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IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Application Nos.3847, 4724 & 4725 of 2019 in

C.S.No.194 of 2019

Application No.3847 of 2019

Goomo Orbit Corporate & Leisure Travels (I) Private Limited,
Office No.1003, Hallmark Business Plaza,
SD Marg, Opposite Guru Nanak Hospital,
Bandra East, Mumbai - 400 051.
Rep. By its Director ... Petitioner

Vs

1. G.I. Retail Private Limited,
Represented by its Director Mr.Ramu Annamalai
C-9, Thiru Vi Ka Industrial Estate,
Guindy, Chennai - 32. Tamilnadu
2. Hermes I Tickets Private Limited
represented by its Director,
Mr.Manoj Kumar Sabu,
Unit No.301, 302, 3rd Floor, Campus 3B,
RMZ Millenia Business Park,
143, MGR Main Road, Perungudi,
Chennai - 600 096.
3. Wirecard Ag,
Einsterlnring 35,
Represented by its Chief Financial Officer,
Alexander Von Knoop,
Einstelnring 35, 85609 Aschheim,
Germany.

4. Emerging Markets Investments Fund – Fund 1A,
Represented by its Director, Rohit Kumar,
5th Floor, Barkly Wharf, Le Garden,
Waterfron, Port Louis,
Republic of Mauritius.
5. James Henry O' Sullivan
C/o.Senjo Group,
#56, One Raffle Place,
048616 Singapore,
6. Jan Marsalek,
Einsterlnring 35,
85609 Aschhelm,
Eeutschland, Germany. ... Respondents

Application No.4724 of 2019

Wirecard Ag,
Einsterlnring 35,
Represented by its Chief Financial Officer,
Alexander Von Knoop,
Einstelnring 35, 85609 Aschheim,
Germany. ... Petitioner

Vs

1. G.I. Retail Private Limited,
Represented by its Director Mr.Ramu Annamalai
C-9, Thiru Vi Ka Industrial Estate,
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85609 Aschhelm,
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6. Goomo Orbit Corporate & Leisure Travels (I) Private Limited,
Office No.1003, Hallmark Business Plaza,
SD Marg, Opposite Guru Nanak Hospital,
Bandra East, Mumbai – 400 051.
Rep. By its Director

... Respondents

Application No.4725 of 2019

Jan Marsalek,
Einsterlnring 35,
85609 Aschhelm,
Eeutschland, Germany.

... Petitioner

Vs

1. G.I. Retail Private Limited,
Represented by its Director Mr.Ramu Annamalai
C-9, Thiru Vi Ka Industrial Estate,
Guindy, Chennai - 32. Tamilnadu

2. Hermes I Tickets Private Limited
represented by its Director,
Mr.Manoj Kumar Sabu,
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Limited,
Office No.1003, Hallmark Business Plaza,
SD Marg, Opposite Guru Nanak Hospital,
Bandra East, Mumbai - 400 051.
Rep. By its Director ... Respondents

Prayer :- These applications have been filed under Order
XIV Rule 8 of the Madras High Court Original Side Rules,
1956 read with Clause 12 of the Letters Patent by the
defendants 6, 2, and 5 to revoke the leave granted vide
Order 12.03.2019 in A.No.1956 of 2019 in C.S.No.194 of
2019.

For Petitioners : Mr.R.Shankaranarayanan (Sr. Counsel)
in A.No.3847 of 2019
for Mr.S.V.Pravin Rathinam

Mr.P.H.Arvind Pandian (Sr. Counsel)
in A.No.4724 of 2019
for Mr.G.V.Anand Bhushan

Mr.Hashodvardhan (Sr. Counsel)
in A.No.4725 of 2019
for Mr.Avinash Krishan Ravi

For Respondents : Mr.Guru Krishnakumar (Sr. Counsel)
for Mr.R.Udhaya Kumar for R1 in all
applications

C O M M O N O R D E R

These applications have been filed to revoke the leave granted by this Court by Order dated 12.07.2019 in A.No.1956 of 2019

2. The brief facts leading to the filing of this application is as follows :

The respondent/plaintiff has filed the the suit for the following reliefs as against the defendants :

a. The plaintiff seeks permanent injunction restraining the defendants and/or their agents, representatives or servants from representing that the plaintiff or its shareholders/Directors had made any profit/earn out from the sale of share of Hermes, other than that pursuant to the Share Purchase Agreements (SPA) entered into between the plaintiff and the third defendant dated 07th September 2015.

b. The plaintiff is also seeking mandatory injunction directing the defendant No.2 to withdraw the statements made to the public, with respect to the purchase of the shares of Hermes, and to place the correct factual position with respect to the same.

c. The plaintiff is also seeking a damages

against the said defendant Nos.1 to 6, jointly and severally, to pay a sum of INR 40 crores or for any higher amount due to the defamatory and malicious act on their part.

d. Costs of the suit.

3. The entire allegation is with regard to the sale of the shares of the first defendant's company. It is stated in the plaint that out of the sale of the shares by the second and third defendants, the plaintiff nor its shareholders have secured any profit or earn out from the said transaction. Despite the above fact, the second defendant is making misrepresentation to the public. It is also stated in the plaint that the cause of action arose in the present suit arose where the situs and transfer of shares took place and the second defendant executed the share purchase agreement and subsequently when the defendants gave the press statements regarding the acquisition of Hermes and thereafter, on the dates when the emails were exchanged between the plaintiff and the defendants 2 to 5. Thereafter, the plaintiff bank also wrote an email on 12.09.2018. It is stated that a part of cause of action has arose for maintaining the present suit before this Court.

