

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2020

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

O.S.A. Nos. 213 to 215 of 2019

In

C.S. No. 194 of 2019

O.S.A. No. 213 of 2019

G.I. Retail Private Limited,

Having its registered office at:

C-9, Thiru.Vi.Ka. Industrial Estate,

Guindy, Chennai - 32,

Tamil Nadu,

Rep. by its Director,

Mr. Ramu Annamalai

... Appellant

Vs.

1. Goomo Orbit Corporate & Leisure
Travels (I) Private Limited,
Office Number : 1003,
Hallmark Business Plaza,
SD Marg, Opposite Guru Nanak Hospital,
Bandra East, Mumbai - 400 051.
Rep. by its Director.
2. Hermes I Tickets Private Limited,
Rep. by its Director,
Mr. Manoj Kumar Sahu,
Having its registered office at:
Unit No. 301, 302, 3rd Floor,
Campus 3B,
RMZ Millenia Business Park,
143, MGR Main Road, Perungudi,
Chennai - 600096.
3. Wirecard AG,
Einstelnring 35,
Rep by its Chief Financial Officer,
Alexander Von Knoop,
Einstelnring 35, 85609 Aschheim, Germany.

4. Emerging Markets Investments Fund -
Fund 1A,
Rep. by its Director, Rohit Kumar,
Having registered office at:
5th Floor, Barkly Wharf,
Le Can den Waterfron, Port Louis,
Republic of Mauritius.

5. Mr. James Henry O' Sullivan,
C/o. Senjo Group
#56, One Raffle Place,
048616 -Singapore.

6. Mr. Jan Marsalek,
Einstelnring 35,
85609 Aschhelm,
Deutschland, Germany. ...Respondents

Prayer : Appeal against the order dated 26.08.2019 made in A.
NO. 3847/2019 in C.S. No. 194/2019.

O.S.A. No. 214 of 2019:

G.I. Retail Private Limited,
Having its registered office at:
C-9, Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai - 32,
Tamil Nadu,
Rep. by its Director,
Mr. Ramu Annamalai ...Appellant

Vs.

1. Mr. Jan Marsalek,
Einstelnring 35,
85609 Aschhelm,
Deutschland, Germany.

2. Hermes I Tickets Private Limited,
Rep. by its Director,
Mr.Manoj Kumar Sahu,
Having its registered office at:
Unit No. 301, 302, 3rd Floor,
Campus 3B,
RMZ Millenia Business Park,
143, MGR Main Road, Perungudi,
Chennai - 600096.

3. Wirecard AG,
Einstelnring 35,
Rep by its Chief Financial Officer,
Alexander Von Knoop,
Einstelnring 35,85609 Aschheim, Germany.

4. Emerging Markets Investments Fund -
Fund 1A,
Rep. by its Director, Rohit Kumar,
Having registered office at:
5th Floor, Barkly Wharf,
Le Can den Waterfron, Port Louis,
Republic of Mauritius.

5. Mr. James Henry O' Sullivan,
C/o. Senjo Group
#56, One Raffle Place,
048616 -Singapore.

6. Goomo Orbit Corporate & Leisure
Travels (I) Private Limited,
Office Number : 1003,
Hallmark Business Plaza,
SD Marg, Opposite Guru Nanak Hospital,
Bandra East, Mumbai - 400 051.
Rep. by its Director.

...Respondents

Prayer : Appeal against the order dated 26.08.2019 made in A.
No. 4725/2019 in C.S. No. 194/2019.

O.S.A. No. 215 of 2019:

G.I. Retail Private Limited,
Having its registered office at:
C-9, Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai - 32,
Tamil Nadu,
Rep. by its Director,
Mr. RAMu Annamalai

सत्यमेव जयते

..Appellant

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Vs.

1. Wirecard AG,
Einstelnring 35,
Rep by its Chief Financial Officer,
Alexander Von Knoop,
Einstelnring 35,85609 Aschheim, Germany.

2. Hermes I Tickets Private Limited,
Rep. by its Director,
Mr. Manoj Kumar Sahu,
Having its registered office at:
Unit No. 301, 302, 3rd Floor,
Campus 3B,
RMZ Millenia Business Park,
143, MGR Main Road, Perungudi,
Chennai - 600096.
3. Emerging Markets Investments Fund -
Fund 1A,
Rep. by its Director, Rohit Kumar,
Having registered office at:
5th Floor, Barkly Wharf,
Le Candan Waterfront, Port Louis,
Republic of Mauritius.
4. Mr. James Henry O' Sullivan,
C/o. Senjo Group
#56, One Raffle Place,
048616 -Singapore.
5. Mr. Jan Marsalek,
Einstelnring 35,
85609 Aschhelm,
Deutschland, Germany.
6. Goomo Orbit Corporate & Leisure
Travels (I) Private Limited,
Office Number : 1003,
Hallmark Business Plaza,
SD Marg, Opposite Guru Nanak Hospital,
Bandra East, Mumbai - 400 051.
Rep. by its Director.

..Respondents

Prayer: Appeal against the order dated 26.08.2019 made in A.
No. 4724/2019 in C.S. No. 194/2019.

