

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2020

DELIVERED ON : 10.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

O.S.A.No.195 of 2020
and C.M.P.Nos.10230 & 10232 of 2020

(Through Video Conferencing)

M/s.Unicorn Maritimes (India) Private Limited,
Represented by its Director,
Arul augustin Joseph
Having its registered Office at
Old No.322, New No.24,
Thambu Chetty Street,
3rd Floor, Chennai 600 001. .. Appellant

vs.

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

(Singapore UEN No.2007021113R)
Email.:coal@valencyinternational.com

2. JSW International Trade Corp Pvt.Ltd.,
Represented by its Director,
Having its registered office at
JSW Centre, Bandra Kuria Complex,
Near MMRDA Grounds, Bandra East,
Mumbai 400 051.
Having its branch office at
8 Eu Tong Street, The Central
#11-91&92, Singapore 059818
Email.: Jez.shree@jswinternational.com

3. KI International Limited,
Represented by its Director,
Having its registered office at
No.142/1A, Manali Oil Refinery Road,
Ernavoor, Chennai 600 057, Tamilnadu.
Having its branch office at
No.18, Srisai Nagar Main Road,
Nellore, Muthukur 524 344,
Andhrapradesh.
Email.:glkothari@kamachigroup.com

... Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of O.S.Rules R/W Clause 15 of Letters Patent U/s.13(1) of the Commercial Court Act, against the Judgment and decree passed in A.No.1674 of 2020 in Commercial Suit (D)No.50213 of 2010 dated 11.09.2020.

For Appellant : Mr.B.Vijay for
M/s.Eswar, Kumar Rao
For Respondents : Mr.L.Ravichander,
Senior Counsel for
Mr.Mayar Mundra - R1
Mr.Naved Askari
Senior Counsel for
Mr.B.Deepak Narayanan - R2
No Appearance - R3

J U D G M E N T

C.SARAVANAN, J.

The appellant herein is the unsuccessful plaintiff. The appellant is aggrieved by the impugned order dated 11.09.2020 passed by the learned Single Judge in A.No.1674 of 2020 in CS.D.No.50213 of 2020. The respective respondents in this appeal were the 1st to 3rd defendants in the suit.

2. By the impugned order, the learned Single Judge has dismissed the application filed by the appellant under Clause 12 of the Letters Patent Act, 1865 seeking leave to sue the respondents, with the following observations:-

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 outside 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: सत्यमेव जयते

(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.LaminartPvt.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.

3. Though the learned Single Judge has partly touched on the merits while rejecting the application filed by the appellant for grant of leave to the appellant to sue the respondents under Clause 12 of the Letters Patent, 1865, for a proper understanding the scope of dispute in the present appeal, it would be appropriate to refer to the relevant paragraph from the draft plaint filed by the appellant along with A.No.1674 of 2020 which deals with the cause of action. Paragraph 27 of the plaint deals with the same and is therefore reproduced below:-