4. This Court has granted leave under clause 12 of

the Letter Patent for filing this suit. Application No.3847 of 2019 has been filed by the sixth defendant. A.No.4724 of 2019 has been filed by the second defendant and A.No.4725 of 2019 has been filed by the fifth defendant. In the above applications all the three defendants have sought to revoke the leave on the ground that the sale of shares of the first defendant is a concluded transaction and such transfers are not the subject matter of the suit. Therefore, those transactions do not constitute cause of action for the suit nor the holding of the shares by the second defendant is in question. Further it is also stated in these applications, that no part of cause of action arose within the jurisdiction of this Court.

5. The suit is one for defamation. The plaintiffs have also not impleaded minority share holders, namely, Ramu and Palaniappan, who are the Managing Director and Promoter of the plaintiff, who were allegedly injured by the alleged defamative statement. The defamation alleged in the suit has nothing to do with situs of the shares. The second defendant is neither a proper or necessary party to the suit. The suit in the nature of defamatory suit, does not fall within the purview of the commercial dispute and the suit is only a bid to harass the defendants.

6. Though three applications have been filed, the common grounds alleged in these applications **are as follows** :

The defendants are not party to the transaction of sale of the shares to the defendants 1 to 3. It is the contention of the defendants that no part of the cause of action arose within the jurisdiction of this Court. The earlier suit in O.S.192 of 2018 has been filed by the Promoter and Managing Director and the plaintiff company with regard to the sale of shares of first defendant by the plaintiff to the third defendant to non suit the suit pending before the English Court. Therefore, it is contended that the present is an abuse of process of law and malicious.

7. The above applications have been resisted by the plaintiff by filing a detailed counter. It is well settled that in an application for revocation of leave under Clause 12 of the Letters Patent, the plaint is the material document on which the decision should rest. Only the petition and the affidavit filed in support of and against the revocation of leave is relevant, but must be read subject the overriding consideration and the entire facts pleaded in the plaint. Therefore, all the details of the counter statements denying every allegations need not be extracted.

8. It is mainly contended by the respondent/plaintiff that the subject matter of the suit arise out of the sale of shares from the first defendant to the third defendant and the subsequent sale of share by the third defendant to the second defendant. The third defendant is a company registered under the companies Act. It deals in sale of shares in several Indian Companies including the second defendant and the sixth defendant. Several emails and letters including the letter dated 18.04.2018 sent by the fifth defendant with respect to the role of the plaintiff in the alleged transaction took place in Chennai. The fifth defendant was present in Chennai for several meetings. The leave was granted after considering the averments in the plaint and the affidavit filed along with the petition. It is further contended that a part of cause of action arose within the jurisdiction of this Court. Hence, leave once granted after considering the materials cannot be revoked.

9. Mr.Arvind Pandian, Senior Counsel appearing for the applicant/ second defendant in A.No.4724 of 2019, submitted that the Share Purchase Agreement dated 09.09.2015 and 07.09.2015 is the subject matter of the suit. It is his contention that the Promoter and Managing Director of the present plaintiff along with the plaintiff

have already filed a suit for anti suit injunction against the minority share holders wherein the Division Bench of this Court has rejected the leave granted to institute the suit and the SLP filed against the said Order has also been dismissed. The previous suit is entirely in respect of the share purchase agreement dated 07.09.2015. The above allegations in the suit also applies to the share purchase agreement dated 07.09.2015. The present suit is couched in a manner as if there is a new cause of action to institute the present suit. It is his contention that the defendants 2 and 3 were not made a party in the earlier suit, despite the plaintiff was aware of the alleged publication made by the second defendant in the year 2015. Further, the documents relied upon by the plaintiff show that the publication issued was emanated from Germany and not within the jurisdiction of this Court. The defendants are not residing within the jurisdiction of this Court. The second defendant is not a party to the share purchase agreement at any point of time. There is no privity of contract between the parties. The first prayer in the present suit is couched in the manner to non suit the Order of the Division Bench in the earlier suit. Further, it is his contention that the alleged agent who is said to have circulated certain criticisms is also not made a party. In the earlier suit, the plaintiff themselves pleaded that the alleged publications are not verified news and the same

were sought to be relied upon by the minority share holders before the English Court. Whereas in the present suit, the same unverified news was pressed into service to show as if there is a cause of action against these defendants.

10. Mr.Yashod Vardhan, the learned counsel appearing for the applicant in A.No.4725 of 2019 contended that the suit is nothing but frivolous and vexatious one. The relief sought in the suit is to non suit or to defeat the suit pending before the English Court filed by the minority share holders for tortuous liability. It is his contention that the article dated 25.01.2018 published in the internet by one Alpahaville is only critical in nature. This has been relied upon by the plaintiff to save limitation. Such an article will not give a cause of action before this Court.

11. Mr.Sankara Narayanan, Senior Counsel appearing for the applicant in A.No.3847 of 2019 submitted that there is no cause of action in the entire plaint. Para 11.1 to 11.37 relate to the earlier litigation. Page 1 of the plaint itself indicate that the first defendant is not within the jurisdiction of this Court. The alleged share purchase is already pleaded in the earlier suit. The entire pleading in the plaint do not show which defendant gave the statement. The email relied upon by the plaintiff

between the plaintiff and the third defendant is only in the nature of seeking information. The above email will not give a cause of action in apprehensive relief as well as damages. This suit is one for seeking information by the plaintiff. Therefore, it is his contention that no part of cause of action arose within the jurisdiction of this Court. This suit is nothing but an abuse of process of law and it has been filed only to non suit the earlier Orders passed by this Court in an anti suit injunction. The relief sought in the suit is in the nature of gag Order as against the minority share holders or a witness not to give correct particulars before the English Court. Hence, it is his contention that the prayer in the suit has been couched in such a manner by clever drafting to show as if the cause of action arose within the jurisdiction of this Court. Hence, submitted that the leave granted by this Court has to be revoked.