For Appellant :: Mr. Srinath Sridevan,
for Mr. R. Udhaya Kumar
in all OSA's

For Respondents:: Mr. Sankara Narayanan, Senior Counsel
for Mr. S. V. Pravin Rathinam,
for R1 in OSA.No.213/2019 &
R6 in OSA.Nos.214 & 215/2019

Mr.P.H.Arvind Pandian, Senior Counsel
for Mr.Anand Bhushan,
for R3 in OSA.Nos.213 & 214/2019
& R1 in OSA.No.215/2019

Mr.J.Sivanandharaj,
for Mr.EKK.Kumaresan,
for R2 in all OSA's

Mr.C.Mani Shankar, Senior Counsel
for Mr.Avinash Krishnan Ravi,
for R6 in OSA.No.213/2019
for R1 in OSA.No.214/2019
for R5 in OSA.No.215/2019

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

These appeals have been filed against the allowing of applications filed by the respondents/2nd, 5th and 6th defendants to revoke the leave granted in favour of the appellant to file a suit in C.S. No. (Commercial Division) 194/2019 praying for a decree of permanent injunction restraining the respondents/defendants from making any representation that the appellant had made any profit from the sale of share of Hermes other than the consideration as per the share purchase agreement entered into between the appellant and the 3rd defendant on 07.09.2015 and for a mandatory injunction directing the 2nd defendant to withdraw the statements made to the public with respect to the purchase of the shares of Hermes and for damages against the respondents/defendants to pay a sum of INR 40 crores or for any higher amount due to the defamatory and malicious act on their part.

2. For the sake of convenience, the parties are referred in the same rank as stated in the suit.

3. The facts of the case are as follows:

The plaintiff filed a suit for injunction and damages against the defendants. The 1st defendant is an Indian Company namely Hermes I Tickets Private Limited initially owned by its promoters namely, Ramasamy and Palaniappan along with minority shareholders of the Company. By virtue of share purchase agreements dated 07.09.2015 and 16.09.2015, the plaintiff sold the shares of the 1st defendant to the 3rd defendant in the year 2015. After purchase of the shares of the 1st defendant Company by the 3rd defendant, the 3rd defendant is said to have sold shares of the 1st defendant company to the 2nd defendant during the year 2015 for a huge value.

4. The plaintiff came to know about the said fact only when the then minority shareholders in the 1st defendant's company issued a legal notice dated 04.04.2017 to the plaintiff during 2017. The minority shareholders claimed that the plaintiff and the 3rd defendant conspired and sold the 1st defendant's company to the 2nd defendant for a higher price and the same was suppressed by the plaintiff. The basis for such a claim was due to a representation made by the 2nd defendant made on 27.10.2015 through a net press release. The reply notice was given on 17.05.2017 by the plaintiff through their counsel which invoked a rejoinder legal notice dated 06.10.2017 from the minority shareholders.

5. Thereafter, the minority shareholders filed a suit for tortious claim before the English Court on 26.01.2018 against the plaintiff. An ex parte worldwide freezing order dated 14.03.2018 was issued against Ramasamy and Palaniappan, who are the promoters of 1st defendant company in the tortious claim made by the minority shareholders. Karur Vysya Bank Limited, the Bankers of the plaintiff company restricted its financial facilities to the plaintiff company and also sought creditworthiness of the plaintiff.

6. In view of the aforesaid position, the plaintiff filed C.S. No. 192/2018 before this Court seeking anti-suit injunction against the minority shareholders from proceeding with the tortious suit filed before English Court. The said suit was rejected in O.S.A. Nos. 275 to 277 of 2018 by judgment dated 24.01.2019 directing the plaintiff/appellant to approach the English Court for appropriate relief and the same was confirmed by the Honourable Supreme Court on 15.02.2019. The present suit is for a mandatory injunction directing the 2nd defendant to withdraw the misleading, malicious and defamatory statements made to the public in respect of the purchase of shares of Hermes and for damages against the respondents/defendants to pay a sum of INR 40 crores or levy any sufficient higher amount for defamatory and malicious act on their part as the 2nd defendant made a publication on 27.10.2015 in its website that it got the 1st defendant company along with other company from the plaintiff/appellant herein and financial investors with capital increase in one of the plaintiff's subsidiary companies for a sum of Euro 230 million along with earnout of 110 Euro.

7. According to the plaintiff, on account of the acts of such malicious and defamatory misrepresentation dated 27.10.2015, the minority shareholders of the 1st defendant company filed tortious claim. Due to the acts of misrepresentation and statements made by the 2nd defendant, the plaintiff and promoters faced severe financial loss, apart from loss of reputation in

the business. The plaintiff's Banker also restricted its financial facility to the plaintiff company resulting in loss to the plaintiff company. Since the 2nd defendant made misrepresentation through internet, which effect was felt in Chennai, the present suit has been filed.

8. The plaintiff would state that the suit claim arises out of the sale of shares of the 1st defendant company to the 3rd defendant and the subsequent sale of shares of the 1st defendant by the 3rd defendant to the 2nd defendant. Though the 3rd defendant is a company registered in Mauritius, it deals in sale of shares in several Indian Companies including the 2nd defendant and the 6th defendant. The 1st defendant company was situated in Guindy, Chennai at the time of sale of shares in 2015 to the 3rd defendant. Two share purchase agreements dated 07.09.2015 and 16.09.2015 were executed at Chennai and the actual share transaction took place at Chennai apart from location of the 1st defendant company at Chennai. The flow of fund for sale took place in Chennai. Several e-mails and letters including letter dated 18.04.2018 were sent by the 5th defendant with respect to the role of plaintiff when the alleged transaction took place in Chennai. The misrepresentation made by the 2nd defendant, the plaintiff made hidden profit out of the aforesaid sale of shares of the 1st defendant in 2015 to the 3rd defendant was felt in Chennai as the plaintiff company is located and doing business in Chennai. Karur Vysya Bank restricted its financial facilities to the plaintiff company, thereafter, at Chennai. Making all the above contentions, leave was prayed for and the same was granted to file the suit here.