The cause of action arose within the territorial and pecuniary jurisdiction of this Hon'ble Court as the plaintiff's third defendant's registered office are within the territorial jurisdiction of this Hon'ble Court and when the owner appointed the plaintiff as their agent who is at Chennai vide email dated 24.06.2018 to manage the cargo discharge at the port and subsequently when the vessel berthed in the port on 27.08.2018 and subsequently when discharge of cargo was commenced by plaintiff on 27.08.2019 and completed on 31.08.2019 and the monies towards agency invoices were paid to the plaintiff by the owner of the vessel through the third defendant into the plaintiff's Bank Account (Union Bank of India, at Chennai) on 29.06.2018 and subsequently when a letter was sought by the second defendant from the plaintiff vide their email dated 03.09.2018 and subsequently when the plaintiff issued the letter dated 31.08.2018 through email dated 04.09.2018 from Chennai to the second defendant under coercion and misrepresentation and when the third defendant situated at Chennai sought for delivery order to the plaintiff and when the first defendant visited the port confirming the availability of the cargo and when the cargo was taken delivery by the third defendant to his factory in Chennai and subsequently when the second defendant instructed the plaintiff to issue delivery order for total 55,00 MT and subsequently when the plaintiff completed issuance of the delivery orders based on request of third defendant on 15.11.2018 and the agency assigned to the plaintiff was completed on 15.11.2018 and subsequently when the plaintiff received email dated 17.09.2019 addressed from first defendant to third defendant pressuring the third respondent for their payment and for identifying the cargo, and subsequently when the plaintiff came to know that the cargo had been financed by the first defendant for the third defendant and immediately approached the first defendant for revocation of the letter dated 31.08.2018 which was refused by first defendant and subsequently when the first defendant issued their legal notice dated 04.06.2020 to plaintiff situated at Chennai and subsequently when the plaintiff replied through their counsel from Chennai on 09.06.2020 and when the defendant filed the vexatious, oppressive suit suppressing the vital facts of the case before the

Hon'ble High Court of Republic of Singapore in HC/S
297/2020.

4. The appellant wanted leave of the Court to institute the above suit against the respondents for the following reliefs:-

A. Directing the defendants collectively or severally to pay the plaintiff a sum of Rs.1,00,01,000/- as damages with interest @ 18% p.a. from the date of filing of the suit till payment and/or realization as per the particulars of the claim;

B. Declaration to declare that the letter dated 31.08.2018 issued by the plaintiff at the behest of the second defendant in favour of the first defendant as inoperative, null and void;

C. Granting permanent injunction restraining the defendants, their directors, agents, servants or any person under them in commencing, pursuing or proceeding or invoking or making any claim as against this plaintiff based on the letter dated 31.10.2018 issued by plaintiff;

D. Granting permanent injunction restraining the defendants, their directors, agents, servants, men or any person claiming under them from proceeding against the plaintiff in the civil suit filed before the Hon'ble High Court of Republic of Singapore in HC/S 297/2020.

5. It is the contention of the learned counsel for the appellant that the 1st and 2nd respondents have their offices in India and that the 3rd respondent has a factory in Chennai and that a back dated letter dated 31.08.2018 was sent by the appellant to the 1st respondent pursuant to draft sent to the appellant by the 2nd respondent by an E-mail dated 03.09.2018 and therefore, a part of cause of action arose within the jurisdiction of this Court.

6. The learned counsel for the appellant submits that appellant has not filed a suit for demurrages. The suit was filed for damages against the respondents based on the communication received at Chennai by the appellant and sent by the appellant from Chennai and therefore, this court had jurisdiction as a part of the cause of action arose within the Jurisdiction of the Court for the purpose of grant of leave.

7. It is further submitted that merely because the cargo was discharged at the Krishnapatnam Port, in Andhra Pradesh, ipso facto did not mean no part of cause of action had arisen

within the jurisdiction of this Court as all the work was carried out from Chennai by the appellant for the owner of the vessel and the cargo owner.

8. That apart, it was also submitted that the agency commission was also received by the appellant from the owner of the vessel and the Shipper (Cara Shipping Pte. Ltd., Singapore and MV Stella Cherish Shipping Pte. Ltd.) for discharging the imported cargo of non coking coal and therefore, the appellant was entitled to institute a suit within the jurisdiction of this Court.

9. The learned counsel for the appellant also drew my attention to paragraph 4 of the counter filed by the 2nd respondent wherein it has been stated that the 2nd respondent acknowledged the delivery of the cargo giving rise to filing of the present suit and and Suit No.HC/S/2020 took place in Chennai, India.

