



A.Nos.451 & 455 of 2019 & 5728 of 2018
in O.A.No.696 of 201 in C.S.No.501 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.01.2020

Pronounced on: 09.01.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

Application Nos.451 & 455 of 2019
in A.No.5728 of 2018 in O.A.No.696 of 2018
in C.S.No.501 of 2018

1. M/s.Grant Thornton India LLP.
No.16th Floor, Tower – II,
L/41, Connaught Circus,
New Delhi – 110 001.

... Plaintiff
in both cases

versus

1. 63 Moons Technologies Limited,
Formerly Known as Financial Technologies (India) Ltd.,
Rep. by its Authorised Signatory Mr.D.John Deepak,
Having its Registered Office at Shakti Tower – 1, 7th Floor,
Premises E, 766, Anna Salai, Thousand Lights,
Chennai – 600 002.

... 1st Respondent/Plaintiff
in both cases

2. National Spot Exchange Limited,
B-Wing, 6th Floor, Chintamani Plaza,
Chakala, Andheri Kurla Road, Andheri,
Mumbai – 400 009.

... 2nd Respondent/2nd Defendant
in both cases

Prayer in Application No.451 of 2019:-

Judge's summons under Order XIV Rule 8 of Original Side Rules read with order VII Rule 11 of the Code of Civil Procedure Code, 1908.

(i). To reject the plaint in C.S.No.501 of 2018 under Order

VII Rule XI of the Code of Civil Procedure, 1908.



A.Nos.451 & 455 of 2019 & 5728 of 2018
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Prayer in Application No.455 of 2019:-

Judge's summons under Order XIV Rule VIII and Order III Rule 1 of the Original Sides Rules, read with Clause 12 of Madras High Court Letters Patent for revocation of leave:-

(i). To revoke the leave granted in A.No.5328 of 2018.

For Applicant : Mr. Krishna Srinivasan
in both cases for M/s.Ramasubramanian Associates

For R1 : Mr.A.L.Somayaji, Senior Counsel
in both cases for Mr.Nithyaesh Natraj

O R D E R

These two applications were taken out by the 1st defendant, (i). to reject the plaint in C.S.No.501 of 2018 under Order VII Rule 11 of the Code of Civil Procedure, 1908. (ii). To revoke the leave to sue the defendants in A.No.5328 of 2018.

2. The case of the plaintiff in short is that, "the plaintiff's M/s.63 Moons Technologies Limited (formerly known as Financial Technologies (India) Limited, is a public listed

Company incorporated under the Companies Act, 1956. The 1st



Defendant, M/s.Grant Thornton India, a Limited Liability Partnership, is engaged in the business of providing services, such as, consulting, assurance, business advisory, digitech, etc., as published on its website. The 2nd defendant, National Sport Exchange Limited (NSEL), is a Company registered under the Companies Act, 1956 and is promoted by the MCX and National Agricultural Cooperative Marketing Federation of India (NAFED).

3. The Plaintiff has acquired the stake of MCX in NSEL in order to meet regulatory compliance of Spot Exchange. The Plaintiff is a technology service company. The shares of the Plaintiff are listed in the Bombay stock Exchange (BSE) and National Stock Exchange (NSE). The plaintiff claims that they are leaders in financial technologies market. The 1st Defendant had carried out forensic service of the 2nd defendant with the approval of FMC. The scope of the work was to establish the books of accounts, including contracts/trades pending settlement, quantifying the outstanding, quantifying and verifying the collateral available and ascertaining accounting if accounting policies and procedures reflect the complexity of the NSEL.

4. In the report, the 1st Defendant has specifically stated that there are some limitations with respect to their report and there are also certain restrictions. In spite of the limitation and restrictions, the 1st defendant has disclosed the content of the report during the proceedings initiated before the



Forward Markets Commission (hereinafter referred as "FMC"). Since the 1st defendant has made the content of the report public and it has been used to damage the reputation and goodwill of the plaintiff.

5. Therefore, alleging that based on the report of the 1st defendant, showcause notice was issued by FMC as to why the plaintiff should not be declared not fit and proper to hold the shareholders in commodity exchanges. Later, the plaintiff Company was declared not fit and proper and was forced to exit the commodity exchanges. Various criminal proceedings were initiated against the plaintiff and Officials, pursuant to the 1st defendant report. More particularly, the Government of India through Ministry of Corporate Affairs, has passed draconian order under Section 396 of the Companies Act, merging the 2nd defendant with the plaintiff and this order has been passed largely on the basis of the 1st defendant's report.