12. The learned counsel for the defendants also placed reliance on the following judgments :

Union of India (UOI) and others Vs. Adani Exports Ltd. and Ors. reported in 2002 (1) SCC 567

Kusum Ingots and alloys Ltd. Vs. Union of India (UOI) and Ors. reported in 2004 (6) SCC 254

Alchemist Limited and Ors. Vs. State Bank of Sikkim
and Ors. reported in 2007 (11) SCC 335

Om Prakash Srivastava Vs. Union of India (UOI) and
Ors. reported in 2006 (6) SCC 207

Tecpro Systems Limited Vs. The Union of India reported
in 2016 (6) MLJ 641

Duro Flex Pvt. Limited Vs. Duroflex Sittings System
150 reported in 2014 (6) CTC 577

South East Asia Shipping Co. Ltd. Vs. Nav Bharat
Enterprises Pvt. Ltd. And Ors. reported in 1996 (3) CC 443

Baroda Oil Cakes Traders Vs. Parshottam Narayandas
Bagulla and Ors. reported in MANY/MH/0130/1954

Shah Ganpat Pasu and Co. Gulzarilal Bhaiyalal and Anr.
reported in MANU/MP/0152/1958

Zila Parishad (District Board) Vs. Shanti Devi and
Ors. reported in AIR 1965 A11590

Rajasthan High Court Advocates Association Vs. Union
of India (UOI) and Ors. reported in 2001 (2) SCC 294

Ram Chandra Ladha and Ors. Vs. Teja Bai and Ors.
reported in AIR 1996 AII 522

Captain Tactors Pvt. Ltd. Vs. Ashok Layland Ltd.
reported in 2018 (8) MLJ 564

Ahmed Abdulla hmed I Ghurair and Ors Vs. Star Health
and Allied Insurance Company Limited and Ors. reported in

2019 (1) CTC 211

Bharat Aluminium Company and Ors Vs. Kaiser Aluminium Technical Service Inc. and Ors reported in 2012 (9) SCC 552

Syed Mohamed Salahuddin and Ors. Vs. Ahmed Abdulla Ahmed AI Ghurair and Ors. reported in 2018 (5) CTC 291

Mytrah Energy (India) Limited Vs. Gamesa Renewable Private Limited and Ors reported in 2016 - 4 - LW 86

13. The learned Senior Counsel Mr.Guru Krishna Kumar in his inimitable style and persuasive skills vehemently contended that the defendants seek to revoke the leave on the basis of their own construction of the plaint. It is his contention that the present suit arose out of the sale of shares of the first defendant to the third defendant and the subsequent sale by the third defendant to the second defendant. The second defendant has created a smoke screen with respect to sale of shares of the first defendant to the second defendant by making various representations in the public website in respect of the sale or transfer made by the third defendant and regarding the role of the third defendant. The misrepresentations made by the defendants had caused gross prejudice and huge loss to the plaintiff. All the facts pleaded in the plaint are the mater for trial. At this stage, this Court cannot

be expected to entertain the disputed facts. These applications are in the nature of demurrer. Therefore, it is his contention that their objection must proceed on the facts as pleaded by the plaintiff are true. The allegations of misjoinder or nonjoinder of parties are irrelevant at this stage. It is also his contention that the argument of forum conveniens arise only when the defendant acknowledge the jurisdiction.

14. The earlier litigation has not been pleaded in the petition and affidavit. The prayer sought in the suit is not to publish against the plaintiff. The third defendant has not even entered appearance in the suit. In paragraphs 11.38 and 11.39 in the plaint, the facts have been clearly pleaded and the facts pleaded in paragraph 11.40 has not been specifically denied by the defendants. The emails were exchanged within the jurisdiction of this Court. The plaintiff is having its registered office within the jurisdiction of this Court. The loss suffered by the plaintiff is at Chennai. The Defendants made a statement in the website with an intent to market in India. Misrepresentation is based on the transaction took place in Chennai. This suit is based on the action of the defendants projecting false pictures at world at large. In fact, there is no dispute as to the press release issued by the defendants. Though it is the contention of the second

defendant in the present suit that the second defendant had acquired share from the third defendant, the press release communicated otherwise. Besides, the second defendant is also running business at Chennai. Now they cannot plead forum inconueniens. Emails also exchanged in Chennai and the press release also in Chennai. These are all matters for trial. The press release in January, 2018 issued by one Alphaville, which is an unit of part of financial times. It is internationally recognized platform for industry. Hence, it is the contention of the learned Senior Counsel that the plaintiff has also filed an application for amendment to amend the plaint after getting necessary particulars. These applications have been filed much after the amendment application filed by the plaintiff. Territorial jurisdiction has to be raised at the earlier stage. Though publication published in website, the effects doctrine apply.

15. The first defendant has registered office at Chennai. The second defendant holds share in the first defendant company at Chennai. Situs of shares of the first defendant are at Chennai. The first defendant controls the sixth defendant and the sixth defendant has basis in India.

The publication was received in Chennai. The email correspondences are from Chennai and loss and damages have been sustained at Chennai. Sale of Shares also took place at Chennai and the plaintiffs have sold one share directly

to the second defendant at Chennai. All these facts clearly indicate that a part of cause of action arose within the jurisdiction of this Court. Therefore, it is the contention of the learned Senior Counsel that these applications have been filed only to non suit the plaintiff.

16. The facts pleaded in the applications are the matter for trial. It is the further contention of the Senior Counsel that while granting leave, this Court by its reasoned Order considered the entire materials and satisfied itself and passed an Order and such a leave cannot be revoked. The Court cannot deal with the question of jurisdiction while considering application filed for revocation of leave filed under clause 12 of the Letters Patent. Hence, it is his contention that the entire plaint must be read in a meaningful manner and there cannot be compartmental or segmentation manner. The merits of the suit cannot be considered while considering the application filed for revoking the leave. The suit for injunction is between the minority shareholders and the plaintiff. The parties in the present suit are different. Therefore, previous proceedings cannot be relied upon. Those findings cannot be determinative of the issues in the present proceedings. The present suit arises out of misrepresentation of the defendants resulting in loss to the plaintiff.