10. It is submitted that the learned single Judge failed to note the above admission of the 2nd respondent while passing the impugned order while rejecting the application filed for leave to sue the respondents. The learned counsel for the appellant placed reliance on the following decisions in support of the present appeal:-

i. Isha Distribution House Private Limited Vs. Aditya Birla Nuvo Limited and Another, (2019) 12 SCC 205;

ii. Indian Mineral & Chemicals Co. and Others Vs. Deutsche Bank, (2004) 12 SCC 376;

iii. A.B.C. Laminart Pvt. Ltd. Vs. A.P. Agencies, Salem, (1989) 2 SCC 163;

iv. Exphar Sa and Another Vs. Eupharma Laboratories Ltd. and Another, (2004) 3 SCC 688;

v. Boston Scientific International Vs. Trivitron Healthcare Pvt. Ltd., 2015 SCC OnLine Mad 7196;

vi. Sanjay D. Ghodawat Vs. RRB Energy Limited, 2009 SCC OnLine Mad 2055;

vii. Chlogalal Vs. G. Ramalingam, 1988 ~ 1 ? L.W. 616;

viii. ICFAT Academy Vs. Everonn Education Limited and Others, Judgment dated 23.11.2011 passed by this Court in A.No.2782 of 2011 in C.S.No.210 of 2011;

ix. Madras Fertilizers Ltd., Madras Vs. Karnataka Agro Supplies, Tumkur, 1993 SCC OnLine Mad 444;

x. Sical Logistics Limited Vs.Kyko Global Insurance and Others, 2014 SCC OnLine Mad 797;

xi. Mr.Gopal Arumugam Vs.Mrs.Lalithamani Deivasigamani, Order dated 04.09.2020 passed by this Court in Cont.P.No.2056 of 2019.

11. Defending the impugned order of the learned Single Judge, the learned senior counsel for the 1st respondent submitted that it had financed the imported cargo and had a lien over the same and that the appellant acted contrary to the undertaking given in letter dated 31.08.2018 which was communicated to it.

12. It is submitted that the appellant had no authority to allow delivery of the cargo from the Custom Bonded House without authorisation from the 1st respondent.

13. It is further submitted that out of 55,000 Metric Tons of cargo that was discharged at Krishnapatnam port, Andhra Pradesh, it had authorised removal of only 5000 Metric Tons of cargo to the 3rd respondent. However, contrary to the instruction, the appellant allowed the removal of the entire cargo and thereby defrauded the 1st respondent.

14. It is submitted that the 1st respondent has therefore initiated a proceeding to recover the amount from the 2nd defendant, the plaintiff and from the shipper Stella Cherise Shipping Pte Ltd before the Singapore High Court on 31.03.2020 in HC/S/297/2020.

15. The learned senior counsel for the 1st respondent submitted that the entire cause of action had arisen outside the jurisdiction of this court in as much as the cargo was discharged at Krishnapatnam, Andhra Pradesh. Since two of the defendants were in Singapore, a suit was filed HC/S/297/2020 before the Singapore High Court on 31.03.2020. It is further submitted that imported cargo was purportedly delivered to the

3rd respondent who branch office is located in Nellore, Andhra Pradesh while the registered office is located at No.142/1 A, Manali Oil Refinery Road, Ernavoor, Chennai-600 057. The factory of the 3rd respondent is also located outside the jurisdiction. It is further submitted that even as per the plaint and the suit summons was to be served on the 3rd respondent through the Principal District and Sessions Court at Thiruvallavur.

16. It is further submitted that both the 1st and 2nd respondents have no presence in Chennai and much less any operations in Chennai with the appellant. It is submitted that both the 1st and 2nd respondents are Singapore based companies having their registered offices in Singapore and have no presence. They are not amenable to the jurisdiction of this Court.

17. The learned senior counsel for the appellant submitted that none of the respondents are within the jurisdiction of this court and therefore, the leave to sue the respondents have been rightly rejected by the learned Single Judge.

18. It is further submitted that the attempt of the appellant was not a bonafide as a prior suit proceeding in HC/S/297/2020 has already been initiated before Court of competent jurisdiction, namely, the High Court of Singapore and the attempt of the appellant was to scuttle the proceedings pending in the said Court by wrongly obtaining leave to sue.

