

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

OSA.No.124 of 2020 & CMP.No.5944 of 2020

Sai Electromech Industries
A Sole Proprietary Concern rep.by
Its Proprietor Mr.Umangkumar Joshi
853, GIDC Estate
Wadhodia, Vadodara-391760
Gujarat, India.

..Appellant / Defendant

Versus

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

..Respondent / Plaintiff

PRAYER:- Original Side Appeal filed under Order XXXVI Rule 1 of O.S.Rules read with Clause 15 of Letters Patent to set aside the impugned judgment and decretal order dated 12.12.2019 passed by the learned Judge in Appln.No.5 of 2018 in Appln.No.3636 of 2017 in CS [D] No.3859 of 2017 [subsequently numbered as CS.No.676 of 2017].

For Appellant : Mr.R.Palaniandavan

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

(1)The defendant in CS.No.676 of 2017 is the appellant herein.

(2)The respondent/plaintiff filed the said suit for recovery of a sum of Rs.1,23,62,585/- with further interest @ 24% per annum for the outstanding amount of Rs.96,58,270/- from the date of plaint till the date of realization and also awarding of the cost.

- (3) The appellant/defendant is an Entity located at Wadhodia, Vadodara, State of Gujarat.
- (4) The respondent/plaintiff filed an application in A.No.3636 of 2017 under Order XIV Rule 8 of the Original Side Rules read with Clause No.12 of the Amended Letters Patent Act read with Section 151 of CPC, seeking leave of this Court to institute the said suit and it was granted and thereafter, the said suit came to be numbered as CS.No.676 of 2017. The appellant who is arrayed as the respondent/defendant, filed A.No.5 of 2018 for revoking the leave to suit granted to the plaintiff/respondent herein. The learned Single Judge, upon taking into consideration, the contents of the application, arguments advanced as well as the decisions relied on by the learned counsel appearing for the applicant/defendant/appellant herein in A.No.5 of 2018 has dismissed the said application vide impugned order dated 12.12.2019 and challenging the legality of the same, the present Original Side Appeal is filed.
- (5) The facts leading to this appeal have been narrated in detail and in extenso in the impugned order, which is the subject matter of challenge and for the sake of brevity, the facts are not restated once again except to cull out the relevant facts,
- (6) The substratum of the case of the respondent/plaintiff is that it is a Public Limited Company and is carrying on business of selling building materials, commercial vehicles and offering mechanical governor services etc and it supplied materials through their branches to the appellant/defendant regularly on credit basis at their request made. It is also pointed out by the respondent/plaintiff that at the time of accepting the Purchase Order, it has been clearly stated that all disputes are subject to Chennai jurisdiction only and having accepted the same, the appellant/defendant had delivered the goods and the appellant/defendant had also acknowledged the same. In view of the defaults committed, there was a legal notice for which, the appellant/defendant has failed to respond and therefore, came forward to institute the suit.
- (7) It is relevant to extract paragraph No.16 of the plaint, which reads thus:-
- ''16 The cause of action arose at Guindy, Chennai within the jurisdiction of this Hon'ble Court where the plaintiff Head Office is situated and also the approval of the supply of materials on credit basis to the defendant was given by the plaintiff at Chennai only and the plaintiff supplied the building materials to the defendant on through their Bill/Invoice and

the defendant received the materials and he failed to pay the bill amount to the plaintiff and the plaintiff send notice to the defendant lastly on demanding the due amount of Rs.96,58,270/- [Ninety Six Lakhs Fifty Eight Thousand Two Hundred and Seventy Only] and the defendant failed to pay the due amount and as well as no reply for the notice send by the plaintiff and on all subsequent dates when the defendant had failed to repay the amount due till date.''

