

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2020

PRONOUNCED ON : 11.09.2020

Coram:

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

Application No.1674 of 2020

in

CS.D.No.50213 of 2020

M/s.Unicorn Maritimes (India) Private Limited,
Represented by its Director,
Mr.Arul Augustin Joseph,
Having its registered office at
Old No.322, New No.24,
Thambu Chetty Street,
3rd Floor, Chennai – 600 001,
Tamil Nadu.

... Applicant/Plaintiff

/Versus/

1.Valency Internation Trading Pte Limited,
Represented by its Director,
10, Anson Road, #17-23 International Plaza,
Singapore – 079 903.

2.JSW International Tradecorp Pte Limited,
Represented by its Director,
Having its registered office at
JSW Centre, Bandra Kurla Complex,
Near MMRDA Grounds, Bandra East,
Mumbai 400 051.
Having its branch office at
8 Eu Tong Street, The Central
#11-91&92, Singapore 059 818.

3.K I International Limited,
Represented by its Director,
Having its registered office at
No.142/1A, Manali Oil Refinery Road,
Ernavoor, Chennai – 600 057, Tamil Nadu.
Having its branch office at
No.18, Srisai Nagar Main Road,
Nellore, Muthukur – 524 344,
Andhra Pradesh. ... Respondents/Defendants

Prayer : Application filed under Letters Patent Act 1865 praying to grant
of leave to the applicant/plaintiff to sue the respondents/defendants
before this Hon'ble Court.

For Plaintiff : Mr.S.S.Rajesh
for Mr.Eswar Kumar and Rao
For D1 : Mr.L.Ravichander, Senior Counsel,
for Mr.C.Kathiravan
For D2 : Mr.Naved Askari, Senior Counsel,
for Mr.Deepak Narayanan
For D3 : No Appearance

ORDER

Application filed under Clause 12 of the Letters Patent,
1865 seeking leave to the applicant/plaintiff to sue the
respondents/defendants before this Court.

2. The plaintiff is a Private Limited Company having its registered office at Chennai. The first defendant is a Limited Company having its registered office at Singapore. The second defendant is also a Limited Company having its registered office at Mumbai and branch office at Singapore. The third defendant is also a Limited Company having its registered office out side the jurisdiction of this Court at Ernavoor, Chennai – 600 057 and a branch office at Andhra Pradesh.

3. The plaintiff had instituted the suit seeking damages and for declaration that a letter dated 31.08.2018 issued by the plaintiff to the second defendant in favour of the first defendant is inoperative, bad in law, null and void and for permanent injunction from making any claim pursuant to the letter dated 31.08.2018 and for permanent injunction restraining the first defendant from proceeding with the suit filed before the High Court of Republic of Singapore in HC/S 297/2020 against the plaintiff and also for costs.

4. The plaintiff is a shipping company. A vessel MV Stella Cherise loaded Steam (Non Cooking) coal from Richards Bay Coal

Terminal, South Africa to Krishnapatnam Port, Andhra Pradesh, India. The owner/consignor of the cargo was the second defendant. The receiver/consignee of the cargo was the third defendant. The cargo, according to the bills of lading Nos. 1 to 22 totalled 55,000 MTs at 2500 MTs for each bill of lading. On the recommendation of the second defendant, the owner of the vessel appointed the plaintiff as their agent by e-mail dated 24.06.2018 and the charterer also confirmed the same by e-mail dated 25.06.2018. This was informed to the third defendant by the plaintiff, who also acknowledged the said appointment. The third defendant by their e-mail dated 26.06.2018 requested the owner of the vessel to delegate the third defendant for paying the port charges for handling the vessel. Normally, the port charges are paid by the agent.

5. In this case, the plaintiff, being the agent, stated that they have no objection and issued the letter dated 26.06.2018. The plaintiff informed the Krishnapatnam Port to raise invoice for the port charges in favour of the third defendant by e-mail dated 20.08.2018. The owner of the vessel paid the port charges to the bank account of the third defendant who in turn paid the port against invoice dated 20.08.2018. The owner of the vessel also deposited the agency fee payable to the

plaintiff to the account of the third defendant on 29.06.2018. The plaintiff raised the invoice on 23.08.2018 and the amount was paid by the third defendant. It was claimed that the entire transactions took place between the plaintiff and the second and third defendants. The first defendant did not participate in any of the transactions. However, the name of the first defendant was also mentioned in the bills of lading. The plaintiff filed Import General Manifest. The Import General Manifest is dated 24.08.2018 on the file of the Customs in the name of the third defendant. The third defendant then sent copies of the bills of lading Nos.1 to 22 to the plaintiff by e-mail dated 24.08.2018.