19. The learned senior counsel also submitted that to allow the appellant to file a suit within the jurisdiction of this Court would be in violation of principal of Comity of jurisdiction of the courts particularly in the light of the fact that a prior suit arising from the same cause of action has already been filed before court of competent jurisdiction in Singapore. It is further submitted that the appellant has resorted to forum shopping by clever drafting and the same should not be encouraged.

20. Finally, the learned senior counsel for the 1st respondent submitted that the appellant had decided to do commercial business with global parties and therefore has to face the consequences in the global Forum / Court of competent jurisdiction and cannot drag parties to a court which lacks territorial jurisdiction to entertain and try the suit. It was therefore prayed that the appeal be dismissed. The learned

senior counsel for the 1st respondent relied on the following decisions:-

- i. Dinesh Singh Vs. SonalTakur, (2018) 17 SCC 12;
- ii. Narendra Kumar Maheswari Vs. Union of India, AIR 1989 SC 2138;
- iii. Modi Entertainment Network and Others Vs. W.S.G. Cricket PTE. Ltd., (2003) 4 SCC 341;
- iv. Surya Vadanam Vs. State of Tamil Nadu and Others, (2015) 5 SCC 450;
- v. Sical Logistics Limited Vs. Kyko Global Inc., 2014~3~L.W.7;
- vi. Uttar Pradesh Cricket Association Vs. The Uttar Pradesh Cricket Association, 2007-2-L.W.1079;
- vii. Jagdale Industries Limited Vs. Halewood Laboratories Pvt. Ltd. and Others, (2013) 5 MLJ 798;
- viii. A.S.HameedVs.P.Maharajan, 2019-1-L.W.634;
- ix. National Westminster Bank Ltd. Vs. Devraj Mensee and Co. and Others, 1997-1-L.W.117;
- x. Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs., Judgment dated 13.03.2019 passed by the Hon'ble Supreme Court in Civil Appeal No.2960 of 2019;
- xi. Goomo Orbit Corporate & Leisure Travels (l) Private Limited Vs. G.I.Retail Private Limited and Others, Order dated 26.08.2019 passed by this Court in A.Nos.3847 of 2019 and etc. in C.S.No.194 of 2019;
- xii. Union of India (UOI) and Others Vs. Adani Exports Ltd. and Others, (2002) 1 SCC 567;
- xiii. Kosum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Others, (2004) 6 SCC 254;
- xiv. Syed Mohamed Salahuddin and Others Vs. Ahmed Abdulla Ahmed Al Ghurair and Others, 2018 (5) CTC 291.

21. The learned counsel for the 2nd respondent submitted that its role was limited. It merely recommended the name of the appellant to the owner of the vessel (Cara Shipping Pte Ltd.) and to the Shipper (Stella Shipping Pte Ltd.,) for being appointed as latter's agent for discharging a part of the cargo at Gangavaram Port and the balance cargo at Krishnapatnam Port. Both the Ports are in the state of Andhra Pradesh. Necessary charges for the same were paid by the Shippers to the appellant. The 2nd defendant also denied having any office in India.

22. It was further submitted that the cargo was imported for the 3rd respondent. Therefore, when the consignments of the cargo sailed from South Africa, the 3rd respondent was named as the notified party in the Bill of Lading. However, the 3rd respondent was unable to arrange for the sale consideration. Therefore, the 1st respondent came forward to finance the purchase by paying the sale consideration to the 2nd respondent while giving latter a right to exercise lien over the imported cargo.

23. It was under the circumstances, in the Bill of Lading, the name of the 1st respondent was included along with the 3rd respondent as the notified parties. It was further submitted that the 1st respondent exercised a lien over the cargo and that appellant had no authority to deliver the cargo after it was discharged at the Krishnapatnam Port without express instruction from the 1st respondent.