17. Further it is the contention of the learned Senior Counsel that the press statement published in the website can be accessible at anywhere because the press statement can be felt in Chennai. It is also submitted that the argument of forum conveniens can be raised only when the Court has jurisdiction. The forum conveniens means proper forum and not conveniens forum. It is his contention that while passing the Order dated 19.03.2019, the Court passed a direction that statement with regard to obtaining of shares and other particulars need to be filed either as status report or in the form of an affidavit. The above Order was never complied by the defendants. They cannot be heard unless they comply with the said Order. Hence, prayed for dismissal of these applications. In support of his submissions, he has also relied upon the following judgments :

Ritu Sachdev Vs. Anita Jindal and others reported in **1982 SCC OnLine Cal 44**

Subramaniam Swamy vs. Prabhakar S. Pai and Ors. reported in **MANU/MH/0019/1983**

Abdulla Bin Ali and others Vs. Calappa and others reported in **1985 (2) Supreme Court Cases 54**

A.B.C. Laminart Pvt. Ltd. And another Vs. A.P.Agencies, Salem reported in **1989 (2) Supreme Court Cases 163**

Morgan Stanley Mutual Fund Vs. Kartick Das reported in 1994 (4) Supreme Court Cases 225

Bloom Dekor Limited Vs. Subhash Himatlal Desai and others reported in 1994 (6) Supreme Court Cases 322

Exphar sa and another Vs. Eupharma Laboratories Ltd and another reported in 2004 (3) Supreme Court Cases

Indian Mineral & Chemicals Co. and others Vs. Deutsche Bank reported in 2004 (12) Supreme Court Cases 376

Popat and Kotecha Property Vs. State Bank of India Staff Association reported in 2005 (7) Supreme Court Cases 510

Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others reported in 2006 (5) Supreme Court Cases 638

Prem Lal Nahata and another Vs. Chandi Prasad Sikaria reported in 2007 (2) Supreme Court Cases 551

Prestige Lights Ltd. Vs. State Bank of India reported in Manu/SC/3355/2007

S.Abdul Subhan Vs. A.R.Mahaboob Jani reported in 2007 (3) CTC 259

Bristol Myers Squibb Company and Anr. Vs. V.C.Bhutada and others reported in 2013 SCC OnLine Del 4129

Lindsay International Pvt. Ltd. And Ors. Vs. Laxmi Niwas Mittal and Ors. reported in Manu/WB/0743/2017

Isha Distribution House Pvt. Ltd. Vs. Aditya Birla Nuvo Ltd and another reported in 2019 SCC OnLine SC 337

18. In **Union of India (UOI) and others Vs. Adani Exports Ltd. and Ors.** reported in 2002 (1) SCC 567 in para 17 it has been held as follows :

"17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the courts territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give

rise to a cause of action so as to confer territorial jurisdiction on the court concerned.

19. In **Kusum Ingots and alloys Ltd. Vs. Union of India (UOI) and Ors.** reported in **2004 (6) SCC 254** in para 6 it has been held as follows :

Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

20. In **Syed Mohamed Salahuddin and Ors. Vs. Ahmed**

Abdulla Ahmed AI Ghurair and Ors. reported in **2018 (5) CTC 291**, it has been held as follows :

6.7. A cause of action has to involve material facts. Therefore, all facts not being material would not constitute cause of action. Such a material fact may be a fact in issue or a relevant fact. It has to be seen in the context of the averments in the plaint which in turn takes the plaintiffs towards the relief. The aforesaid principle has already been dealt with by one of us (M.M.Sundresh,J.) in MYTRAH ENERGY (INDIA) LIMITED VS. GAMESA RENEWABLE PRIVATE LIMITED (2016 (4) LAW WEEKLY 86) in the following manner.

8. Cause of Action:-

8.1. Before going in to the merits of the case, let us deal with the word cause of action. The word cause of action has not been defined either under the Civil Procedure Code or under the Letters Patent. A cause of action has to be seen in the context of territorial jurisdiction available to the Court while entertaining a suit. It is the basis for the maintainability of a suit. It is the foundation of a suit, around

which, the other provisions of the Civil Procedure Code revolve. While dealing with the cause of action, the Courts are concerned with the material facts required to be established in support of the right of the party to get a judgment. Such a material fact may be a fact in issue or a relevant fact. It has got no relationship with the case of a defendant. Such a fact shall not be equated with the evidence, which is necessary to prove a fact. A cause of action would include not only the right of the plaintiff, but also, the facts disclosing the infringement of its right. Therefore, the facts which are in support of its right and leading to infringement would form cause of action. Thus, what is important is that a fact will have to be material to the suit and the relief. Therefore, all facts, which are not material, would not constitute cause of action. There has to be an existence or infraction coupled with the right.

8.2. It is nothing but bundle of facts, which, when added with the law applicable provide the adequate right to the plaintiff 's relief. In a suit relates to a breach of contract, the making of a contract and its breach would be the proper cause of action.

Therefore, the place in which it occurred would be very relevant. Thus, the fact which is remotely connected to another which forms a cause of action cannot be one, just for the purpose of giving jurisdiction to a Court. Similarly, termination of a contract would certainly create a part of cause of action and therefore, the place in which it takes place gives jurisdiction to the Court. The legal position aforesaid has been reiterated by the Division Bench of this Court in D.LAKSHMINARAYANA CHETTIAR AND ANOTHER ((1954) AIR Madras 594) in the following manner.