(8)The primordial submission made by the learned counsel for the appellant/defendant by drawing the attention of this Court to the additional typed set of documents is that except the fact that the Registered Office of the respondent/plaintiff is located at Chennai, admittedly, the goods were supplied to the appellant/defendant's office at Gujarat and mere location of the Registered Office at Chennai, will not enable the respondent/plaintiff to institute a suit here and merely the fact that the contents of the Invoices as to the Bank Account of the respondent/plaintiff at Chennai as well as the dispute, would be subject to Chennai jurisdiction, will not cloth the respondent/plaintiff with a right to institute a suit at Chennai and since no part of cause of action has arose within the jurisdiction of this Court, leave granted in favour of the respondent/plaintiff ought to have been revoked and the learned Single Judge, without properly appreciating the factual circumstances and the legal position, had erroneously dismissed the application seeking for revocation of the leave granted to the respondent/plaintiff and hence, prays for interference.

(9)The learned counsel for the appellant/defendant, in support of his submissions, has placed reliance upon the following decisions:-

- (a)2011 [3] Law Weekly 376 [DB] - M/s.Murthy Hosiery Mills rep.by its Managing Partner, Miller R.T.Murth, 507 [Old No.326], P.N.Road, Tirupur-641602 and Another Vs.The State Bank of India rep.by its Chief General Manager, Local Head Office, Chennai 600 001 and another] ; and
- (b)2016 [4] Law Weekly 86 [SB] - Mytrah Energy [India] Limited, 8001, Q-City, S.No.109, Nanakramguda, Gachibowli, Hyderabad-500 032 Vs. Gamesa Renewable Private Limited, formerly Gamesa Wind Turbines Private Limited, The Futura Park, Block B, 81 Floor, No.334, Rajiv Gandhi Salai, Sholinganallur, Chennai 600 119 and Others.

(10)This Court paid its best attention to the arguments advanced by the learned counsel for the appellant/defendant and also perused the materials placed before it.

- (11) It is not in dispute that the Registered Office of the respondent/plaintiff is located at Chennai and a perusal of the Invoices would also disclose that for RTGS/NEFT purposes, the Bank Account of HDFC Bank at ITC Centre, Anna Salai, Chennai, is given and one of the terms and conditions for effecting supply is that the dispute is subject to Chennai jurisdiction.
- (12) The primordial submission made by the learned counsel for the appellant/defendant is that mere location of the Registered office will not confer any jurisdiction upon this Court to entertain the suit instituted by the respondent/plaintiff and has placed strong reliance upon the decision reported in 2011 [3] LW 376 [M/s. Murthy Hosiery Mills' case] [cited supra] and in paragraph No.22 of the said decision, it has been observed that, "in order to entertain the suit on the Original Side of High Court, the plaint must disclose that cause of action, wholly or in part, has arisen at Chennai within the jurisdiction of the Original Side of High Court. The plaint must also disclose the integral facts pleaded in support of the cause of action do constitute cause conferring jurisdiction upon the Court to decide the suit. As per Clause 12, if defendant carries on business in Chennai, Suit on Original Side is maintainable, but pre-eminence has to be given where substantial part of cause of action has arisen."
- (13) A Division Bench of this Court, on the facts of the case, found that though the State Bank of India is having various Branch Offices located in the entire State of Tamil Nadu, has held that for instituting the suit within the jurisdiction of this Court, the decision taking process by the Head Office will not alone confer the cause of action for instituting such suit and proceeded to render its findings upon the said fact.
- (14) In the decision reported in 2016 [4] LW 86 [SB] [Mytrah Energy [I] Pvt.Ltd case] [cited supra], the facts of the case would disclose that for conferring jurisdiction, it was pleaded that the first defendant therein came to Chennai and consulted lawyers and it was observed by this Court in the said decision that "mere fact that the first defendant came to Chennai and consulted lawyers would not constitute cause of action, conferring jurisdiction on this Court [para 10.2]". On the factual aspect, the learned Single Judge also found that the Court which has the jurisdiction over Sholinganallur [the then Kancheepuram District] would alone have the jurisdiction and that even otherwise, law is settled that parties by consent, cannot confer jurisdiction upon the Court. As far as payments made from the Bank at Chennai is concerned, it was observed that mere payment made from the Bank at Chennai alone will not confer jurisdiction for the reason that admittedly, the 2nd

defendant therein is not situated within the territorial jurisdiction of this Court.