6. The vessel MV Stella Cherise arrived at the outer anchorage of the Port on 23.08.2018 and berthed in the Port on 27.08.2018. The discharge of the cargo commenced on 27.08.2018 and completed on 31.08.2018. The vessel left from the Port on 31.08.2020. The second defendant sent an e-mail dated 03.09.2018 requesting the plaintiff to issue a letter in favour of the first defendant. In the plaint, it is claimed that the plaintiff hesitated to provide such letter. However, owing to coercion by the second defendant, the plaintiff issued a letter

dated 31.08.2018. It was stated that the said letter was not issued by free consent or volition. It is claimed that though the letter was dated 31.08.2018, it was issued only on 04.09.2018. The letter dated 31.08.2018 issued by the plaintiff to the first defendant with copy to the second defendant is as follows :

“The vessel MV Stella Cherise has called at Krishnapatnam Port in July 2018 to discharge about 55,000 MTs of coal on account of Valency International Trading PTE Ltd. Singapore.

We the vessel agent at the discharge port hereby confirm that the cargo will be discharged and kept at authorized Krishnapatnam port are and will be released only upon surrender of original Bills(s) of Lading or by only written instruction to release the cargo by Valency International Trading PTE Ltd. Singapore who is the title owner of the cargo and hold financial lien of cargo at Krishnapatnam port for MV Stella Cherise for 55,000 MT.

We have received the letter and instruction from JSW International Singapore dated 31.08.2018. We are issuing this letter as well as guarantee that we will not ask for any do prior vessel berthing/discharging of vessel for physical delivery out of custom bonded area or custom notified area or authorized port area.”

7. The relief sought in the plaint is that a declaration should be issued declaring that the said letter as inoperative, null and void. Thereafter, on 13.09.2018 the charterer instructed the plaintiff to issue delivery order. The second defendant instructed the plaintiff to issue delivery order for total 55,000 MTs. The plaintiff claimed that they issued 14 delivery orders based on the request of the third defendant and completed the same on 15.11.2018.

8. Thereafter, the plaintiff received an e-mail on 30.11.2018 from the first defendant to issue delivery order with respect to cargo for another vessel MV Golden Daisy. The plaintiff claims that only then they came to know that the first defendant is an independent entity. The plaintiff issued the delivery order for the said vessel.

9. On 17.09.2019, the plaintiff received an e-mail, which was actually sent to the third defendant by the first defendant stating that the first defendant was seeking payment for the cargo unloaded by the plaintiff. It is claimed that the representative of the first defendant flew down to Chennai from Singapore and visited the Port/custom bonded

area and confirmed the availability of the cargo. It is claimed that at that point of time, the plaintiff came to know from the second defendant that the cargo had been financed by the first defendant for the third defendant.

10. Later, on 23.01.2020, the plaintiff received an e-mail from the first defendant to the Port for changing the name of Import General Manifest and to issue a fresh Import General Manifest in the name of the first defendant. The Port authorities refused. The plaintiff claimed that they realized that a fraud has been played. They sent an e-mail on 29.01.2020 seeking revocation of the letter dated 31.08.2018. The first defendant however issued a legal notice on 04.06.2020 and the plaintiff replied on 09.06.2020. In the notice, the first defendant claimed that out of the 55,000 MTs of coal, the third defendant had paid consideration for 2,500 MTs and the balance 52,500 MTs was under the care and custody of the plaintiff, but the plaintiff in collusion with the second and third defendants had delivered the cargo without instructions and without the knowledge of the first defendant and released the entire 52,500 MTs of cargo to the third defendant. It was, therefore, stated that the plaintiff should remit an amount of USD 5,319,825.00 together with

interest at 18% per annum and other damages towards the cost of the missing cargo of 52,500 MTs of coal. The plaintiff claimed that the letter dated 31.08.2018 can never be considered as an indemnity and that the letter was issued as expressed by the second defendant and not by the first defendant. It was also stated that the first defendant was not the title owner of the cargo. It was stated that the plaintiff had acted as a prudent mercantile agent for the owner of the vessel/principal. It had been stated that the responsibility of the plaintiff as an agent ended upon the issuance of delivery order. The allegations in the notice were denied.