"41. There is no definition of "cause of action" in the Civil Procedure Code; but it is the fundamental pivot around which many of the provisions of the Civil Procedure Code revolve. It is the basis for the maintainability of the suit. It is the foundation for the adding up of parties, and it is an important ingredient in working out the principle of res judicata and that embodied in Order 2, Rule 2, Civil P.C. It has, therefore, necessarily become the subject of judicial scrutiny. Brett J. defined it in -- 'Cooke v. Gill', (1373) 8 CP 107 (Z1) a leading case on the subject, to mean "every fact which

is material to be proved to entitle the plaintiff to succeed, every fact which the defendant would have a right to traverse." In -- 'Bead V. Brown', (1889) 22 QBD 128 (Z2), Lord Esher adopted the same definition, but expressed it in more felicitous language as follows:

"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."

Lord Watson in 'Chandkour v. Partab Singh', 16 Cal 08 (PC) (Z3) approved of the definition, but added a rider that "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."

21. In very same judgment, in para 6.9, it has been held as follows :

6.9. The principle governing forum non conveniens would fundamentally require the existence of a jurisdiction. Thus, when there is

no jurisdiction available to a Court, the aforesaid principle will have no application. The Full Bench of our High Court has considered in extenso the principle governing forum conveniens in DURO FLEX PVT. LIMITED VS. DUROFLEX SITTINGS SYSTEMS (2014 (6) CTC 577) through the following paragraphs.

35. Learned counsel emphasised that it has been the consistent practice of the Madras High Court to consider the issue of conveniens of parties in ascertaining appropriateness of jurisdiction. In Seshagiri Row vs. Nawab Askur Jung Aftal Dowlah Mushral Mulk, reported in (ILR 30 Mad. 438), it was observed by the Division Bench that having regard to the wordings of Clause-12 of the Letters Patent, it was clear that the fact whether cause of action arises in part within the local limits is not the question, and notwithstanding that the cause has arisen within the local limits, the court may decline to leave to sue. The question of conveniens cannot be thus excluded from consideration. This view was cited with approval in [Madanlal Jalan vs. Madanlal and others](#) reported in AIR 1949 Cal. 495, where the Judge has held that the balance of conveniens is

a material consideration in the exercise of discretion under Clause 12 of the Letters Patent and has enunciated the following legal principles:

"a) that the application lies for revoking the leave granted under Clause 12 of the Letters Patent;

b) that such an application should be made at an early stage of the suit and delay and acquiescence may be a bar to such an application;

c) that if the application depends on difficult questions of law or fact, the Court should not revoke leave on a summary application but should decide the question at the trial;

d) that if the defendant shows clearly that no part of the cause of action arose within jurisdiction, the leave should be revoked as a matter of course;

e) that if only a part of the cause of action arose within jurisdiction, then it is a question of discretion for the Court to give or refuse leave or where leave has already been granted to revoke or maintain the leave;

g) that in giving or refusing leave or maintaining or revoking leave, the Court will ordinarily take into consideration the balance of conveniens and may, if the balance is definitely in favour of the defendant, apply the doctrine of forum conveniens;

h) that the Court may refuse leave or revoke leave on the ground of balance of conveniens, although there be no evidence of bad faith or abuse of process on the part of the plaintiff;.....

j) that if the Court is satisfied that the suit has been filed mala fide for the purpose of harassing or oppressing the defendant or might result in injustice, the Court should in all cases readily refuse leave or if leave has already been granted, revoke the leave as a matter of course".

22. From the above judgments, it emerges that when the facts have no bearing with the lis or dispute involved in the case those facts would not give a right to cause of action. Similarly, there must be material facts to constitute the cause of action. If the Court is satisfied that the suit has been filed with a malafied intention of harassing or oppressing the defendants, Court can rightly

revoke the leave which has already been granted. The above such view was approved by the Apex Court in the judgment in **Kusum Ingots and Alloys Ltd. Vs. Union of India and another** reported in **2004 (6) SCC 254** wherein the apex Court has held that High Court may refuse to exercise its discretionary jurisdiction even if a small part of the cause of action arises within its territorial jurisdiction applying the test of 'forum conveniens'.

23. In **Indian Mineral & Chemicals Co. and others Vs. Deutsche Bank** reported in **2004 (12) Supreme Court Cases 376**, the Apex Court has held that in the applications filed for revoking leave is in the nature of Demurrer and for the purpose of determine whether the leave is liable to be revoked, the Apex Court also followed the observations of **Rankin, C.J. In Secy. Of State V. Golabrai Paliram** correctly represents the law as to how the Court should approach an application for revocation of leave [AIR p.147]:

"I do really protest against questions of difficulty and importance being dealt with by an application to revoke the leave under Cl.12, Letters Patent and to take the plaint off the file. Normally it is well settled that the proper way to plead to the jurisdiction of the Court is to take the plea in the written

statement and as a substantive part of the defence. Except in the clearest cases that should be the course".

24. In **Expfar Sa and another Vs. Supharma Laboratories Ltd. And another** reported in **2004 (3) SCC 688** it has been held that when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true.

25. Similarly in the judgment in **Abdulla Bin Ali and others Vs. Calappa and others** reported in **1985 (2) Supreme Court Cases 54** it has been held that the jurisdiction does not depend upon the defence taken by the defendants in the written statement. In **Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others** reported in **2006 (5) SCC 638**, the Apex Court has held that Demurrer is an act of objecting or taking exception or a protest. It is a pleading by a party to a legal action that assumes the truth of the matter alleged by the opposite party and sets up that it is insufficient in law to sustain his claim or that there is some other defect on the fact of the pleadings constituting a legal reason why the opposite party should not be allowed

to proceed further and held that the demurrer, the question of jurisdiction had to be determined with advertence to the allegations contained in the statement of claim.