9. Pursuant to grant of leave, suit was numbered.

10. After receiving the summons, the 6th defendant filed application No. 3847 of 2019, the 2nd defendant filed application No. 4724/2019 and the 5th defendant filed application No. 4725/2019 seeking revocation of leave granted to the plaintiff on the ground that the sale of shares of the 1st defendant company was a concluded transaction and the said transfer is not the subject matter of the suit. The above transaction did not give raise to cause of action for the suit claim and holding of shares by the 2nd defendant which is a third party to the concluded contract between the 3rd defendant and plaintiff is in question. That apart, all the defendants are outside the jurisdiction of this Court. The suit for damages for defamation is barred by limitation. Therefore, the suit cannot be maintained before this Court and sought for revocation of leave.

11. The plaintiff/appellant resisted the said applications making the contentions which have been stated in the application for grant of leave. However, the learned Single Judge rejected

the contention of the appellant and allowed the applications and revoked the leave holding that,

(i) The suit is one for defamation simpliciter which has been filed after a period of one year limitation, hence, cannot be maintained;

(ii) The defendants/respondents are outside Chennai and the suit is not maintainable;

(iii) No part of cause of action arose within the jurisdiction of this Court;

(iv) The present suit has been filed only to re-agitate the issues, which have been concluded in the anti-suit injunction filed by the plaintiff in C.S. NO. 192 of 2018. If at all any relief is to be obtained, it is only before the English Court.

Against the allowing of these applications revoking the leave granted in favour of the appellant, the present appeals have been filed by the plaintiffs.

12. According to Mr.Srinath Sridevan, learned counsel assisted by Mr.R.Udayakumar, learned counsel for the appellant, the suit is maintainable before this Court for the following reasons:

(i) The entire dispute has genesis from the share purchase agreements dated 07.09.2015 and 16.09.2015 entered into at Chennai by the plaintiff with the 3rd defendant;

(ii) The shares of the first defendant were sold and registered at Chennai as the 1st defendant's registered office was located at that time at Guindy, Chennai;

(iii) The flow of fund for the transaction took place at Chennai through plaintiff Bank at Chennai;

(iv) Out of the above sale of shares in the 1st defendant company covered by share purchase agreements dated 07.09.2015 and 16.09.2015 between the plaintiff and the 3rd defendant only, the 2nd defendant alleged by virtue of malicious and defamatory misrepresentation dated 27.10.2015 through website that the plaintiff/appellant made a huge hidden profit;

(v) The effect of such net publication in website was felt in Chennai, as the plaintiff is carrying on business.

(vi) There is another article published in Alphaville during January, 2018 based on the misrepresentation and wrong statement made by the second defendant about the sale transaction of 1st defendant's company's shares.

(vii) Effect of wrong and malicious representation of the 2nd defendant through website about giving false information regarding sale of 1st defendant shares and sale consideration, the alleged huge profit made by the plaintiff/appellant was though capable of being felt throughout the world and was felt particularly, in Chennai where the plaintiff is located and doing business.

(viii) The 2nd defendant is running its business in Chennai through 5th defendant.

(ix) E-mail correspondences are from Chennai.

(x) Since the misleading publication has been effected by the 2nd defendant and also by Alphaville through website, the "doctrine of effect" would apply;

(xi) The statements made by the 2nd defendant through internet is nothing but "injurious falsehood", which is a malicious statement, ultimately damaging the image of the plaintiff and consequently, make it suffer huge loss and damages and loss of reputation;

(xii) It is not a suit for defamation simpliciter and as stated above, it is damages for injurious falsehood. Since the present suit is in the nature of claim for injurious falsehood, which originated on account of sale of shares of the 1st defendant by the plaintiff to 3rd defendant, the issue would squarely fall under Section 2(c)(xii) of the Commercial Courts Act.

(xiii) The limitation of one year as per Article 75 as found by the learned Single Judge is not applicable. Article 113 of Limitation Act alone will be applicable for the claim of the plaintiff/appellant as the Limitation Act does not provide for injurious falsehood as it is an emerging tort for the time being. Articles 74 & 75 of the Limitation Act only deal with "libel" and "slander" and would not cover injurious falsehood statements. Since the present suit is in the nature of claim for injurious falsehood, which originated on account of sale of shares to 3rd defendant, the issue would squarely fall under Section 2(c)(xii) of the Commercial Courts Act.

(xiv) Since the present suit is in the nature of claim for injurious falsehood, which originated on account of sale of shares to 3rd defendant, the issue would squarely fall under Section 2(c)(xii) of the Commercial Courts Act.

(xv) The misleading and malicious statement which is nothing but injurious falsehood is available on internet and cause of action is a recurring one and no time limit could be fixed. Therefore, the finding given by the learned Single Judge that as the said publication was made by the 2nd defendant on 27.10.2015 and the suit has been filed only on 11.03.2019, the suit is barred by limitation as per Article 75 of Limitation Act, the suit filed beyond one year cannot be sustained.

