

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 11TH DAY OF FEBRUARY 2019

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

A.No.9960 of 2018

in

C.S.No.786 of 2018

M/s.Techbio Solutions
Represented by its Director Mr.Vishnu
No.2, South Avenue
A-1, Deju Plaza
Srinagar Colony
Saidapet, Chennai - 600 015.

...Plaintiff

-Vs-

1.Raja Mehra
Mehra Enterprises
1st Floor, Chopra Building
NH-22, Kalka-Shimla Building
Sector-6, Parwanoo Dist, Solan
Himachal Pradesh - 172 322.
2.Vijay Mehra Director
Agmera Private Limited
Plot No.19(1), Sector 1, Parwanoo
Solan, Himachal Pradesh - 173 220 India

3.Agmera Private Limited
Plot No.19(1),Sector 1, Parwanoo
Solan, Himachal Pradesh - 173 220 India

4.AGMA Limited
Gemini Works, Haltwhistle
Northumberland, NE49
9HA, United Kingdom

...Defendants

A.No.9960 of 2018:

1.Raja Mehra
Mehra Enterprises

Ist Floor, Chopra Building
NH-22, Kalka-Shimla Building
Sector-6, Parwanoo Dist, Solan
Himachal Pradesh - 172 322.

2.Vijay Mehra Director
Agmera Private Limited
Plot No.19(1), Sector 1, Parwanoo
Solan, Himachal Pradesh - 173 220 India

...Applicants/1st and 2nd Defendants
-Vs-

M/s.Techbio Solutions
Represented by its Director Mr.Vishnu
No.2, South Avenue
A-1, Deju Plaza
Srinagar Colony
Saidapet, Chennai - 600 015.

...Respondent/Plaintiff

1.Agmera Private Limited
Plot No.19(1),Sector 1, Parwanoo
Solan, Himachal Pradesh - 173 220 India

2.AGMA Limited
Gemini Works, Haltwhistle
Northumberland, NE49
9HA, United Kingdom

...Respondents/3rd and 4th Defendants

Application praying that this Hon'ble Court be pleased to revoke the leave granted in Appln.No.8937 of 2018 in C.S.No.786 of 2018 to file the suit as against the applicant herein.

This application coming on this day before this court for hearing, the court made the following order:

These Applications have been filed by the applicants, who are the defendants 1 to 3 respectively, to revoke the leave granted by this Court in Application No.8937 of 2018 in C.S.SR.No.125412 of 2018 (now numbered as C.S.No.786 of

2018) to file the suit as against the applicants herein on 22.11.2018.

2. For the sake of brevity, the parties would be referred to by their original nomenclature as found in the main suit.

3. The case of the applicants / defendants 1 & 2 is that they had entered into a Share Subscription Agreement with the fourth defendant on 07.04.2017 for distributing its products and thereafter, the fourth defendant had illegally terminated the said agreement with the applicants and appointed the plaintiff as their Distributor for sale of their products.

4. The learned counsel for the defendants 1 & 2 drew the attention of this Court to the cause-title of the plaint, in which, the plaintiff company has been shown as M/s.Techbio Solutions, whereas in the pleadings, in paragraph no.1, it is described as M/s Techbio Solutions Pvt. Ltd. Further, there is no relief sought as against the 4th defendant. The agreement entered into between the defendants 1 and 2 and the fourth defendant has expired.

5. The learned counsel for the defendants 1 and 2 further brought to the notice of this Court the Clause 12 of the Letters Patent Act, which reads as follows:

"Original jurisdiction as to suits - And We do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court: or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed hundred rupees."

6. The learned counsel for the defendants 1 and 2 has vehemently argued that when the cause of action (wholly or partly) has arisen within the local limits of the ordinary

original jurisdiction of the High Court, then, this Court is entitled to invoke its jurisdiction, in absence of which, this Court has no territorial jurisdiction to try the suit and the leave ought not to have been granted, as the remedy lies not before this Court. He has further submitted that the plaintiff has to approach the High Court of Himachal Pradesh for seeking appropriate relief and there is no need to file any petition muchless the present one before this Court. Hence, on that score, the leave granted by this Court on 22.11.2018 has to be revoked.