26. In **Ritu Sachdev Vs. Anita Jindal and others** reported in **1982 SCC OnLine Cal 44** the Division Bench of the Calcutta High Court has held that the question of jurisdiction must be decided with the allegations in the pleadings. In **Lindsay International Pvt. Ltd. And Ors. Vs. Laxmi Niwas Mittal and Ors.** reported in **Manu/WB/0743/2017**, the Calcutta High Court has held that when the plaint discloses some cause of action, mere fact that the case was weak or may not likely to succeed at trial, was no ground to reject the plaint. In **Bloom Dekor Limited Vs. Subhash Himatlal Desai and others** reported in **1884 (6) Supreme Court Cases 322**, the Honourable Apex Court has held as follows :

28. By "cause of action" it is meant 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, (Cooke v. Gill²). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit. This Court had

occasion to refer to the case of Cooke² in **A.K. Gupta and Sons Ltd. v. Damodar Valley Corpn.**³ At page 98 it is stated thus:

"The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in Cooke v. Gill² in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd.⁴ and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have understood to mean 'new set of ideas': Doman v. J. W. Ellis and Co. Ltd.⁵ This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

27. In **Morgan Stanley Mutual Fund Vs. Kartick Das**

reported in **1994 (4) Supreme Court Cases 225**, the Apex Court has held that the residence of the company is where the registered office is located. **Subramaniam Swamy vs. Prabhakar S. Pai and Ors.** reported in **MANU/MH/0019/1983**, it is held that in cases of defamation, statement made in Chandigarh have effect in Bombay by circulation of newspapers in Bombay. Hence, the Bombay Court has jurisdiction to take cognizance of the offence.

28. From the above judgments, the facts emerge that the plaint must be read in a meaningful manner and there cannot be segmentation or compartmental reading. Similarly, the Court cannot deal with facts at the time of consideration of the application filed for revocation and objection raised by the Demurrer, the Court must proceed on the basis of the facts pleaded by the plaintiff are true. As far as the defamation is concerned, the doctrine of facts come into place. Not only in the place where the news was published and the place of circulation also give raise to jurisdiction.

29. In the line of the above settled position of law, now we have to analyse the entire facts pleaded in the plaint to find out whether the suit is maintainable before this Court. The plaintiff as a company filed a suit

against the defendants. From the plaint, it can be seen that one Ramu Annamalai Ramasamy was the Managing Director of the plaintiff company and Palaniappan was the Promoter of the plaintiff company. Para 7 of the plaint deals with the incorporation of the first defendant. Para 8 of the plaint clearly indicate that the suit arises out of the sale of the shares of the first defendant namely *Hermes I tickets Private Limited* by the plaintiff and subsequent sale by the third defendant to the second defendant. It is also pleaded that the second defendant is making various misrepresentations to the public website with regard to the role of the third defendant. The above misrepresentations resulted in huge loss to the plaintiff and created mental agony to the plaintiff. From para 11.12 to 11.37, the facts pleaded in the plaint is entirely with regard to the share purchase agreement between the plaintiff and the third defendant and also the legal issues pending between the minority shareholders and the plaintiff company and also deals with the civil suit filed by the promoter and the director of the present plaintiff company in O.S.No.192 of 2018 before this Court seeking anti Suit injunction against the minority shareholders. The facts pleaded, except paragraph 8 in the plaint, all other paragraphs relate to previous share purchase agreement between the plaintiff and the third defendant and the dispute between the plaintiff and the minority

shareholders. In Paragraph 11.38, it is pleaded by the plaintiff that there are certain email correspondences between the plaintiff and the second defendant seeking information. However, the information has not been furnished by the second defendant to the plaintiff. In paragraph 12, it is pleaded as if the plaintiff nor the share holders had no role or interest in the subsequent transaction of the second defendant. They also have no knowledge about the huge profit between the second defendant and third defendant.

30. It is further contended that there were some misrepresentations made to the public. It is to be noted that with regard the so called misrepresentation, the particulars of the misrepresentation is vague. No details whatsoever pleaded in the plaint. It is also to be noted that under Order 6 Rule 4 of Code of Civil Procedure, when the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or any undue influence and in all the other cases particulars have to be given in the pleading. The particulars including the dates and items are necessary. Except a bald allegation of misrepresentation, no particulars as to the date item wise is not pleaded in paragraph 12 of the plaint. Para 11.38 and Para 13 deals with the alleged email correspondences seeking information from the second defendant as to the

nature of the profit made in the subsequent sale transfer.

31. The alleged publication said to have been issued by the second defendant was relied by the plaintiff in the plaint document. This appears to have been issued in a website on 20.07.2015 wherein the Wire Card of the second defendant has issued a statement that they will acquire 100% of the shares from the GI Retail and Financial investors of the companies operating payment services in India, Philipines, Indonesia and Malaysia under the brands "CASH CARD". This publication is sought to be relied by the plaintiff to show that there are misrepresentations and misleading of the facts and subsequently when publication issued by one Alphaville in January 2018 has been relied to show that there are misrepresentations made by the defendants. These two documents were mainly relied upon by the plaintiff in the plaint documents. Though the Court is not to make elaborate enquiry as to the correctness of the document or otherwise going by the plaintiff avements, it is also well settled that not only the plaint but the plaint document as well can be read in conjunction with the plaint as held by the Division Bench of this Court in a judgment reported in **2014 (2) L.W. 575 [A.L.Mathialagan Vs. Balasundaram]**. Why this Court is inclined to look into those documents is to find out whether the present suit is

a oppressive one, particularly in the line of previous proceedings, viz., tortuous claim pending against the Promoters and the Director of the plaintiff company before the English Court.