6. In the plaint, it is alleged and averred that the 1st defendant had not approached the forensic Audit from the holistic point of view and of being biased. It is contended that fixing responsibility should have been done only after all stakeholders in the value chain were investigated, the 1st defendant has colluded with the FMC and targeted the plaintiff to inflict harm to the plaintiff. Therefore, the plaintiff suffering illegal actions till date and suffered loss. Hence, sought for a relief



of declaring the report of the 1st defendant dated 21.09.2013 and the supplementary report dated 24.10.2013 as invalid, null and void, vitiated and unreliable. Further, compensation of Rs.5,00,00,000/-, besides injunction restraining the 1st defendant, agent and nominees from directly or indirectly relying upon the report.

7. The 1st defendant, who is the applicant herein, has not filed the written statement. This Court has held that, having failed to file the written statement within 120 days, it has forfeited the right to file the written statement, as per the Commercial Courts Act. Thereafter, the present applications are filed for the relief mentioned below. The grounds in these two applications are almost same, which are capsulised by the applicant himself as below:-

a. The Suit is filed challenging herein;

b. The said Audit was carried out by the Applicant at the request of the Forward Markets Commission and pursuant to an Agreement dated 27.08.2013 entered into by the Applicant with the 2nd Respondent;

c. As per the terms of the said agreement, the reports have been furnished by the applicant to the 2nd respondent and to the Forward Markets Commission alone;



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A.Nos.451 & 455 of 2019 & 5728 of 2018
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d. There was no privity of contract between the applicant and the 1st respondent i.e., the plaintiff in the suit;

e. The agreement dated 27.08.2013, the audit that culminated in the Reports dated 21.09.2013 and 24.10.2013, the provision of the reports to the FMC and the 2nd respondent all took place at Mumbai, i.e outside the territorial jurisdiction of this Hon'ble Court.

f. The subsequent proceedings purportedly initiated on the basis of the reports dated 21.09.2013 and 24.10.2013 that have been referred to in the plaint also took place outside the jurisdiction of this Hon'ble Court;

g. It is therefore evident, from a bare perusal of the plaint itself, that no part of the cause of action in the present suit took place within the territorial limits of jurisdiction of this Hon'ble Court;

h. It is not the case of the 1st respondent that, as can be seen from a reading of the plaint, the reports were furnished by the Applicant to any other party apart from the FMC and the 2nd respondent. Therefore, the Applicant having acted as per the terms of its contract with the FMC and the 2nd respondent,



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A.Nos.451 & 455 of 2019 & 5728 of 2018
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and the 1st respondent having no privity with the applicant, there is no cause of action that has arisen entitling the 1st respondent to sue for the reliefs sought in the present suit. It is therefore submitted that the plaint does not disclose any cause of action as against the applicant and the plaint ought to be rejected on this ground alone.

i. A reading of the plaint would itself reveal that the 1st respondent was aware of the report as early as on 03.12.2013, when its Officers participated in proceedings before the FMC wherein the representatives of the Applicant were subjected to cross-examination. It is submitted that, in fact, the 1st respondent was aware of the reports even before the said date.

j. Despite being aware of the reports, the 1st respondent has not chosen to challenge the said reports until now, a period of more than 5 years later;

k. In view of the aforesaid, the present suit is barred by limitation as the same has been instituted more than 5 years after the last of the aforesaid events had occurred.

8. The Learned Counsel appearing for the applicant/1st

defendant make the following submissions in support of the application for revocation of leave.

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(i). Neither of the defendants in the suit are carrying on business or personally work for gain within the local limits of this Court and no part of the cause of action has arisen within the territorial jurisdiction of this Court.

(ii). The proceedings adverted in the plaint regarding the jurisdiction did not took place within the local limits of this Court. Merely because, the plaintiff has its registered Office at Chennai and filing "annual returns" before the Registrar of Companies, Chennai, will not give rise to a cause of action to sue before this Court.

(iii). Having not satisfied the requirement of Clause 12 of the Letters Patent and Section 20 of the Code of Civil Procedure, 1908, the leave granted to sue has to be revoked.