24. It is submitted that there was an error in paragraph 4 of their counter in so far as the jurisdiction is concerned. It is further submitted that even if part of cause of action had arisen within the jurisdiction, it is for the court to exercise its discretion to see the convenience of the parties before granting leave to the appellant to sue the respondents.

25. It was further submitted that the imported cargo arrived at the Krishnapatnam Port on 23.08.2018. By 31.08.2018, the cargo was discharged and transferred to the Custom Bonded House and after the payment of necessary charges to the port authorities, the vessel sailed on the same date. Meanwhile, an irrevocable letter of credit was arranged by the 1st respondent securing the payment to the 2nd respondent.

26. The 3rd respondent thereafter gave an undertaking to indemnify the 1st respondent. It is submitted that the original Bill of Lading is still with the 1st respondent. It is submitted

that the cargo after its entry into India was financed by the 1st respondent pursuant to a letter of indemnity dated 27.08.2018 issued by the 3rd respondent on 27.08.2018 and it is pursuant to the aforesaid letter of indemnity, email dated 03.09.2018 was sent to ensure that after the discharge of the cargo at the Krishnapatnam Port, the 3rd respondent would ensure that the cargo is not delivered without instruction from the 1st respondent.

27. We have considered the arguments advanced by the learned counsel for the appellant, learned senior counsel for the 1st respondent and the learned senior counsel for the 2nd respondent. The 3rd respondent remained ex-parte before the learned single Judge. Before us also there is representation by the 3rd respondent despite notice being served on it.

28. We are of the view that no part of cause of action had arisen within the jurisdiction of this Court. Therefore, question of invoking Clause 12 of Letters Patent did not arise as no part of cause of action had arisen against any of the respondents within the original Jurisdiction of the Court.

29. In fact, while considering the application for grant of leave under Clause 12 of the Letters Patent, the Court also has to see whether the jurisdiction has been contrived by clever drafting by the plaintiff. If so, the Court has to quell such vexatious proceedings at very threshold.

30. Even if a part of cause of action had arisen within the jurisdiction of the court, the court are not bound to grant leave as a matter of course. In matters relating to grant of leave under Clause 12 of the Letter Patent, the Court is also guided by the international doctrine of forum conveniens M/s.Duro Flex Pvt. Limited Vs. M/s.Duroflex Sittings System and other dated 04.12.2014 and the latest decision of this Division Bench rendered in OSA.Nos.38, 40 & 42 of 2020 on 11.11.2020 between Sulphur Mills Limited, 604, 605, 6th Floor, 349 Business Point, Western Express Highway, Andheri (E), Mumbai - 400 069, Maharashtra, India, Rep.by its Power Agent Mr.DipakMundra and M/s.Dayal Fertilizers Pvt. Limited, Delhi Road, Partapur, Meerut -250 103 and 3 Others.

31. Whether the Principles of Forum Conveniens or analogous principles will apply or not for consideration of an Application for leave to sue under Clause 12 of the Letters Patent fell for

consideration before the Full Bench of this Court in Duro Flex Pvt., Limited vs. Duroflex Sitzings System, 2014 (6) CTC 577.

32. There the court referred to several decision of various court and that of the Delhi High Court in Bharat Bhogilal Patel & Others Vs. Union of India, 2014 5 LW 289, wherein, the Delhi High Court had gone into the doctrine of Forum Conveniens. This case was decided by the Full Bench of Court was presided over by Five Judges of the Delhi High Court. The Court held as follows:

"The concept of forum conveniens fundamentally means that it is obligatory on the part of the Court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens."