32. In communication dated 25.01.2018, though it is said to have internationally recognized platform for industry, it is to be noted that the above article is in the nature of a criticism and not issued by any of the defendants. A third party has issued the same in the year 2018. Therefore, such a publication or circulation of a third party cannot be construed to mean that the defendants have issued such a circulation continuously 2018. The relief sought in the plaint though couched in a different manner, the third relief appears to be damages against the defendants for alleged defamatory and malicious act on their part. It is to be noted that the two reliefs, relief 'a', restraining the defendants or their representatives from representing that the plaintiff or his share holder or directors had made any profit/earn out from the sale of share of Hermes, other than that pursuant to the Share Purchase Agreement entered into between the plaintiff and the third defendant and the relief 'b' seeking mandatory relief directing the second defendant to withdraw the statement made to the public. As far as the relief 'a' is concerned, it is in the nature of "gag" Order as against the defendants.

33. The email correspondences sought to be relied on by the plaintiff as plaint documents clearly indicate that the plaintiff sought certain particulars, particularly subsequent to the sale of the shares by the third defendant to the second defendant. The email correspondences sought by the plaintiff seeking those particulars on the ground that there was no profit. Such information is sought only to defend the action brought out by the minority share holders against the promoter and the Managing Director of the Plaintiff company. However, the information sought by the plaintiff was not furnished on the ground of confidentiality. The email correspondences though emanated from Chennai, it was primarily for the plaintiff's Promoter and the Managing Director to seek certain particulars from the first defendant in respect of the sale of shares in favour of the second defendant to defend their action. The correspondences also indicate that they have in fact gone to the extent of saying that the second and the third defendants would be impleaded in the proceedings before the High Court, i.e., in O.S.A.275 5o 277 of 2018.

34. In the light of the above facts, since the plaintiff itself has pleaded about the previous suit filed by them in O.S.No.192 of 1998, it is relevant to refer those proceedings also. Though the above suit originally

filed by the one Ramu alias Annamalai Ramasamy and Palaniappan, the Managing Director and Promoter of the plaintiff herein, in the above suit, the plaintiff is also arrayed as the third plaintiff. They filed the suit restraining the minority share holders and one Eagm Ventures India Private Limited from instituting proceedings before the English Court. The above suit is mainly based on the share purchase agreement between the present plaintiff and the third defendant. The minority share holders smelt a rat. According to them, they have been fraudulently deceived to sell their shares to the third defendant. Accordingly they initiated action for tortuous liability by claiming huge compensation against the Promoter and the Managing Director of the present plaintiff before the English Court. To prevent such a claim before the English Court, the present plaintiff along with Managing Director and Promoter had filed anti suit injunction suit.

35. In fact, the injunctions have been initially granted by this Court taking note of the fact that there were arbitration clause in the agreement and also forum conveniens. However, the Division Bench of this Court in OSA No.275 to 277 of 2019, by its Order dated 24.01.2019 by stating that no cause of action arose within the jurisdiction of this Court and has held as follows :

"The learned Single Judge, in our considered view, was not correct in holding that the cause of action arose within the jurisdiction of this Court on the premise, the Share Purchase Agreements were signed in Chennai, flow of funds was at Chennai and M/s.Hermes shares were sold within the territorial jurisdiction of this Court. These facts are not sufficient to institute a suit, to injunct the defendant from proceeding in the foreign Court on a different factual premise also involving third parties. A claim made in England is also not breach of contract, but a tortuous liability. The venue of the arbitration is only in Mumbai. The real intention is to prevent the appellants to go on with their claim and thus not to facilitate arbitration proceeding. Perhaps that is the reason why all the three respondents jointly filed the suit.

In our considered view, the learned Single Judge ought not to have gone into the merits of the case. The moot question sought to be raised in the present proceeding by the respondents

itself involves a disputed question of facts. We find there is no specific finding given inn the English forum being vexatious or oppressive. As discussed above, the reliance upon the legal notice issued also cannot be countenanced. In such view of the matter, we are inclined to set aside the orders passed by the learned Single Judge.”

The above findings reached its finality. The Special Leave application filed in this regard has also been dismissed on 15.02.2019 by the Honourable Supreme Court in S.L.P.No.4181 to 4183 of 2019.

36. It is also to be noted that in the English Court, the minority shareholders have filed a suit claiming huge amount on various grounds. The entire issue in the English Court is with regard to the sale of shares of the first defendant namely Hermes I tickets Private Limited using Emerging Markets Investments, the third defendant herein and subsequent sale of shares by the third defendant to the second defendant. The main claim has been proceeded on the basis of alleged fraud, conspiracy, decit etc. The Managing Director and the Promoter of the plaintiff company's attempt to prevent the action of the minority shareholders in the English Court failed in the earlier

suit in O.S.No.192 of 1998. Whereas, this suit has been filed only by the company, though the company is also one of the plaintiff in the earlier suit.

37. The entire issue revolves around the share purchase agreement between the plaintiff and the third defendant. Now the present suit is couched in the manner as if the transaction between the third defendant and the second defendant and their representatives has made huge impact on the plaintiff and the plaintiff sustained the loss. It is their contention that the publication has been issued by the second defendant in the year 2015 in the website at Germany which had affect at Chennai and subsequently a communication in January 2018 by Alphaville also gives rise to cause of action. In para 8 of the present plaint, it is the contention of the plaintiff that the publication dated 27.10.2015 issued by the second defendant are misrepresentations. Therefore, they are entitled to maintain the suit not only for the preventive relief but also for damages.

38. It is curious to note that in the earlier suit in O.S.No.192 of 2018 filed by the Promoter and Managing Director of the present plaintiff herein in para 16 they had pleaded as if the action of the minority share holders are based on unverified news reports and other allegations

which are merely surmises and conjectures and the same have no legal or documentary proof. In the earlier suit, the Promoter and Managing Director and the present plaintiff took a stand to the effect that the publication issued by the third defendant in the year 2015 is unverified news report and has no legal documentary proof. Now the same document sought to be relied upon by the plaintiff company to show that those documents is relevant to decide the jurisdiction of this Court. The manner in which the company alone filing the present suit to overcome the earlier pleadings filed by the Managing Director and the Promoter including the present plaintiff clearly indicate that the present suit has been filed seeking relief indirectly preventing any materials which may be produced before the English Court. Even assuming that the representation made by the third defendant on 27.10.2015 is a result of misrepresentation and has been published on the same day in a website which has effect all over India and even applying the effects doctrine that the circulation in the website has effect in the entire world, it is to be noted that the moment such publication was published and known to the parties, the suit for claiming any damages on the basis of such publication ought to have been filed within one year from the date of the publication.