9. In support of the Application filed for rejection of plaint, the Learned Counsel would submit that, the suit claim is badly barred by limitation since it has been laid beyond the period prescribed for recovery of money. The plaintiff's plea, there is a continuous cause of action on account of publication of the report is devoid of merits and misleading. The plaintiff had knowledge of the forensic report submitted by the 1st defendant as early as 31.12.2013 during the FMC proceedings. Besides, FMC

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proceedings, there are several other proceedings initiated by the



various authorities against the plaintiff and in most of those proceedings, the forensic report of the 1st defendant has been relied. The plaintiff himself has relied upon the portion of the 1st defendant report in the proceedings before the SEBI and CERC, which culminated in orders dated 19.03.2014 and 13.05.2014. Therefore, after expiry of several years, the suit has been filed for damages which is hopelessly barred by limitation.

10. Yet another contention raised by the Learned Counsel appearing for the 1st defendant/applicant is that, in any event, the present suit cannot be considered as a Commercial dispute and the contention of the plaintiff that, it fall under Section 2(1) (c) (x) and (XVIII) of the Commercial Courts Act is incorrect.

11. Admittedly, there is no privity of contract between the applicant and 1st respondent. The fact being so, the dispute cannot be termed as a dispute arising out of an agreement for sale of goods or provision of services or relating to consultancy or management agreements. The dispute raised by the plaintiff at best, could be a tortuous claim and therefore, the *lis* should be decided as a regular suit and not as a Commercial dispute.

12. The Learned Senior Counsel appearing for the respondent/plaintiff would submit that, the suit has been initiated at Chennai, since, the cause of action has arisen within the jurisdiction of this Court. Damage to the plaintiff's



business, reputation and goodwill due to the malafide action of the applicant/1st defendant, has caused in areas within the jurisdiction of this Court. The wrong done by the applicant/1st defendant has affected, the plaintiff and its 63,000 shareholders in Chennai. The report of the 1st defendant is resulted in the plaintiff being declared "not fit person" by FMC on 17.12.2013, which in turn has been used by other regulators namely SEBI, CERC and ROC.

13. Further, pointing out that, the applicant/1st defendant involved financial audit and have Office throughout India, including Chennai. Therefore, it is not correct to say that no cause of action arose within the jurisdiction of this Court.

14. Regarding the question of limitation, the Learned Senior Counsel appearing for the plaintiff/respondent would submit that, the suit is filed in time. There is continuous cause of action accruing against the defendant on account of continuous and repeated false and malicious actions perpetrated against the plaintiff.

15. Referring paragraph No.42 of the plaint, the Learned Senior Counsel appearing for the plaintiff/respondent would submit that, the plaintiff suffers recurring loss every year due to the impugned report of the 1st defendant. The said report continue to be in circulation both on the online space as well as in the



physical form in the public domain and it continuously causes damage to the plaintiff's reputation and business every day which give rise to fresh cause of action.

16. Referring Section 22 of the Limitation Act, 1963, the Learned Senior Counsel appearing for the plaintiff would submit that, in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time the tort continues.

17. Limitation being a mixed question of facts and law, the Learned Senior Counsel appearing for the plaintiff would submit that, in the absence of *ex facie* bar under the law, plaint cannot be rejected invoking Order VII Rule 11 of C.P.C.

18. Referring Section 19 of the C.P.C., the Learned Senior Counsel appearing for the plaintiff would submit that, where a suit is for compensation for wrong done to the person, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Court and would submit that, the suit is filed seeking compensation for the damages caused to the plaintiff in view of the 1st defendant's



carrying on its business and the 1st defendant having its branch.

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19. Regarding the determination of jurisdiction of the Commercial Court, the Learned Counsel appearing for the plaintiff/1st respondent would submit that, under Section 6 of the Commercial Courts Act, the Commercial Court shall have jurisdiction to try all suits and applications relating to Commercial dispute of a specified value arising out of the entire territory of the state over which it has been vested territorial jurisdiction.

20. Commercial dispute is defined under Section 2(c) of the Commercial Courts Act, wherein, Section 2(c) (x) and (xviii), includes 'Consultancy Agreement' and 'Agreement of Service'. Any dispute arising out of this, will fall under Commercial dispute. Relying upon the interpretation of this Court, in C.S.No.786 of 2018 dated 25.01.2019, the learned Counsel would submit that, the expression 'arising out of' occurring in Section 2(1)(c) of said Act should be given a wide and elaborate interpretation. The phrase, arising out of not only the matter "arising under" but also matters connected with an instrument of the kinds mentioned.