(xvi) Mr. Srinath Sridevan, learned counsel for the plaintiff/appellant would also submit that the finding given by the learned Single Judge that the present suit is only to re-agitate the issues, which had already been rejected by this Court in the earlier anti-suit injunction in C.S. No. 192 of 2018 is erroneous as the parties to the present suit, namely, the present defendants were not parties to the earlier suit. According to him, the prayer sought in the earlier suit and in

the present suit are different and therefore, the finding of the learned Single Judge cannot be sustained in this regard.

(xvii) The earlier anti-suit injunction had been filed by the promoters and the plaintiff against the minority shareholders only to non-suit the proceedings before the English suit. This Court directed the plaintiff therein to approach the English Court for relief and therefore, the same cannot be put against the plaintiff.

(xviii) The learned Single Judge conducted a roving enquiry and gave a finding on merits of the case unnecessarily holding that no details about the misrepresentation made by the 2nd defendant had been given in the plaint and also held that bald allegations of misrepresentation have been made in paragraph No.12 and paragraph No.11.38.

(xix) The learned Single Judge exceeded the limit by stating that the article in Alphaville in January, 2018 is in the nature of criticism.

(xx) Further, regarding the relief, he has stated that preventive relief cannot be granted as it is in the nature of a gag order against the defendants. Such a finding cannot be given when this Court has got no jurisdiction to grant such a relief.

By making the above contentions, the learned counsel for the plaintiff would contend that even if part of cause of action arises at Chennai, leave could be granted. Many acts have been done at Chennai, which attract the jurisdiction of this Court. Therefore, the order of the learned Single Judge revoking the leave has to be set aside and the suit has to be restored. The following judgments have been relied on by the learned counsel for the plaintiff/appellant:

- (i).2005 SCC OnLine Bom 110 : (2005) 3 Bom CR 41 (Villa Mode General Trading Co.V. Chordia Fashions Pvt. Ltd.)
- (ii).AIR 1963 SC 1, Viswanathan v. Rukn Ul Mulk.
- (iii).2007 (3) CTC 259, S.Abdul Subhan v. AR Mahaboob Jani.
- (iv).977 F.Supp 404 (E.D. Va 1997), Telco Communications v. An Apple a Day.
- (v).148 F.2d 416 (2nd Cir.1945), U.S. v. Aluminium Co. Of America

13. However, Mr.Arvinth Pandian, learned Senior Counsel appearing for the 2nd defendant made the following contentions:

(i) The present suit is not maintainable as the suit filed by the appellant in C.S. NO. 192/2018 filed by the promoters of the plaintiff making the very same allegations was already rejected and the same was confirmed by the Honourable Supreme Court;

(ii) The present suit is only to re-agitate the issues which had been concluded against the appellant;

(iii) The plaint is based on the sale of shares of 1st defendant company by the plaintiff to the 3rd defendant and the

said transaction was over. Therefore, it is a concluded contract and that cannot be made use to file a suit;

(iv) The publication given by the 2nd defendant emanated from Germany and not within the jurisdiction of this Court;

(v) None of the defendants are residing nor they are having office within the jurisdiction of this Court;

(vi) The 2nd defendant was not a party to the share purchase agreement between the appellant and the 3rd defendant at any point of time as there is no privity of contract at any point of time between them;

(vii) Prayer(a) in the suit is made in such a manner to non-suit the earlier order of the Division Bench in O.S.A. No. 275 to 277 of 2018;

(viii) The article dated 25.01.2018 published on the internet by one Alphaville is only critical in nature and the same cannot be relied upon to save limitation and no cause of action would arise out of the same;

The following judgments have been relied on by the learned counsel for the 2nd defendant:

(i). (2002) 1 SCC 567, Union of India and Others v. Adani Exports Ltd and Others.

(ii). (2004) 6 SCC 254, Kusum Ingots and Alloys Ltd. v. Union of India and Others.

(iii). (2007) 11 SCC 335, Alchemist Limited and Others v. State Bank of Sikkim and Others.

(iv). (2006) 6 SCC 207, Om Prakash Srivastava v. Union of India and Others.

(v). 2016-5-L.W.865, Tecpro Systems Limited v. The Union of India.

(vi). 2014 (6) CTC 577, Duro Flex Pvt. Limited v. Duroflex Sittings System 150.

(vii). (1996) 3 SCC 443, South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd. and Others.

(viii). AIR 1954 Bom 491, Baroda Oil Cakes and Traders v. Parshottam Narayandas Bagulia and Others.

(ix). AIR 1958 MP 409, Shah Ganpat Pasu and Co. v. Gulzarilal Bhaiyalal and Another.

(x). AIR 1965 All 590, Zila Parishad (District Board) v. Shanti Devi and Others.

(xi). (2001) 2 SCC 294, Rajasthan High Court Advocates Association v. Union of India and Others.

(xii). AIR 1966 All 522, Ram Chandra Laddha and Others v. Teja Bai and Others.

(xiii). 2018-5-L.W.689, Captain Tractors Pvt. Ltd. v. Ashok Leyland Ltd.

(xiv). AIR 2019 SC 413, Ahmed Abdulla Ahmed Al Ghurair and Others v. Star Health and Allied Insurance Company Limited and Others.

(xv). (2012) 9 SCC 552, Bharat Aluminium Company and Others v. Kaiser Aluminium Technical Services Inc and Others.