7. The learned counsel for the Plaintiff would submit that the defendants 1 to 3 were appointed on 07.04.2017 by the 4th third respondent company for the supply of its goods for a period of six months and the said six months had already expired without any further extension. He would also submit that the issue with regard to describing the name of the plaintiff company as M/s.Techbio Solutions Pvt. Ltd, has already been considered by this Court while granting the relief of Interim Injunction, which was subsequently made absolute. The defendants 1 to 3 cannot re-adjudicate the issue, as it was a mere typographical error. He has further submitted that the plaintiff has been appointed as the distributor by the 4th defendant not only in Chennai, but also in various other places. The plaintiff has clearly

stated in paragraph 19 of the plaint that the plaintiff company was established at Chennai on 26.4.2018 under the Distributorship agreement for supply of healthcare products produced by the 4th defendant company, which is not only restricted to Chennai but, also other States within India. For better appreciation, Paragraph No.19 of the plaint is extracted below:

"The Plaintiff states that the cause of action in the above suit arose in Kotturpuram Chennai on 26.04.2018 when the plaintiff was awarded the Distributorship agreement for supply of range of healthcare products including but not limited to Chennai; On 10.05.2018, when a lawyers notice was sent to the 4th Defendant and also to the plaintiff by the 3rd Defendant, which the Plaintiff received at Chennai; On 23.05.2018, reply notice was sent to the 3rd Defendant by the 4th Defendant to refrain from issuing any malicious notice to them and which was also received by the Plaintiff at Chennai; On 28.05.2018, when an FIR was came to be registered by the Parwanoo Police Station based the complaint given by the 2nd Defendant against the 4th Defendant; On 15.07.2018, when an Email was received by the Plaintiff at Chennai from the Parwanoo Police Station under Section 160 CrPC; On 03.08.2018, when the Plaintiff received threatening calls from the 1st and 2nd Defendant to stop doing business with the 4th Defendant. On 13.09.2018, when an application seeking for issuance of warrant agaist Mrs.Jayanthi Bhaskar was filed before the Chief Judicial Magistrate, Kasauli District Solam (H.P); On 20.09.2018, when a criminal compliant was addressed to the

jurisdiction Inspector, J-4, Kotturpuram to take action against the 1st and 2nd Defendant by the Plaintiff and continuously thereafter since the Plaintiff is suffering harrassment at the hands of the 1st and the 2nd Defendant. Therefore the cause of action arises *die-in diem*."

8. Learned counsel for the plaintiff has further averred that in the plaint, it has been stated that when the Director, representing the plaintiff company was in Chennai, he had received phone calls threatening him not to do any business with the 4th defendant. It is submitted that this Court has already considered the points raised by the defendants 1 to 3 and being satisfied with the same, granted leave. In addition to the above, this Court has also granted interim order based on the documents placed on record, which has been made absolute on 07.12.2018.

9. Though no relief has been sought for against the fourth defendant, the learned counsel for the fourth defendant would submit that the Distributorship Agreement entered into between the defendants 1 and 2 and the 4th defendant was terminated on 23.03.2018 itself and in its place, the plaintiff was appointed.

10. Heard the learned counsel for all the parties and perused the material documents available on record.

11. The points for consideration in these applications are, as to whether whole or part of the cause of action had taken place within the State of Tamil Nadu for the purpose of entertaining the present Suit and whether the present applications filed to revoke the leave granted, have got to be allowed.

12. The issue regarding wrong description of the plaintiff company in the cause-list as well as in the pleadings has been considered in detail by one of my Brother Judges and held that it was a typographical error. The plaintiff has been appointed as the distributor of the 4th defendant on 26.4.2018 for the supply of Health Care Products for promotion and distribution throughout India. Apprehending that there would be interference by the defendants 1 to 3 and its agents, the plaintiff has approached this Court for permanent injunction. Though no relief has been sought against the fourth defendant, the learned counsel appearing for the fourth defendant submitted that there has been a subsequent renewal of agreement with plaintiff and that the agreement entered into with the defendants 1 to 3 stood terminated.

