



Application No.5 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.12.2019

PRONOUNCED ON : 12.12.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

**Application No.5 of 2018 in
Application No.3636 of 2017 in
Civil Suit No.676 of 2017**

Sai Electromech Industries
Rep. By its Authorised Signatory,
853, GIDC Estate,
Wadhodia, Vadodara - 391 760
Gujarat, India.

... Applicant

vs

Sicagen India Limited,
Rep. By its Authorised Signatory,
Mr.S.Mahadevan,
4th Floor, SPIC House,
No.88, Mount Road,
Guindy, Chennai - 600 032.

... Respondent

Application filed to revoke the leave to sue granted to the respondent/applicant/ plaintiff vide the order dated 12.07.2017 in Application No.3636 of 2017 in C.S(D)No.3859 of 2017 (subsequently numbered as summary suit No.676 of 2017) against the applicant/respondent/ defendant before this Court.

For Applicant : Mr.R.Palaniandavan

For Respondent : Mr.D.S.Ramesh



ORDER

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Civil Suit No.676 of 2017 has been filed under Order XXXVII Rules 1 and 2 of C.P.C., read with Order IV Rule 1 of Original Side Rules of Madras High Court to direct the defendants to pay the plaintiff a sum of Rs.1,23,62,585/- with interest @ 24% per annum for the outstanding amount Rs.96,58,270/- from the date of the plaint till the date of realization.

2.Since the defendants carrying on business in the State of Gujarat, at the time of filing the suit, this Court has granted leave to sue recording the following reasons:-

"It has been stated that the suit had been filed for recovery of a sum of Rs.96,58,270/- together with interest at 24% per annum and for costs. It had been informed and accepted by both the parties that the jurisdiction of the Court would be only in Chennai. Payments were received through Bank in Chennai. Transaction took place in Chennai. Since the substantial part of cause of action is within Chennai, leave is granted."

3.On receipt of the suit summons, the defendants have taken up an Application in A.P.No.5 of 2018 to revoke the leave granted by this Court vide order dated 12.07.2017.

4.The gist of the Application to revoke leave is as below:-



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The Original Side of the Madras High Court has no territorial jurisdiction over the subject matter of the suit. The goods alleged to have been supplied by the plaintiff was from its Branch at Ankleshwar (Gujarat State) and the purchase orders issued in favour of the plaintiff by the defendant was within the State of Gujarat. No part of cause of action has arisen within the jurisdiction of Madras High Court.

5. When the entire transaction between the plaintiff and the defendants took place within the State of Gujarat, the plaintiff has suppressed material facts and has obtained leave to sue before this Court by misleading the Court. The instant suit cannot be brought into any of the Clauses of Section 20 of C.P.C., or under Clause 12 of the Madras High Court Letters Patent. When no part of the cause of action arose within the territorial jurisdiction of High Court of Madras, the leave granted has to be revoked.

6. The averment in the plaint that the defendants came down to Chennai and gave an undertaking that all disputes should be subject to Chennai jurisdiction, are false statement. No transaction between the plaintiff and the defendants took place at Chennai. The Purchase Orders and the Cheques relied by the plaintiff were issued in good faith as a security in order to maintain the business relationship. The plaintiff failed to



execute MoU and also misused the security cheques by filling in details and depositing the same. As a coercive steps, the plaintiff has filled up the cheque and filed complaint and simultaneously, initiated the suit at Chennai which has no territorial jurisdiction. The High Court of Madras is not forum conveniens in respect of the alleged dispute stated in the instant suit. If the leave not revoked, it will cause irreparable loss and grave injury to the defendants.

7.The learned counsel for the Applicant/defendant would submit that the suit filed by the plaintiff at Original Side of the Madras High Court is a gross abuse of law. Location of Head Office at Chennai or unilaterally declaring Chennai as lex situs, as a forum conveniens without any material facts constituting cause of action is bad in law. To buttress his submission, the learned counsel would rely upon the judgments in **M/s.Murthy Hosiery Mills and another v. The State Bank of India & another** (2011 (3) L.W 376) and in **Mytrah Energy (India) Limited v. Ganesa Renewable Private Limited & others** (2016 (4) L.W 86).

8.In the counter filed by the respondent/plaintiff, it is stated that the plaintiff is a public limited company and doing business of selling building materials, commercial vehicle, etc., all over India through its branches. Whenever any purchase



order received by its branches, the respondent/ plaintiff will approve the same and supply building materials through its branches all over India to their clients.