(xvi). 2018 (5) CTC 291, Syed Mohamed Salahuddin and Others v. Ahmed Adulla Ahmed Al Ghurair and Others.
(xvii). 2016-4-L.W.86, Mytrah Energy (India) Limited v. Gamesa Renewable Private Limited and Others.
(xviii). 2014 (3) CTC 565, A.L.Mathialagan v. V.Balasundaram and Others.
(xix). AIR 1984 Mad 212, S.Nagaraj v. S.Govindaswamy and Others.
(xx). AIR 2019 Mad 260, FLSmith Private Limited and Others v. S.Balaj Das and Others.
(xxi). 2016 (4) CTC 353, Sub Continental Equities Limited v. R.V.D. Ramaiah and Others.
(xxii). 2009 SCC OnLine Del 3780, Banyan Tree Holding (P) Ltd. v. A.Murali Krishna Reddy.
(xxiii). ILR (2010) Supp.(1) Delhi 11, Sholay Media Entertainment and Others v. Yogesh Patel and Others.
(xxiv). (2011) SCC 47, Crookes v. Newton.
(xxv). (2015) SGHC 38, Golden Season Pvt Ltd and Others v. Kairos Singapore Holdings Pvt Ltd and Another.
(xxvi). 369 Fed.Appx. 368, Bruce Marks and Marks, LLC v. ALFA Group.
(xxvii). 155 F.3d 254, IMO Industries, INC v. Kiekert AG Appellee.
(xxviii). 317 F.3d 467, Oliver "Buck" Revell v. Hart G.W. LIDOV.
(xxix). 315 F.3d 256, Stanley K.YOUNG v. NEW HAVEN ADVOCATE.
(xxx). 238 F.3d 248, Lloyd Z.REMICK v. Angel MANFREDY.
(xxxi). 633 F.3d 1235, Greg SHRADER v. AL BIDDINGER.
(xxxii). 2017 Indlaw MAD 7749, Ponmari Enterprises Pvt. Ltd v. C.Sivasubramanian.
(xxxiii). 2016 Indlaw MAD 3728, D.R.Logistics v. Pridhvi Asset Reconstructions and Securitization Company.

14. Mr.R.Sankaranarayanan, learned Senior Counsel appearing for the 6th defendant would submit that the 1st defendant company itself is not within the jurisdiction of this Court. The email exchanged between the plaintiff between the plaintiff and the 3rd defendant is only in the nature of seeking information which cannot give rise to any cause of action to file a suit. The suit is nothing but abuse of process of law. It is only filed to non-suit the earlier orders passed by this Court in English Suit. On the other hand, prayer (a) in the suit, namely, permanent injunction restraining the defendants from alleging that the plaintiff made profit/ earnout from sale of shares of Hermes other than what had been stated in share purchase agreement dated 07.09.2015 is only to prevent the minority shareholders from giving particulars before the English Court.

15. Mr.C.Manishankar, learned senior counsel appearing for the 5th defendant would submit that the suit is barred by

limitation; the article relied on by the appellant does not give any cause of action before this Court and the suit is nothing but a vexatious one. The following judgments have been relied upon:

- (i).AIR (36) 1949 Calcutta 495 (Madanlal Jalan V. Madanlal)
- (ii).(2002) 1 SCC 567 (Union of India V. Adani Exports)
- (iii).1990 (Supp) SCC 727(Wander Ltd. V. Antox India P. Ltd)

- (iv).2014-5-L.W.673 (M/s. Duro Flex Pvt. Limited V. M/s. Duroflex Sittings System)

16. Mr. Sivanandaraj, learned counsel appearing for the first defendant would elaborately argue and condense submissions made by other counsel.

17. Heard the parties in detail and perused the records very carefully.

18. Though the appeals arise out of allowing of applications filed by 2nd, 5th and 6th defendants to revoke the leave granted in favour of the plaintiff, it is appropriate to go into the details of the case as the impugned judgment touches upon the merits of the case.

19. The plaintiff sold the shares in the 1st defendant company to the 3rd defendant company, which in turn sold it to the 2nd defendant company. The 2nd defendant gave an internet publication on 27.10.2015 which is the basis for the present proceedings. Hence, the said publication is essential for this case. The relevant portion of the publication reads as follows:

"Wirecard will acquire 100% of the shares from GI Retail and financial investors of companies operating payment services in India, Philippines, Indonesia and Malaysia under the brands " I CASH CARD", " Smart Shop", " Star Global", " Commerce Payment" as well as several segment brands. Furthermore, Wirecard will also acquire 60% of the shares in GI Technology Private Ltd (GIT), a licensed Prepaid Payment Instrument (PPI) issuer in India. Wirecard will take over more than 900 staff in offices in Delhi, Chennai, Hyderabad, Bangalore, Mumbai, Kolkata, Lucknow, Manila, Batam and Kuala Lumpur.

Dr. Markus Braun, CEO, of Wirecard AG says " Great Indian (GI) Retail Group has been on the forefront of India's very dynamic and early stage e-commerce and money remittance market for many years. Our investment into one of the region's leading payment groups secures us a strong position in one of the world's most rapidly growing electronic payment markets.

The total cash consideration paid to GI Retail and Financial Investors including capital increase of GI Technology will amount to EUR 230 million, completely paid for in cash and financed by common capital and by committed Bank Loans. Further payment of up to a total of EUR 110 million are linked to the overall financial performance of acquired business in calendar years 2015 to 2017. Elements of the agreement are subject to certain closing conditions."