13. Contending that, this Court cannot permit the Plaintiff to file a Suit in the absence of whole or part of cause action, learned counsel for the defendants 1 and 2, has relied upon the following decisions:

(i) **Captain Tractors Pvt. Ltd. vs Ashok Leyland Ltd, (2018 (5) L.W. 689)**

"44. The cause of action in the present suit first arose on 7th June 2018 when the plaintiff's group concern, Ashok Leyland Vehicles Limited received a cease and desist notice dated 1st June 2018 and the plaintiff was informed of the same. The cause of action further arose when the plaintiff confirmed on 12th June 2018 from the online records of the Trademark Office that the defendant has no rights in word CAPTAIN word per and their label mark carrying the word CAPTAIN was restricted to "mini tractors and parts thereof". The cause of action further arose when Ashok Leyland Vehicles Limited's counsel issued an interim reply dated 13th June 2018 to the defendant's lawyer in response to their notice dated 1st June 2018 and subsequently on 29th June when the detailed response to the legal notice dated 01st June 2018 was issued.

45. The casue of action is a continuous one and arises with each act of the defendant attempting to Invate in to the rights fo the plaintiff and passing off by the Defendant under the impugned mark CAPTAIN for land vehicles and commercial vehicles and shall continue to subsist until the Defendant is restrained by an order of this Hon'ble Court."

(ii) **Syed Mohamed Salahuddin v. Ahmed**

Abdulla Ahmed Al Ghurair, 2018(5) CTC 291.

"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. Ltd. v. Duroflex Sitzings 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 convenience of parties in ascertaining appropriateness of jurisdiction. In *Seshagiri Row v. Nawab Askur Jung Aftal Dowlah Mushral Mulk*, 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, the court may decline to leave to sue. The question of convenience cannot be thus excluded from consideration. This view was cited with approval in *Madanlal Jalan v. Madanlal and others*, AIR 1949 Cal. 495, where the Judge has held that the balance of convenience 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 Letter 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 convenience 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 convenience, 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."

14. Learned counsel appearing for Defendants 1 and 2 has also relied on a judgment of this Court in the case of **S.Nagaraj.S vs. S.Govindaswamy**, reported in 1996 L.W. 498 and contended that in an application filed to revoke the leave, the averments made in the plaint have to be looked into and not the averments in the affidavit. Relevant portion of the said decision is extracted hereunder:

"8. ...

On a reading of the above averments, it is too much for us to presume that the parties intended to purchase lottery tickets at Madras and share the prize, if any, between themselves. At best, the above averments will indicate that the parties wanted to do business by selling lottery tickets. Further, we have to go only by the averments in the plaint and not by the averments in the affidavit. This position has been made very

clear in *Muttra Electric Supply Co., Ltd., v. Gopal Saran Kulasesthi*, referred to by the learned Advocate General. In this decision, it has been stated that in an application for revocation of leave under Cl.12, the plaint is the most material document on which the decision should rest, although such decision does not rest merely on a criticism of the pleading. The petition and the affidavits in support of and against the revocation of leave are relevant, but must be read subject to the overriding considerations and facts pleaded in the plaint. It is not unusual that in such petition and affidavits the plaintiff and the defendant are prone to overstate their respective cases for and against the leave, and such overstatement should be toned down by reference to the plaint."

15. It is no doubt true that while considering the matters placed before this Court, the pleadings have got to be gone into, on the basis of which, this Court can dwell upon regarding the grant of leave. Even though the 4th defendant has no role to play, it has been unnecessarily dragged into the present suit, mainly because the cause of action is a bundle of facts, which has to be narrated and suit has to be contested.

16. Considering the facts and circumstances of the case, this Court finds that the plaintiff has been duly appointed by the 4th defendant as its Distributor under the

Partnership Agreement at Chennai and therefore, the plaintiff is entitled to maintain the suit. The said fact is fortified from the fact that the defendants 1 to 3 were appointed as its Distributors and their period had also come to an end. Consequent to the termination of the Dealership, the plaintiff has been appointed as the Distributor of the 4th defendant and since there was a continuous threat to the plaintiff, the present suit was sought to be filed for permanent injunction. Hence, I find much force in the contention of the learned counsel for the plaintiff and the cause of action has arisen within the jurisdiction of this Court, as the plaintiff has been appointed as the Distributor of the 4th defendant on account of termination of the agreement between the defendants 1 to 3 and the 4th defendant.

17. In the result, **these Applications are dismissed and the leave granted by this Court in Application No.8937 of 2018 in C.S.No.786 of 2018 on 22.11.2018 to file the suit as against the defendants 1 to 3 is sustained.**

WEB COPY

Sd/.S.V.N.J.
11.02.2019

//Certified to be a true copy//

Dated this the th day of 2019.

DL/22.02.2019

COURT OFFICER

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