33. The Full Bench of this Court referred to the above passage in M/s.Duro Flex Pvt. Limited Vs. M/s.Duroflex Sitzings System, in 2014 (5) L.W. 673 and observed as under:-

"54.....In two eventualities, the question of obtaining prior leave would not arise, i.e., when the plaintiff resides within the jurisdiction of the Court, benefit conferred by Section 134(2) of the Trade and Merchandise Marks Act, 1958 and when the defendant resides within the jurisdiction of the Court. It is in the third eventuality which is material for the controversy. On the plea of the appellant that the situs of the Trademark Registry within the jurisdiction of the Court would give a part of cause of action on the issue of registration of the trademark alone being sufficient, we have already given a finding under the first question of law aforesaid. Thus, a bundle of facts would determine whether the cause of action has arisen qua the trademark infringement within the jurisdiction of the Court."

"57. There is little doubt that the principles of forum conveniens, though not applicable to civil proceedings, have a role to play insofar as the consideration of grant of leave or revocation thereof under Clause 12 of the Letters Patent is concerned. This is irrespective of the fact as to what expression is used. As observed aforesaid, the balance of convenience is also forum conveniens. The test applied is of appropriateness or suitability of the forum which ought to apply, whether it be called forum conveniens or that the jurisdiction of the Court under Section 20 of the Code of Civil Procedure is different from Clause 12 of the Letters Patent (Food Corporation of India case (supra))."

34. Therefore, even in the case of Trade Mark suit where the suit can be filed based on the residence of the plaintiff, it has been held that the principles of forum conveniens, though not applicable to civil proceedings, have a role to play insofar as the consideration of grant of leave or revocation thereof under Clause 12 of the Letters Patent is concerned.

35. Though Isha Distribution House (P) Ltd. case cited by the learned counsel for the appellant it was held that "a plea of territorial jurisdiction is essentially a mixed question of law and fact. It is for this reason, the respondent ? defendants should be allowed to raise such plea in the written statement to enable the Court to try it on its merits in accordance with law in the light of the requirements of Order 14 of the Code of Civil Procedure, 1908 and other relevant provisions governing the issue on merits," it is to be noted that no cause of action arisen within the Jurisdiction of this Court.

36. In Indian Mineral & Chemicals Co. case referred to supra, the Hon'ble Supreme Court extracted the observation of Rankin, C.J. In Secy. of State v. Golabrai Paliram [SeeAbdulla Bin Ali v. Galappa, (1985) 2 SCC 54; Roop Lal Sathiv. Nachhattar Singh Gill, (1982) 3 SCC 487; Ritu Sachdev v. Anita Jindal, AIR 1982 Cal 333 and Secy. of State v. Golabrai Paliram, AIR 1932 Cal 146] 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 clause 12 of the 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"

37. Reliance of the learned counter for the appellant to A.B.C. Laminart Pvt. Ltd. case referred to supra is not relevant. For the same reason, the decision of the Division Bench of this Court in Sanjay D. Ghodawat case referred to supra is also not relevant.

38. Therefore, the decision of the Hon?ble Supreme Court in Exphar SA and Another case referred to supra rendered in the context of Copyrights Act, 1957 is also not relevant.

39. The decision of this High Court in Boston Scientific International case referred to supra was rendered in the context of dispute between two Indian parties.

40. Thus, in an ordinary civil suit, even if part of cause of action arises within the jurisdiction of the Court, the Court still have to strike a balance before granting leave. The Courts have to be cautious and should not be swayed by clever drafting or by sympathies a party may try to evoke before it. In this case, already a suit has been filed before the court of competent jurisdiction in Singapore. It is therefore open to the appellant to approach the said Court or approach the Courts where the cause of action arose and the decree to be passed can be enforced by it.

41. In our view, at best Courts in Krishnapatinam, Andhra Pradesh may have jurisdiction to entertain a suit under Section 9 read with Sections 16 to 20 of Civil Procedure Code, 1908. Further, in this case, Singapore High Court is already seized of the dispute and therefore it is open for the appellant to approach the said Court and raise all the questions of jurisdiction or file a counter claim.