The aforesaid internet publication, according to the appellant, is misleading and defamatory statement apart from being in the nature of injurious falsehood. Even though, there is no privity of contract between the 2nd defendant and the plaintiff, the 2nd defendant's statement made it appear as if the plaintiff sold the shares to the 2nd defendant directly, which according to the plaintiff, is deliberate one with malice. A perusal of the aforesaid publication would denote name of the 1st defendant company and the 2nd defendant company alone. The 3rd defendant company to which the appellant sold the shares had not been named at all. The 2nd defendant stated it would acquire 100% of the shares in the 1st defendant company from the plaintiff and its financial investors directly. Therefore, according to the plaintiff, the 2nd defendant and the 3rd defendant conspired and made the above statement to the public at large to cause injury to the plaintiff for reasons best known to them.

20. Further, it is stated that the total cash consideration paid to GI Retail Financial Investors including a capital increase of GI Technology to the amount of EUR 230 million, completely paid for in cash and financed by common capital and committed Bank loans. The said statement was deliberately made, according to the plaintiff, as if the plaintiff made hidden profit/earn out, out of the transaction keeping the minority shareholders in the dark. Based on the net publication dated 27.10.2015 only, the minority shareholders of 1st defendant company initiated a tortious claim before the English Court against the promoters of the plaintiff's company. Though the anti-suit injunction filed by the promoters in C.S. No. 192/2018 against the minority shareholders who preferred the tortious claim against the promoters of the plaintiff's company was rejected, the present suit has been filed against the defendants, especially, the 2nd defendant which made a misleading and defamatory statement in the nature of injurious falsehood to cause financial and reputation loss to the plaintiff.

21. Though the disputed statement dated 27.10.2015 had been made on the internet which is available throughout the world, its effect is said to have been felt particularly in Chennai

where the plaintiff company is carrying on business and its reputation got damaged. Consequently, Karur Vysya Bank Limited restricted its financial facilities offered to the plaintiff. Hence, the suit has been filed with the following prayers:

"a. For a permanent injunction restraining the defendants and/or their agents, representatives or servants from representing that the plaintiff or its shareholders/Directors had made any profit/earn out from the sale of share of Hermes, other than that pursuant to the Share Purchase Agreements (SPA) entered into between plaintiff and defendant No.3 dated 07th September, 2015;

b. For a mandatory injunction directing the defendant No.2 to withdraw the statements made to the public, with respect to the purchase of the shares of Hermes, and to place the correct factual position with respect to the same.

c. For damages against the said defendant Nos. 1 to 6, jointly and severally, to pay a sum of INR 40 crores or for any higher amount due to the defamatory and malicious act on the part of their part."

22. From the 2nd defendant's publication, it is very clear that the sale of 1st defendant's shares started with entering into share purchase agreements dated 07.09.2015 and 16.09.2015 and they were originally entered into by the plaintiff to sell the shares of the 1st defendant company in the year 2015 to the 3rd defendant. Though the defendants would argue that the 1st defendant company shifted its office to Perungudi and at present, it is not having office at Chennai, at present, the purchase of shares by the 3rd defendant took place at Chennai. A perusal of the said share purchase agreement documents would reveal that they were entered into in Chennai as the stamp papers were purchased at Chennai and executed at Chennai. The flow of fund with regard to the sale transaction took place at Chennai. That apart, the 1st defendant company is registered at Chennai and it was having office at Guindy, Chennai, during the relevant time in 2015.

23. It is not denied by the respondents that the shares of the 1st defendant company were purchased by the 3rd defendant company. It is very clear from the documents that the 2nd defendant company did not have any privity of contract with the appellant as no transaction took place between the plaintiff company and the 2nd defendant. When such is the position, regarding the purchase of shares of 1st defendant company, the 2nd defendant made a net publication making it appear that it directly dealt with the plaintiff and its promoters, which is contrary to their own pleadings in the petition to revoke leave.

That apart, money is said to have been paid in cash directly to the party by the 2nd defendant to the plaintiff, which should be prima facie a wrong statement as there is no priority of contract. Moreover, there is a reference about GI Technology transaction which has absolutely no connection with the transaction between the appellant and the 3rd defendant, as rightly contended by the plaintiff. Though the above observations of this Court are in the nature of finding on merit, these are all prima facie observations which are necessary for considering as to whether the cause of action for the suit arises at Chennai or not, especially, when the defendants/respondents have taken out applications to revoke the leave granted.

24. The respondents would argue that the share purchase agreements are concluded contracts and therefore, the execution of the same at Chennai cannot be made use for the purpose of cause of action. However, as stated above, the three share purchase agreements and purchasing of shares were done by the 3rd defendant at Chennai only. Even though the contracts are concluded, the material fact in the case is that the 2nd defendant made the disputed net statement regarding the very same sale of shares by the plaintiff. Therefore, in isolation, the statement of the 2nd defendant cannot be dealt with, especially, when the internet statement is the basis of the plaintiff's case. Hence, sale of shares by the plaintiff to 3rd defendant at Chennai would give cause of action for this case.

25. Though a number of judgments have been quoted by all the parties, only the relevant judgments are referred to in this order.