11. Thereafter, the first defendant instituted a suit before the High Court of Republic of Singapore against the plaintiff, the second defendant and the owner of the vessel for recovery of the sum USD 5,319,825.00. The third defendant, who is the consignee was not made as a party to the suit. It was claimed that no part of the cause of action arose in Singapore involving the plaintiff, second defendant and the owner of the vessel for the institution of the said suit before the High Court at Singapore.

12. It is under these circumstances that the suit was filed,

seeking damages and a declaration that the letter dated 31.08.2018 as inoperative, null and void and for a permanent injunction from invoking any claim based on the said letter and for injunction with respect to the proceeding in the Civil Suit filed before the High Court of Republic of Singapore in HC/S-297/2020 and for costs.

13. In the cause of action paragraph, it has been stated that the cause of action arose within the territorial jurisdiction of this Court, where the plaintiff's and the third defendant's registered offices are situated and when the owner appointed the plaintiff as their agent by e-mail dated 24.06.2018 and the third defendant paid an amount into the plaintiff's bank account at Chennai on 29.06.2018 and the plaintiff issued a letter dated 31.08.2018 from Chennai.

14. Notice has been directed to the defendants in this application. The first and second defendants filed their counter affidavit. The third defendant did not participate in the proceedings.

15. In the counter filed on behalf of the first defendant, it

had been stated that the mere fact that a letter has been issued from Chennai on 31.08.2018 would not bestow any jurisdiction on this Court. It was also stated that merely because the plaintiff had a bank account at Chennai, jurisdiction cannot be conferred on this Court. It was stated that the entire operations relating to the disputed transactions, namely, unloading of cargo, delivery of cargo and necessary documents were issued by the Port at Krishnapatnam Port in Andhra Pradesh. It was stated that the first defendant is a company having registered office at Singapore and the second defendant is a company having a branch office at Singapore. It has been stated that the suit at Singapore had been properly laid and had also been taken on file. It had been stated that the averments made regarding the letter dated 31.08.2018 can be put forth even before the Court at Singapore.

16. It had been further stated that the suit had been instituted only after summons has been issued and received by the plaintiff regarding the suit at Singapore. It had been stated that the first defendant had suffered loss owing to fraud committed by the plaintiff, second and third defendants. Therefore, they had instituted the suit at Singapore,

which is the Court of competent jurisdiction. It had been stated that the plaintiff had been joined as a party, since they were an agent of the principal, namely, the second defendant.

17. The statement of the plaintiff that the letter dated 31.08.2018 was issued under coercion of the second defendant was denied. It was stated that the suit before this Court has been instituted with malafide intention to defeat the claim of the first defendant. It had been stated that the plaintiff had not entered appearance before the High Court at Singapore, but on the other hand had filed the present suit.

18. It had been stated that this Court had no jurisdiction since no part of the cause of action arose within the jurisdiction of this Court. It had been further stated that the plaintiff can very well challenge the jurisdiction of the Court at Singapore and without availing the said remedy, he had instituted the present suit. It was stated that no grounds was canvassed by the plaintiff to maintain the suit in this Court.

19. The second defendant filed their counter affidavit and

along with the same, they have also filed their statement of defence filed before the High Court at Singapore. In the counter affidavit, it has been stated that the registered office of the second defendant is actually in Singapore and was not as stated in the plaint at Mumbai. It had been stated that the plaintiff is an agent of the owners of the vessel and that the plaintiff had not made the owners of the vessel as a party to the suit. It was stated that the fraud had been committed by the plaintiff and the third defendant. It had been stated that in the suit in Singapore, the first defendant had not impleaded the third defendant. The allegations of coercion in directing the plaintiff to issue the letter dated 31.08.2018 had been denied and it had been stated that the plaintiff had issued the letter voluntarily. It had been stated that the plaintiff had concocted a story and had shifted the blame for the fraud committed by the plaintiff towards the second defendant. It had been stated that the Court may pass suitable orders.

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20. The third defendant did not participate in the judicial proceedings.

21. Heard Mr.S.S.Rajesh, learned counsel for the plaintiff and Mr.L.Ravichander, learned senior counsel for the first defendant and Mr.Naved Askari, learned senior counsel for the second defendant.