39. Admittedly, the so called statement of the third defendant was published on 27.10.2015 and posted in the website. The plaintiff is aware that the action has been initiated against the plaintiff's Managing Director and the Promoter and was aware of the fact that the English Court has took cognizance of the minority shareholders' claim and also passed freezing Orders. The above claim was made on the basis of the publications said to have been issued by the second defendant herein. At the time of filing the earlier suit also, the present plaintiff is aware of the fact that the so called publication also relied upon by the minority shareholders. Thereafter, they have sent various emails relied upon by the parties herein seeking certain informations, particularly, sale of shares in between the third defendant and the second defendant. Being aware of the publication even during the pendency of the earlier proceedings, no action whatsoever has been taken by the plaintiff for the alleged loss of reputation for claiming damages within a period of one year. Therefore, merely on the basis of some criticism published in some website, namely Alphaville, in the year 2018, which is said to be an international recognized platform for the industry, that cannot be pressed into service to save limitation also.

40. All these facts clearly indicate that suit itself has been filed in order to prevent the claim of the

minority shareholders before the English Court. If the parties involved in the entire transactions are prevented from disclosing any information with regard to the subsequent sale of shares by the third defendant to the second defendant and the alleged profits, if any, the same will amount to gag Orders restraining the defendant from producing any documents before the Court of law. The prayer 'a' is to restrain the defendants or their representatives from representing that the plaintiff or its shareholders/Directors had made any profit pursuant to the share purchase agreement entered between the plaintiff and the third defendant dated 07.09.2015. If the defendants are prevented from disclosing anything, the same will have serious effect in the pending suit and the claim before the English Court. Similarly, the damages is also claimed in this suit. Though damages has been claimed, a perusal of the plaint indicate that the suit is one for defamation and loss of reputation and the suit has not been filed within one year from the alleged publication made by the third defendant.

41. It is not in dispute that the second defendant company is in Germany. The third defendant is in Mauritius and the fourth defendant is in Singapore and the fifth defendant is in Germany. It is stated by the plaintiff that the first defendant has registered office at Chennai

and the second defendant holds share in the first defendant Company in Chennai, the situs first defendant in Chennai and the third defendant controls the sixth defendant and therefore, there is a cause of action. It is to be noted that though in the plaint, it is stated that the first defendant has its registered Office at Perungudi, it lies within the jurisdiction of Chengalpet. In the plaint itself it is stated that the summons for the first defendant is to be served through District Munsif Court, Alandur, which is outside the jurisdiction of this Court. Admittedly, there is no privity of contract between the plaintiff and the defendants as far as the sale of the share from the third defendant to the second defendant. Therefore, from the documents and the facts as discussed above, it appears that the entire suit has been filed to stall the proceedings in the English Court. Admittedly, the defendant's are residing outside the jurisdiction of this Court and no cause of action arose within the jurisdiction of this Court. Merely because the plaintiff company is registered within the jurisdiction of this Court, it cannot be said that a part of the cause of action arose within the jurisdiction of this Court. Mere clever drafting the suit in such a manner as if a part of the cause of action arose within the jurisdiction of this Court, cannot be a ground to maintain the suit.

42. As discussed above, the allegation in the plaint prima facie indicate that the substantive relief is sought only to stall the proceedings in the English Court and non suit the Division Bench Order of this Court. Mere astuteness in drafting will not stand in the way of the Court looking at the substance of the relief asked for. Clever drafting and couching the relief in such a manner to make it appear as if a part of the cause of action arose within the jurisdiction of this Court, in my view, certainly the plaintiff is not entitled to maintain the suit before this Court. It is also to be noted that discretion to grant leave ought to be exercised carefully. It is also argued by the plaintiff that at the time of passing an Order by this Court, there is a direction to file a statement with regard to obtaining of shares and other parties need to be filed before this Court either as a Status report or in the form of an affidavit. But nothing has been complied. Therefore, the applicants have no right to be heard in this matter.

43. On a perusal of the Order dated 19.03.2019, the Order is silent as to whether such direction has to be complied only by the defendants . On the basis of the above Order it cannot be said that the defendants have

violated the Orders. It is also submitted by the learned counsel that the plaintiff has also filed an application for amendment with further particulars gathered as material evidence. It is to be noted that leave has to be granted on the basis of the allegation in the plaint and not on the basis of the pleading sought to be amended subsequently. Therefore, this Court is of the view that if the contention of the plaintiff that they suffered loss due to remarks and the misrepresentations made by the defendants, nothing prevented the plaintiff to implead proper parties in the English Court to seek proper relief against the concerned defendants. Admittedly, the Managing Director and the Promoter are already facing trial before the English Court. Therefore, considering the entire pleadings and particularly the plaint documents and earlier proceedings, I am of the view that no part of cause of action, whatsoever, arose within the jurisdiction of this Court. The clever and astuteness in drafting of the pleadings and the reliefs couched in such a manner only to maintain the suit and to prevent the defendants from providing particulars before the English Court. Therefore, this Court is of the view that the discretion exercised by this Court while granting leave at the time of filing of this suit, has to be revoked.

44. Accordingly, these applications are allowed and the leave already granted by this Court is revoked. The plaint is Ordered to be struck off from the file.

Sd./-N.S.K.J
26.08.2019

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

JJ 29/08/2019

COURT OFFICER(O.S.)

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