26.1. The cause of action is a mixed question of facts and law and the Honourable Supreme Court in Union of India and Others V. Adani Exports Limited and others reported in (2002) 1 SCC 567 held that at least part of cause of action has to arise within the jurisdiction of that Court to maintain the proceedings. Paragraph No.17 of the judgment is extracted as follows:

"It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within

the courts territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in Paragraph 16 of the petition, in our opinion, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

26.2. The cause of action is nothing but a bundle of facts, which provide adequate right to the plaintiff for relief. The above principle has been stated in Syed Mohd Salahuddin V. Ahmed Abdulla Ahmed AlGhurair and others reported in 2018 5 CTC 591. Paragraph Nos. 8.1 and 8.2 are extracted as follows:

"8.1. Before going in to the merits of the case, let us deal with the word cause of action. The word cause of action has not been defined either under the Civil Procedure Code or under the Letters Patent. A cause of action has to be seen in the context of territorial jurisdiction available to the Court while entertaining a suit. It is the basis for the maintainability of a suit. It is the foundation of a suit, around which, the other provisions of the Civil Procedure Code revolve. While dealing with the cause of action, the Courts are concerned with the material facts required to be established in support of the right of the party to get a judgment. Such a material fact may be a fact in issue or a relevant fact. It has got no relationship with the case of a defendant. Such a fact shall not be equated with the evidence, which is necessary to prove a fact. A cause of action would include not only the right of the plaintiff, but also, the facts disclosing the infringement of its right. Therefore, the facts which are in support of its right and leading to infringement would form cause of action. Thus, what is important is that a fact will have to be material to the suit and the relief. Therefore, all facts, which are not material, would not constitute cause of action. There has to be an existence or infringement coupled with the right.

8.2. It is nothing but bundle of facts, which, when added with the law applicable provide the adequate right to the plaintiff 's relief. In a suit relates to a breach of contract, the making of a contract and its breach would be the proper cause of action. Therefore, the place in which it occurred would be very relevant. Thus, the fact

which is remotely connected to another which forms a cause of action cannot be one, just for the purpose of giving jurisdiction to a Court. Similarly, termination of a contract would certainly create a part of cause of action and therefore, the place in which it takes place gives jurisdiction to the Court. The legal position aforesaid has been reiterated by the Division Bench of this Court in D.LAKSHMINARAYANA CHETTIAR AND ANOTHER ((1954) AIR Madras 594) in the following manner.

"41. There is no definition of "cause of action" in the Civil Procedure Code; but it is the fundamental pivot around which many of the provisions of the Civil Procedure Code revolve. It is the basis for the maintainability of the suit. It is the foundation for the adding up of parties, and it is an important ingredient in working out the principle of res judicata and that embodied in Order 2, Rule 2, Civil P.C. It has, therefore, necessarily become the subject of judicial scrutiny. Brett J. defined it in - 'Cooke v. Gill', (1373) 8 CP 107 (Z1) a leading case on the subject, to mean "every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant would have a right to traverse." In - 'Bead V. Brown', (1889) 22 QBD 128 (Z2), Lord Esher adopted the same definition, but expressed it in more felicitous language as follows:

"Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

Lord Watson in 'Chandkour v. Partab Singh', 16 Cal 08 (PC) (Z3) approved of the definition, but added a rider that "the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff."

Subsequent decisions have followed the lead given by the earlier decisions.

48. In 'Gangi v. Ramaswami', 12 Mad LJ 103 (Z.7), Bhashyam Aiyangar J. struck a different note which is more in consonance with the later view regarding the meaning of the word "cause of action." There a first suit was brought by the plaintiffs for the recovery of some land which was in the possession of the defendant on the ground that they succeeded to the

father's estate, and that the alienation made by the mother during her lifetime was bad. They obtained a decree therein, but subsequently they filed another suit to recover possession against another defendant in respect of another item which they claimed as part of the same inheritance. It was contended that the later suit was barred by Section 43, Civil P. C. In dealing with that contention, Bhashyam Aiyangar J. made the following pertinent remarks at p. 105 :

"The former suit was instituted against the defendant therein, by reason of his wrongfully withholding from the plaintiffs, on the death of their mother, possession of the land in Schedule B, and the present suit is brought on the defendants herein similarly withholding the land comprised in schedule A, the defendants in both the cases having respectively come into possession of the lands comprised in schedules B and A under separate alienations made by the mother in favour of each on a different occasion. It will thus be seen that though the ground of title is one and the same in both the suits and the cause of action in respect of both arose at the same time, viz., the date of the mother's death, yet the persons who wrongfully withheld the land in schedule A are quite different and there was no manner of combination or privity between them in respect of the lands which they severally withheld.

"The words 'cause of action' have from long been held to mean 'every fact which it is material to be proved to entitle the plaintiff to succeed; every fact which the defendant would have a right to traverse' and have no relation whatever to the defence, but refer entirely to the grounds set forth in the plaint as the cause of action: (1873) 6 CP 107 (Z1), -- 'Shankar Baksh v. Daya Shankar', 15 Ind App 66 (PC) (Z8), 16 Cal 98 (PC) (33).

"Though the ground of title on both suits are founded in one and the same and the causes of action also arose at the same time, yet the properties comprised in the two suits are different and the persons who severally withheld the same are also different. A reference to Section 50, C. P. C. clearly shows that in every suit the plaint must show that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the plaintiff's demand. This clearly shows that the cause of action is not an abstraction, something independent of the defendant, but that the plaint

should disclose a cause of action against the defendant."

We respectfully agree with the aforesaid observations of the learned Judge, and this passage clearly brings out the distinction between the ground of title and the cause of action. A cause of action is something more than a ground of title. It not only includes the facts necessary to support the plaintiff's title, but also the facts which entitled him to relief against a particular defendant.