22. Even though, the suit has not been taken on file and technically the nomenclature should be applicant and respondents, for the sake of convenience, the parties are referred as plaintiff and the defendants.

23. The plaintiff has a long grievance against the defendants. According to the plaintiff, they are an innocent agent appointed for down loading and discharging the cargo from the ship MV Stella Cherise at Krishnapatnam Port in Andhra Pradesh. The ship berthed at Krishnapatnam Port. The cargo was down loaded/ discharged by the plaintiff acting as agent appointed by the second defendant. However, in the Bills of Lading, the names of the third and first defendants were jointly mentioned. The plaintiff claimed that they did not know the reason why the name of the first defendant was mentioned. The plaintiff claimed that they always believed that the third defendant was the sole

consignor. It is to be mentioned that the cargo was 55,000 MTs of coal from South Africa to Krishnapatnam Port in Andhra Pradesh, India. The ship did not berth at Chennai. The first and second defendants have their registered office at Singapore. The registered office of the third defendant is out side of the jurisdiction of this Court at Ernavoor, Chennai – 600 057.

24. The claim of the plaintiff that the registered office of the third defendant is situated within the jurisdiction of this Court is wrong. The plaintiff alone has a registered office Chennai and branch offices at across the country.

25. The brief case against the plaintiff in the Court at Singapore is that the delivery of the cargo should not have been made without specific instruction from the first defendant. The plaintiff had delivered the cargo to the third defendant. The third defendant had paid only the value of 2,500 MTs of coal of cargo to the first defendant. They have not paid the value of the balance 52,500 MTs. The delivery of the cargo to the third defendant by the plaintiff took place at Krishnapatnam

Port in Andhra Pradesh. The third defendant paid the total value of the cargo to the plaintiff and the plaintiff had a bank account at Chennai and therefore, the plaintiff claims on this ground, that part of cause of action arose within the jurisdiction of this Court.

26. I do not agree.

27. The plaintiff had an option to open a bank account at any place in the country. Merely because the plaintiff, for their convenience have a bank account at Chennai would not give rise for the cause of action.

28. The actual cause of action arose at Andhra Pradesh, if at all the plaintiff had issues to protect its interest because the cargo was down loaded at Krishnapatnam Port at Andhra Pradesh and delivered to the third defendant at Andhra Pradesh. The delivery of cargo at Andhra Pradesh is the cause of action for institution of the suit at Singapore by the first defendant. This delivery is claimed to be in direct violation of the letter dated 31.08.2018 in which the plaintiff undertook that delivery

would be made only in accordance with the directions issued by the first defendant.

29. According to the plaintiff, the letter dated 31.08.2018 was issued under coercion by the second defendant. It was issued from Chennai and therefore, it is stated that the part of cause of action arose within the jurisdiction of this Court.

30. I do not agree.

31. Issuance of the letter would not give rise to any cause of action. The letter was issued to the first defendant at Singapore with copy to the second defendant. The plaintiff may claim that this letter is inoperative, null and void. That is a claim that can be raised to defend the suit at Singapore. If the letter had been issued under coercion of the second defendant, the plaintiff should have taken that issue at the earliest with the first defendant to clarify the situation.

32. It is to be noted that the suit had been filed only after receiving the summons from the Court at Singapore. The plaintiff seeks to avoid appearing before the Court at Singapore. That cannot be a reason for instituting the suit before this Court. Hopefully, it is not the case of the plaintiff that the Court at Singapore will never listen to any of the contentions put forth by them and that the proceedings would not be fair to them.

33. In **2013(4) SCC 341 Modi Entertainment Network Vs.WSG Cricket Private Limited**, the Hon'ble Supreme Court had stated as follows :

10. The courts in India like the courts in England are courts of both law and equity. The principles governing grant of injunction — an equitable relief — by a court will also govern grant of anti-suit injunction which is but a species of injunction. When a court restrains a party to a suit/proceeding before it from instituting or prosecuting a case in another court including a foreign court, it is called anti-suit injunction. It is a common ground that the courts in India have power to issue anti-suit injunction to a party over whom it

has personal jurisdiction, in an appropriate case. This is because courts of equity exercise jurisdiction in personam. However, having regard to the rule of comity, this power will be exercised sparingly because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another court.

