint to which defendant nos.2 to 22 have been parties and because they did not support the case of plaintiff and in some cases have even agreed to look into the case of plaintiff, have admitted their liability.

6. I have considered the plaint and the case of plaintiff, as it emerges, is that plaintiff was an employee of defendant no.1 and employed pursuant to a contract dated 1.7.2014. The contract provided for 3 months notice for termination by either side and if notice is not given then 3 months salary to be paid in lieu of notice period. Defendant no.1 terminated the services of plaintiff with immediate effect and in lieu of the notice period, admittedly gave 3 months compensation. According to plaintiff the termination was wrongful and plaintiff was wrongfully denied performance bonus of Rs.27,00,000/-. In addition, plaintiff claims to have suffered mental trauma resulting in ill-health and financial loss and due to ill-health was unemployed from January-2017 till the date of the suit for which

plaintiff is entitled for damages of Rs.4,50,00,000/- and Rs.60,00,000/-, respectively. Plaintiff has also claimed cost of Rs.1,50,000/-. This, in short is the claim of plaintiff against defendants.

7. At this point of time, I do not wish to and it will not be proper to even go into the validity of the claims made by plaintiff against each of the defendant. Therefore, I am not opining on claims. What we are considering is whether defendant nos.2 to 22 are necessary parties or whether the plaint as against defendant nos.2 to 22 should be rejected for non disclosure of cause of action.

8. When I consider the whole plaint, the only averment which could be remotely stated to have some connection to cause of action is in paragraph-2 of the plaint and paragraph-16 of the plaint. Paragraph nos.3 to 15 on which Ms.Anurag relied extensively, are only narration of facts. In paragraph no.2, plaintiff has alleged that defendants (it means defendant nos.2 to 22) are executives of Capgemini SE, which is not a party to the suit, or they are responsible for the act of commission and omission of defendant no.1-organization or they remained silent spectators to the arbitrary manner in which defendant no.1 treated plaintiff. It is also alleged some of the defendants were

part of the Ethics Committee who did not take cognizance of plaintiff's grievances or they were involved in day to day affairs and are directly and indirectly part of conspiracy and connivance of each other, contributing arbitrarily in terminating employment of plaintiff. In my view, these kind of vague and broad allegations are not enough to fix specific cause of action. Plaintiff ought to have disclosed what is the specific cause of action against each defendant and how each defendant specifically contributed to plaintiff's losses or are bound and liable to plaintiff. In paragraph-16 of the plaint, plaintiff states that the entire conduct of the defendant no.1 in terminating services of plaintiff is a result of joint act between defendant no.1 and defendant nos.2 to 22. How it is a joint act is not disclosed anywhere. How each one have connived with the other or how each one has specifically contributed to plaintiff's termination is also not disclosed in the plaint. In paragraph-19, plaintiff states defendants are liable to pay performance bonus. Plaintiff does not say why defendant no.2 to defendant no.22 should pay performance bonus when his employment was with defendant no.1.

9. The Apex Court in ³*Umesh Chandra Saxena V/s. Administrator General UP Allahabad*, observed “we would only add

³ AIR (1999) Allahabad 109

that an action under Order 7 Rule 11 of CPC does not await an application by any party”. This was followed and applied by this Court in *Rushabh Shipping* (supra).

10. In *T.Arivandandam* (supra), the Apex Court observed as under :-

“If on a meaningful-not formal-reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled if clever drafting has created the illusion of a cause of action, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist judge is the answer to irresponsible law suits.”

11. The Apex Court in *‘ITC Limited Vs.Debts Recovery Appellate Tribunal*, has held, relying upon the judgment in *T.Arivandandam* (supra) that the Court should consider whether real cause of action has been set out in the plaint or something purely illusory has been stated and clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue be shown in the plaint.

Paragraph nos.16 & 27 of the said judgment read as under :-

“16. The question is whether a real cause of action has

4 (1998) 2 SCC 70

been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 C.P.C. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint (See T.Arivandandam v.T.V.Satyapal.).

27. As stated above non-movement of goods by the seller could be due to a variety of tenable or untenable reasons, the seller may be in breach of the contract but that by itself does not permit a plaintiff to use the word "fraud" in the plaint and get over any objections that may be raised by way of filing an application under Order 7 Rule 11 CPC. As pointed out by Krishna Iyer, J. in Trivandandam's case, the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11(a). Inasmuch as the mere allegation of drawal of monies without movement of goods does not amount to a cause of action based on 'fraud' the Bank cannot take shelter under the words 'fraud' or 'misrepresentation' used in the plaint."

12. In the circumstances, the only conclusion that could be arrived, after considering the entire plaint, is that there is no cause of action set out and clear right to sue shown in the plaint as against defendant nos.2 to 22.

13. As against defendant nos.3, 6, 8 to 14, in any event, the suit have to be dismissed for want of jurisdiction. Even the jurisdiction clause in the plaint, para-22, plaintiff only states plaintiff resides in

Mumbai, plaintiff was working with defendant no.1 in Mumbai and hence entire cause of action arisen within Mumbai. This is only restricted to defendant no.1. There is nothing as regards defendant no.2 to defendant no.22.

14. In the circumstances, suit against defendant nos.3, 6 & 8 to 14 is dismissed and as against defendant nos.2, 4, 5, 7 & 15 to 22 plaint is rejected for non disclosure of cause of action. Even if Court has jurisdiction against defendant no.3, 6 & 8 to 14, still the plaint will stand rejected as against these defendants also.

15. Chamber summons accordingly disposed with no order as to costs.

16. Accordingly, plaintiff to take steps to strike off defendant nos.2 to 22 within two weeks from today and serve amended cause title to plaintiff.

17. Defendant no.1 who is the only defendant now left, shall file written statement and serve a copy on or before 16.3.2019.

18. Suit be listed for issues on 20.3.2019.

(K.R.SHRIRAM,J)