21. Clause 12 of the Letters Patent of the High Court of Madras, empowers, the High Court of Judicature to receive, try and determine suits if the cause of action shall have arisen, either



A.Nos.451 & 455 of 2019 & 5728 of 2018
in O.A.No.696 of 201 in C.S.No.501 of 2018

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 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.

22. On reading Clause 12 of Letters Patent along with Section 19 of C.P.C., in the light of the plaint averment regarding jurisdiction, it *prima facie* satisfy the conditions to grant leave to sue. The leave already granted need not be revoked since part cause of action has arisen within jurisdiction of this Court and the plaintiff is carrying on business within jurisdiction of this Court and had incurred the alleged loss at Chennai where he carrying on business. Therefore, the leave granted is sustained. Accordingly, the **Application No.455 of 2019 is dismissed.**

Rejection of plaint:-

Order VII Rule 11 of C.P.C., empowers the Court to reject the plaint on certain circumstances. Where the suit appears from the statement in the plaint to be barred by any law or if it does not discloses cause of action, the plaint may be rejected.

23. The applicant/1st defendant referring to two of the



circumstances namely the plaint does not disclose cause of action and the plaint is barred by limitation, has filed the application and had canvassed the same. As discussed above, the cause of action for filing the suit before this Court is stated in the paragraph Nos.41 & 42 of the plaint.

24. Even if the contention of the Learned Counsel appearing for the 1st defendant is accepted, that there is no privity of contract between the plaintiff and the 1st defendant, the point to be tested is whether the injury caused was by direct action of the defendant or it was a collateral damages caused remotely. This issue is a matter for trial and not a point for consideration in an application under Order VII Rule XI of C.P.C.

25. Likewise, whether the tortious liability alleged, give rise to continuous cause of action or not, to save limitation, is a mixed question of law and facts, which is also matter for trial. Therefore, reserving the right of the defendants to raise the point on limitation and cause of action in the trial, the Application filed to reject the plaint in the suit C.S.No.501 of 2018 is dismissed.

26. The last question to be answered is whether the dispute as narrated in the plaint fall within the definition of 'Commercial dispute' for the Commercial Division to assume jurisdiction.



27. The plaint is presented with an averment that the dispute falls within the definition of Section 2(c) (x) & (xviii), which reads as below:-

2. Definitions:- (1) In this Act, unless the context otherwise requires:-

(c) "Commercial dispute" means a dispute arising out of-

(i).....

(ii).....

(iii).....

*.
.*

(x) Management and consultancy agreements;

*.
.*

(xviii) agreements for sale of goods or provision of services;

28. On holistic reading of the plaint and the submission made by the Learned Senior Counsel for the plaintiff, it is clear that the suit for damages is filed based on the alleged tortuous liability arising out of the forensic report of the 1st defendant. The report came to be filed by the 1st defendant pursuant to the order passed by FMC, appointing the 1st defendant as the forensic Auditor in the proceeding pending before the FMC. The 1st defendant has submitted the report being an expert in the field of Auditing. The Forensic report is a document emanated in a quasi-judicial proceedings and not an instrument arising out of contract as



A.Nos.451 & 455 of 2019 & 5728 of 2018
in O.A.No.696 of 201 in C.S.No.501 of 2018

contended by the plaintiff.

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29. Admittedly, it is not the case of the plaintiff that, it had an agreement with the 1st defendant regarding any provisions of service. When the alleged dispute does not fall under anyone of the 22 categories enumerated under Section 2(c) of the Commercial Courts Act, this Court cannot assume jurisdiction over that *lis*. Hence, the suit has to be tried only as a regular suit and not as a Commercial dispute.

30. Whether the case of the plaintiff fall under the principle *ubi jus ibi remedium* to succeed or fall under the principle of *damnum absque injuria* for the defendants to succeed will be based on evidence. Court cannot decide these issues summarily without trial. As the result, the **Application Nos.451 & 455 of 2019 are dismissed.**

31. Registry is directed to take up this suit as regular Civil Suit and post before the Court concern, as per the roaster.

Sd./-G.J.J

09.01.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 20/01/2020

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