(15) The learned Single Judge, in the impugned order, on an in-depth analysis of the factual aspects, especially the averments made in the plaint as well as the very same decisions, had rightly reached the conclusion that there was a consensus addendum arrived at between the parties that money should be paid into the account of the respondent/plaintiff maintained in HDFC Bank having office at Anna Salai, Chennai and the respondent/plaintiff sold the goods on credit basis to the appellant/defendant/applicant in A.No.5 of 2018 and the cheques given by the appellant/defendant/applicant deposited from the Bank account at Chennai was not realised and as such, this Court is having jurisdiction to entertain the said suit. In the considered opinion of the Court, some of the arguments advanced by the learned counsel for the appellant/defendant also touches upon the merits of the suit, for which, there may be a requirement of oral and documentary evidences.

(16) This Court, on an independent application of mind and on appraisal of the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Single Judge for rejecting the application filed by the appellant/defendant for revocation of the leave to sue granted to the respondent/plaintiff and finds no merits in this Original Side Appeal.

(17) In the result, the Original Side Appeal is dismissed confirming the order and decretal order dated 12.12.2019 passed by the learned Single Judge in Appln.No.5 of 2018 in Appln.No.3636 of 2017 in CS [D] No.3859 of 2017 [subsequently numbered as CS.No.676 of 2017]. No costs.

(18) It is also made clear that the findings/observations made/given in the impugned order as well as in this judgment, pertain to disposal of the application/appeal and it no way touches upon the merits of the case to be projected by the parties to this litigation. Consequently, the connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

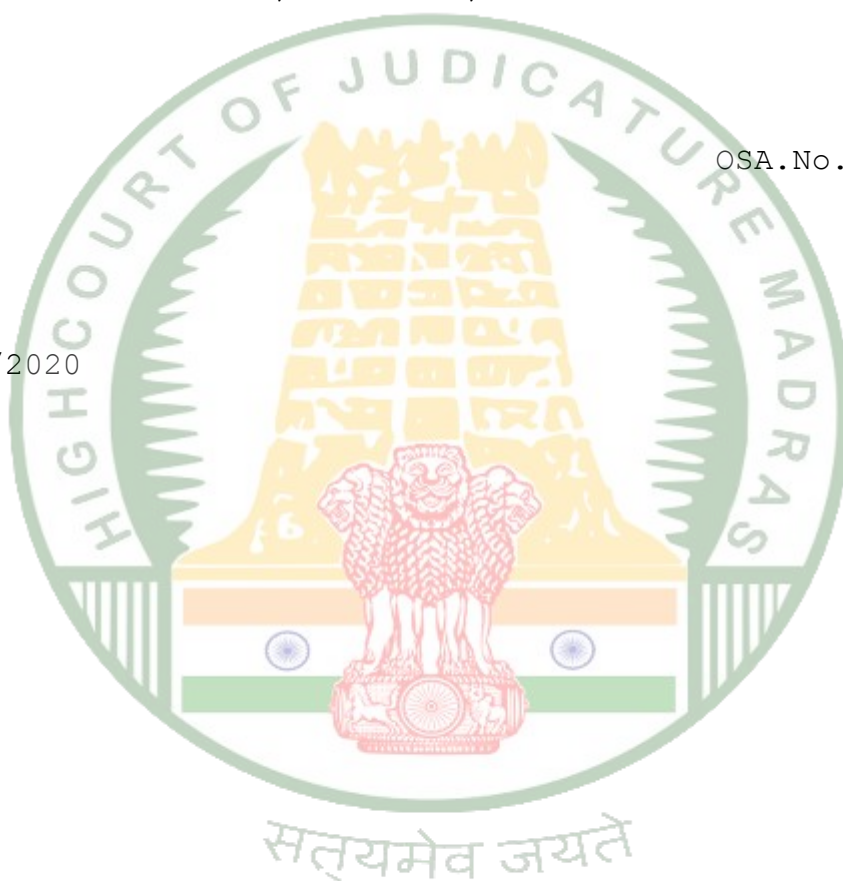
To

The Sub Assistant Registrar,
OS Section,
High Court,
Madras.

+lcc to Mr.Palaniandavan, Advocate, Sr.No.22431

OSA.No.124 of 2020

vba[co]
srg 16/07/2020



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