9. When the applicant/defendant requested the plaintiff to supply building materials, it was accepted by the respondent/plaintiff at the Head office at Chennai and the negotiation took place at Chennai. When the applicant/defendant came down to Chennai and undertook to pay the bill amount, after supply of building materials. Only thereafter, the supply of materials through invoices took place.

10. In the purchase orders itself, it was clearly stated that all disputes are subject to Chennai jurisdiction. The applicant/defendant when dispute arose with regard to non payment of money for the materials supply, came to Chennai negotiated and assured the respondent/plaintiff to settle the amount and handed over the cheques for the amount due. Thus, the substantial part of the cause of action arose within the jurisdiction of High Court, Madras. Except the supply of material from the Branch Office at Ankleshwar (Gujarat State) to the respondent's/plaintiff's place of business at Vadodara, most of the other cause of action's happened at Chennai only.

11. Relying upon the judgment of the Hon'ble Supreme Court,

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in **Indian Mineral & Chemicals Co. and others v. Deutsche Bank**

(2004 (12) SCC 376) and the judgment of the Madras High Court rendered in **Uttar Pradesh Cricket Association v. Board for Control (Madras) vs. Board for Control of Cricket in India** (2012 (5) MLJ 276), the learned counsel for the respondent/plaintiff submitted that the assertion in the plaint must be assumed and proved for the purpose of determination of application for leave to sue and revocation of leave to sue cannot be justified saying only few cause of actions arose at Chennai.

12.The contention of the learned counsel for the applicant/defendant is that, no cause of action arose within the territorial jurisdiction of Chennai and whatever said in the plaint are very trivial and does not form part of 'cause of action'. To substantiate his claim, he relied upon the following passage of the Hon'ble High Court in **M/s.Murthy Hosiery Mills** (cited supra). Paragraph Nos.25 & 26:-

"25. The State Bank of India has got branches throughout the State of Tamil Nadu. For all the Branches in the State of Tamil Nadu, the 1st respondent is the Head Office decision making authority. But to say that the Original Side of Madras High Court will have jurisdiction to entertain the suit in respect of all the branches of State Bank of India throughout the State on the ground that the 1st respondent Head Office is



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the decision making authority would amount to stretching the arms beyond the logical ends. We are afraid that by accepting such contention, Original Side of High Court would be overstepping its limits in assuming jurisdiction over all such transactions.

26. Mere fact that the 1st respondent is the decision making authority over the 2nd respondent and that it has approved One Time Settlement would not constitute an integral part of cause of action to confer jurisdiction. It is not every fact pleaded by the litigant that gives rise to a cause of action and only such facts as are necessary to adjudicate upon the lis would constitute a cause of action conferring territorial jurisdiction."

and the following relevant passage in **Mytrah Energy (India) Limited v. Ganesa Renewable Private Limited & others** (cited supra)

".....It is not a case where two Courts have jurisdiction of which the parties have elected one. If we see the order passed at the time of granting leave, then there will not be any confusion. The plaintiff has proceeded on the footing that Sholinganallur comes within the territorial jurisdiction of this Court. That is why, the averments that the agreement was entered into, the office of the plaintiff is situated

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within Chennai, the first defendant worked in Chennai and followed by the acceptance of resignation have been taken note of by this Court. Therefore, there is no other way that is available for the plaintiff except to approach the Court, which has got territorial jurisdiction over Sholinganallur."

13.In the light of the above submissions of the applicant/defendant, it is necessary to look into the plaint averment regarding the cause of action. In paragraph no.5 of the plaint, the plaintiff has stated as below:-

"5.The plaintiff states that, the defendant requested this to supply building materials to the defendant and the plaintiff also accepted and approved for supply of materials to the defendant, at Chennai and the defendant came to Chennai and personally undertake to pay the bill amount after the supply of building materials and thereafter only the materials supplied through below invoices."

14.At paragraph No.16 of the plaint, the 'cause of action' is explained as below:-

"16.The cause of action arose at Guindy, Chennai within the jurisdiction of this Hon'ble Court where the plaintiff Head Office is situated and also the approval of the supply of materials on credit basis to the defendant was given by the



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plaintiff at Chennai only and the plaintiff supplied the building materials to the defendant on through their Bill/Invoice and the defendant received the materials and he failed to pay the bill amount to the plaintiff and the plaintiff send notice to the defendant and demanding the due amount of Rs.96,58,270/- (Ninety Six Lakhs Fifty Eight Thousand Two Hundred and Seventy Only) and the defendant failed to pay the due amount and as well as no reply for the notice send by the plaintiff and on all subsequent dates when the defendant had failed to repay the amount due till date."