The Hon'ble Supreme Court then laid down the following principles:

24. From the above discussion the following principles emerge:

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity — respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained — must be borne in mind.

(2) In a case where more forums than one are available, the court in exercise of its discretion to grant anti-suit

injunction will examine as to which is the appropriate forum (forum conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non-conveniens.

(3) Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or non-exclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case.

(4) A court of natural jurisdiction will not normally grant anti-suit injunction against a defendant before it where parties have agreed to submit to the exclusive jurisdiction of a court including a foreign court, a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice, save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting party to be relieved of the burden of the contract; or since the date of the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute

the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a vis major or force majeure and the like.

(5) Where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti-suit injunction will be granted in regard to proceedings in such a forum conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to the non-exclusive jurisdiction of the court of their choice which cannot be treated just as an alternative forum.

(6) A party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or non-exclusive jurisdiction is created, the proceedings in that court cannot per se be treated as vexatious or oppressive nor can the court be said to be forum non-conveniens.

(7) The burden of establishing that the forum of choice is a forum non-conveniens or the proceedings therein are

*oppressive or vexatious would be on the party so
contending to aver and prove the same.*

34. It is seen that one of the basic principles is that the defendant against whom injunction is sought must be amenable to the personal jurisdiction of this Court. In this case, all the defendants are outside the jurisdiction of this Court. None of them are amenable to the personal jurisdiction of this Court.

35. It is also seen that the second principle is that if injunction is declined the ends of justice would be defeated and injustice would be perpetuated.

36. In the instant case, the plaintiff had only received the summons from the High Court of Singapore. Again very hopefully it cannot be the contention of the plaintiff that injustice would be perpetuated by the High Court at Singapore. Such a contention, even if raised, has to be summarily rejected.

37. The third principle is the Principle of Comity, namely, a respect for the Court in which the suit has been commenced and is sought

to be restrained.

38. The Court at Singapore has taken on file the case of the first defendant. They have issued notice to the plaintiff inviting the plaintiff to participate in the proceedings. If the plaintiff not chose to appear, they may remain exparte. It is their prerogative to participate or not to participate in the proceedings.

39. It had been the contention of the learned counsel for the plaintiff relying on *AIR 2019 SC 1413 – Isha Distribution House Pvt. Ltd. Vs. Aditya Birla Nuvo Ltd. Nd Ors* that the plea of territorial jurisdiction was essentially a mixed question of law and fact and therefore the defendant has to be allowed to raise such plea in the written statement.

40. I hold that the issue of written statement will arise only when the Court entertaining the suit has jurisdiction. In the instant case no part of cause of action arose in Chennai except those created by the plaintiff themselves, namely, having a bank account at Chennai and

issuing the letter from Chennai, though the plaintiff has branches across the country. The entire discharge and delivery of the cargo also took place at Krishnapatnam Port at Andhra Pradesh.

41. The learned counsel for the plaintiff also relied on *(1989) 2 SCC 163 – A.B.C.Laminart Pvt.Ltd. and Anr. Vs. A.P.Agencies, Salem* for the contention that the suit for breach can always be filed at the place where the contract should have been performed or performance completed. In the instant case the contract was performed at Krishnapatnam Port in Andhra Pradesh and completed in Krishnapatnam Port at Andhra Pradesh. No part of cause of action arose within the jurisdiction of this Court.