42. In our view, in this case the appellant had indeed resorted to clever drafting and they by attempted to contrive the jurisdiction of this Court by stating that a part of cause of action had arisen within the jurisdiction of this Court. We are in agreement with the impugned order of the learned single judge.

43. Even if the appellant had received an order appointing the appellant as their agent from the owner of the vessel and

the shipper at Chennai, the work was for discharging the imported cargo at Gangavaram Port and at Krishnapatnam Port in Andhra Pradesh. Admittedly, the appellant also has no cause of action against either the owner of the vessel or shipper who appointed the appellant as their agent. They are also not a party in the proposed suit. The plaint also does not disclose any cause of action against them. Therefore, it cannot be said, that a part of cause of action had arisen in Chennai within the jurisdiction of this Court.

44. The 2nd respondent had merely identified the appellant and recommended its name to the owner of the Vessel and the Shipper of the cargo. Further, when the cargo sailed from the South Africa, the 3rd respondent was the notified party in the Bill of Lading.

45. However, for commercial reasons, the name of the 1st respondent was added as the notified party in the Bill of Lading and therefore, the appellant was asked to give a letter dated 31.08.2018 to the 1st respondent which reads as under:-

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 Krishnapatinam Port area 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 bonded area or custom notified area or authorized port area.

46. The above letter is self explanatory. It is based on this letter, the 1st respondent has initiated proceeding in Singapore against the 1st and 2nd respondents and against the

owner and the shipper in HC/S/297/2020 before the High Court of Republic of Singapore.

47. The work was undertaken by the appellant in the Krishnapatnam Port. Therefore, merely because the 2nd respondent had allegedly sent a email dated 03.09.2018 to the appellant in Chennai to prepare a back dated letter dated 31.8.2018 is not sufficient to conclude that a part of cause of action had arisen within the jurisdiction of this Court.

48. It would also make no difference as to whether the proposed suit was damages or demurrages incurred. Even if the said appellant had scanned the said letter dated 31.8.2018 from Chennai and sent to the 1st respondent pursuant to the email dated 03.09.2018 of the 2nd respondent would be of no significance for the Court to grant leave.

49. Merely because the appellant has its office in Chennai by itself is not sufficient to conclude that a part of cause of action had arisen in Chennai within the jurisdiction of this Court.

50. In our view, no part of the cause of action had arisen within the jurisdiction of this Court. Even if part of cause of action had arisen within the jurisdiction of this court, the courts are guided by the doctrine of forum convenience.

51. Liberties conferred to a plaintiff to file a suit under the provisions of the Trade Marks Act, 1999 and/or the Copy rights Act 1957 merely based on the residence of the plaintiff within the jurisdiction cannot be imported for ordinary suit under Section 9 of the CPC .

52. Letters Patent as also Civil Procedure Code do not confer jurisdiction to a court to entertain where the plaintiff resides or carries on business if no part of cause of action arises within the jurisdiction of the Court. Only if a part of cause of action arises within the jurisdiction of the Court, question of granting leave under Clause 12 of Letters Patent will arise.

53. The decisions relied by the learned counsel for the appellant and the learned senior counsel for the 1st respondent touching on the merits of the dispute relating to grant of relief for anti suit injunction are not relevant for determining the questions of leave.

54. In our view, the original jurisdiction of this Court was wrongly attempted to be invoked by the appellant based on the clever drafting of the plaint. The learned Single Judge has correctly dismissed the application filed by the appellant under Clause 12 of Letters Patent vide impugned order.

55. We therefore do not find any merits in the present appeal filed by the appellant. Under such circumstances, the present Appeal filed by the appellant is liable to be dismissed. It is accordingly dismissed. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

kkd

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.C.Karthiravan, Advocate, S.R.No.40229.

+2cc to Mr.Easwari Kumar & Rao, Advocate, S.R.No.40052.

Judgment in
O.S.A.No.195 of 2020
and C.M.P.Nos.10230
& 10232 of 2020

SVI (CO)
CSR 19.03.2021

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