15.As mentioned, 18 documents under the list of documents filed along with the plaint under Order VII Rule 14(i) C.P.C. Document Nos.2, 4 to 10, 15 to 17 are tax invoices raised by the respondent/plaintiff against the applicant/defendant. Rest of the documents are delivery challans and letter of authorizations. After filing the application to leave to sue, the respondent/plaintiff has filed some more additional documents to substantiate his plea that part of cause of action arose at Chennai. These documents namely tax invoices and delivery challans indicate that bill was raised.

16.The delivery challan has been raised from Ankleshwar Godown of the respondent/plaintiff to be delivered at applicant/defendant premises at Vadodara. Whereas, the tax

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invoice, raised for the goods sold and delivered indicates that for RTGS/NEFT Payment to:Sicagen India Limited/HDFC A/c No.00040310006600 - IFSC Code:HDFC0000004-ITC Centre/Anna Salai/Chennai and it also indicates that all dispute subject to Chennai jurisdiction.

17.In the light of the above fact, if we look into the judgments relied on by both parties, we could find that there is no definition for cause of action either in C.P.C., or under any other law. Judicial interpretation of the term 'cause of action' is extracted below:-

"Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

18.To this definition a rider was added by Lord Watson in '**Chandkour v. Pratab Singh**', 16 Cal 08 (PC) (Z3) and has stated as below:-

"the cause of action has no 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."



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19. The Hon'ble High Court in **Mytrah Energy (India) Limited v. Ganesa Renewable Private Limited & others** (cited supra) has referred some of the old judgments which have laid the principle of law regarding 'cause of action'. Few of the judgments which are extracted below:-

"A similar view has been taken by the Apex Court in [A.B.C Laminart Pvt. Ltd. v. A.P Agencies](#), Salem (1989 AIR 1239), in which, the following passage would be apposite.

"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 a bundle of facts which taken with the law applicable to them gives the plaintiff a fight 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 possibly 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 fight to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be



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set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

20. In the light of the above observations made by the High Court as well as the Hon'ble Supreme Court, this Court finds that the respondent's/plaintiff's registered office and Head Office is located at Chennai which is within the jurisdiction of this Court. The present suit is in respect of the goods sold and delivered. To prove the sale and due, the respondent/plaintiff relies upon the tax invoices which indicate that the payment should be made in the following manner:-

"RTGS/NEFT Payment to: Sicagen India Limited/HDFC A/c No.00040310006600 - IFSC Code:HDFC0000004-ITC Centre/Anna Salai/Chennai"

21. In a suit for goods sold and delivered, the consensus addendum arrived at between the parties clearly indicates that the money should be paid into the account of the respondent/plaintiff maintained in HDFC bank having office at Anna Salai, Chennai. A contract of sale of goods gets concluded on the payment for the goods sold and delivered.

22. The respondent/plaintiff in this case has to prove not only the factum of delivery of goods but also the non payment for the goods delivered. When the invoice specifically mentioned

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subject to Chennai jurisdiction, certainly, the fact traversed fall within the territorial jurisdiction of Madras High Court.

23.The principle of 'forum conveniens', is not an antithesis to the principle of 'cause of action'. It has to be read harmoniously when part cause of action arose within the jurisdiction of this Court, the discretion is vest with this Court either to grant leave or to refuse leave.

24.If the Court is satisfied that the suit has been filed *mala fidely* for the purpose of harassing or oppressing the respondent/plaintiff or it might cause injustice, the Court shall refuse leave or if leave already granted can revoke the leave, as a matter of course.

25.In this case, there is no such allegation or material to infer any *mala fide*. As a Trader having head office at Chennai and bank transaction at Chennai, the respondent/ plaintiff sold goods on credit to the applicant/defendant. The cheques given by the applicant/defendant was in discharge of the sale consideration, not realised. Hence, for recovery of the said money, suit has been laid by the respondent/ plaintiff before this Court. At the time of admission, this Court having *prima facie* satisfied with the materials had granted leave to sue.

This Court finds no error in the order where leave to sue was



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already granted.

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26.Hence, the application filed by the applicant/ defendant
to revoke the leave to sue is dismissed.

Sd./-G.J.J
12.12.2019

//Certified to be true copy//
Dated at Madras this the day of 2019.

JJ 02/01/2020

COURT OFFICER (O.S.)

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