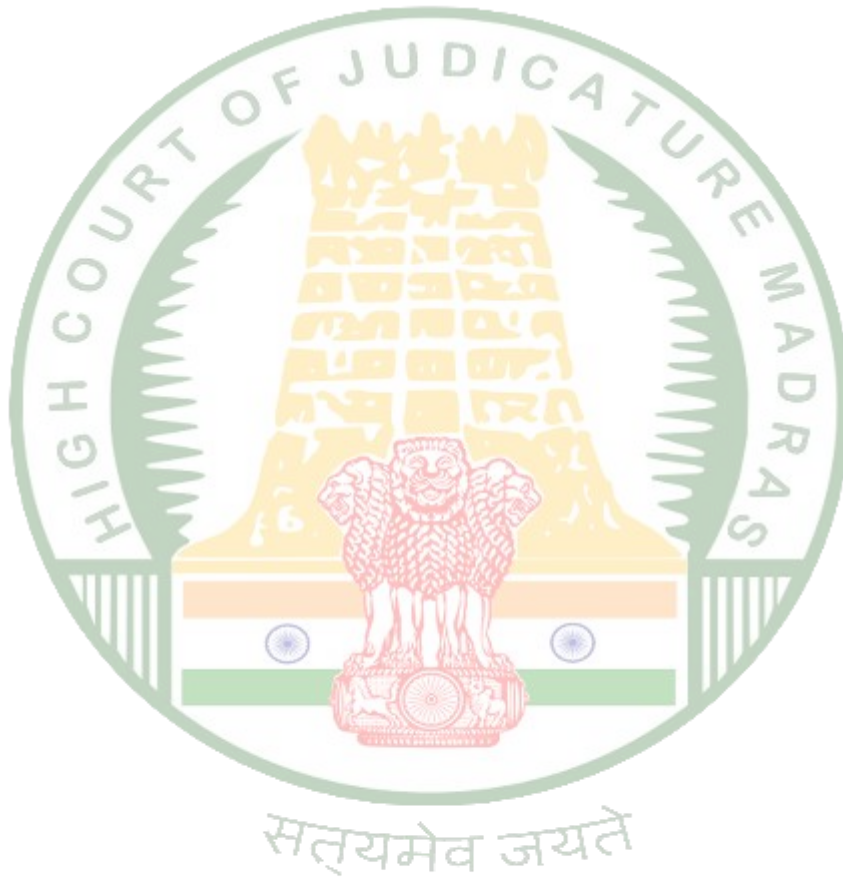
42. For these reasons stated above, I hold that the leave sought by the plaintiff under Clause 12 of The Letters Patent cannot be granted.

43. The application is dismissed. No orders as to costs.

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C.V.KARTHIKEYAN, J.

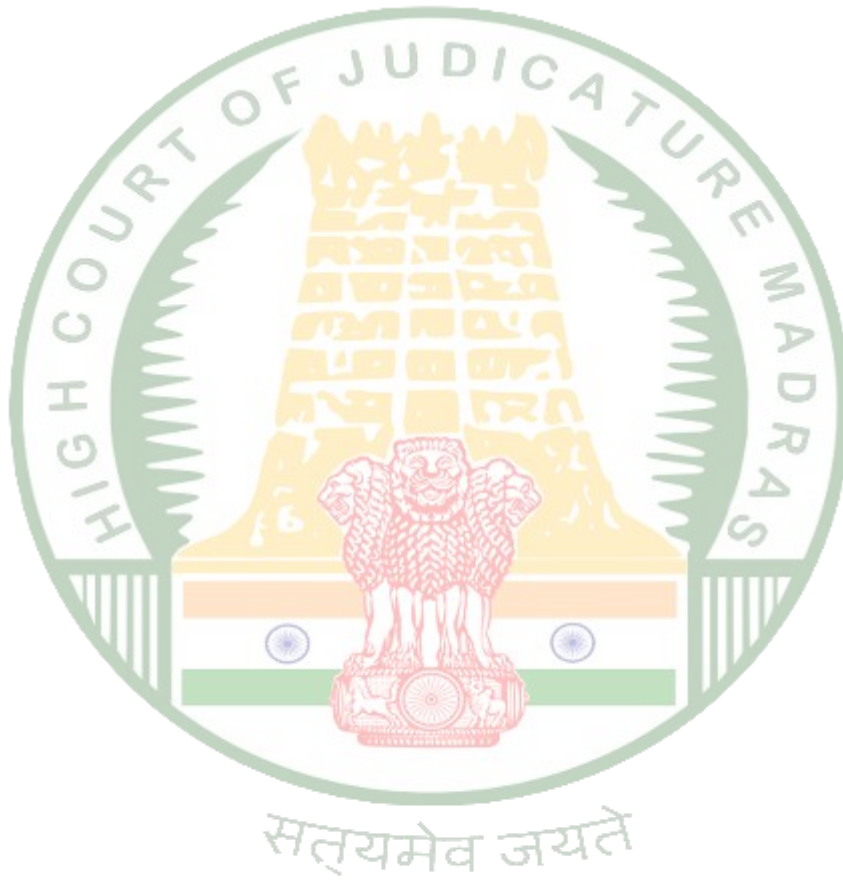
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Pre-delivery Order in
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