49. An interesting and instructive discussion, if we may say so, on the question raised is found in - 'Bahadur Singh v. Sultan Husain Khan', AIR 1922 Oudh 171 (29). Syed Wazir Hasan A. J. C. held that, "A revisioner has a separate cause of action in respect of each alienation made by the widow, and a suit to recover property comprised in one alienation is not barred by Order 2, Rule 2, C. P. C. by reason of a proper suit for the recovery of property comprised in another alienation."

The learned Judge traced the history of the meaning of the words "cause of action" and then made some weighty observations to the following effect at p. 175 ;

"Though the cause of action has no relation to the defence which may be set up by the defendant, yet it would be an error to suppose that it has no relation to the defendant and his acts preceding the suit. A 'cause of action' is not a theoretical term entirely picked up from text books and placed on a plaint. In cases of torts, the right of the plaintiff and its infringement by the defendant will generally make up the 'cause of action'. In - 'Williams v. Morland', (1824) 107 ER 620 (210), cited by Bowen L. J. in - 'Bransden v. Humphrey', (1885) 14 QBD 141 (211), Little-dale J. said 'Generally speaking, there must be a temporal loss or damage accruing from the wrongful act of another, in order to entitle a party to maintain an action on the case.' Order 7, Rule 5 (Act 5 of 1908) is based on the same principle. It is as follows : 'The plaint shall show that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the plaintiff's demand. 'Now in the present case the defendants' connection with the land in suit is wholly different from his connection with the lands covered by the other sales both in point of time and the subject matter of the alienations. Their

act of infringement of the plaintiffs' right qua the property in suit is 'different from their act or acts of infringement of the plaintiffs' right qua one or the other of the properties previously in suit."

It would be seen from the aforesaid decisions that though under Act 3 of 1859 this court was inclined to take the view that the unity of title was synonymous with cause of action, the later decisions clearly laid down that cause of action was something more than unity of title, and that it would include not only the right of the plaintiff but also the facts disclosing the infringement of that right."

26.3. Further, the Honourable Supreme Court in Bloom Dekor V. Subhash Himatlal Desai reported in 1984 (6) SCC 322 held regarding cause of action at paragraph No.28 as follows:

"28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (Cooke v. Gill²). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit. This Court had occasion to refer to the case of Cooke² in A.K. Gupta and Sons Ltd. V. Damodar Valley Corpn.³ At page 98 it is stated thus:

"The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in Cooke v. Gill² in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd.⁴ and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have understood to mean 'new set of ideas': Doman v. J. W. Ellis and Co. Ltd.⁵ This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

26.4. The Honourable Supreme Court in A.B.C. Laminart Pvt Ltd and Another v. A.P.Agency, Salem reported in (1989) 2 SCC 163 has held as follows:

"12. A cause of action means every fact, which if

traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

26.5. The Honorable Karnataka High Court in P.Lankesh and Another v. H.Shivappa and Another reported in 1994 CriLJ 3510 has held as follows:-

"10. In Chambers 20th Century Dictionary, the meaning of the word "publish" is given as "to make public, to divulge, to announce, to proclaim, to send forth to the public, to put forth and offer for sale any article, new books, newspapers, to put into circulation". The word "publish" is used in Section 499 IPC in its ordinary sense. It cannot be said that the act of publication comes to an end as soon as one issue of the newspaper is released at one place. If that newspaper is despatched by the printer and publisher to other places for being sold or circulated the defamatory article gets published at each such place. Mere fact that the headquarters of a newspaper is based at a particular place or that it is printed and published at one place does not necessarily mean that there cannot be publication of defamatory article contained in the paper at another place. If the defamatory imputation is made available to public at several places then the offence is committed at each such place. Though the first offence may be committed at the place where it is printed and first published, it gets repeated wherever the newspaper is circulated at other places. I may refer to some of the decided cases on this aspect. The earliest case is that of Queen Empress v. Girja Shankar Kashiram (ILR 15 Bom 286). In that case an issue of a newspaper printed and published in Bombay was sent to certain person at Ahmedabad. The Bombay High Court held that the editor and proprietor of the newspaper is responsible for the circulation of newspaper

in Ahmedabad of such copies of the paper as have been so sent. It was held that there was a publication of the defamatory article in Ahmedabad. In *Emperor v. Jhabbar Mal* (AIR 1928 All 222) relying on the decision in *Girjashankar's* case it has been held that, to prove publication of libel through newspaper it is sufficient to prove that the paper was delivered within the postal area over which the court had jurisdiction and it need not be proved that the article was read by some particular person.

12. *Chellappa Pilla v. Karanjia* (1962 (2) Cri LJ 142) (Ker) it has been held at p. 142 as hereunder :

"To maintain a prosecution for defamation in a particular court there must be publication of that court. Where it is a publication of a newspaper containing the libel it is sufficient to prove that the paper was delivered within the territorial jurisdiction of the court and it need not be proved that the libellous matter was seen or read by any particular person as in the case of a letter. Newspaper is a commodity printed for the purpose of being read and it can be presumed that it was so read."

13. In *Sunilakhaya Chowdhury v. H. M. Jadwet* an issue of a Bengal weekly published in Calcutta contained a defamatory article regarding the complainant. The complainant filed the complaint in the court at Port Blair stating that the court at Port Blair had jurisdiction to entertain the complaint as the accused had made and published the article and circulated for sale the paper at Port Blair. The Calcutta High Court has held that the gravamen of the question of jurisdiction is the test of publication and that where a defamatory statement is published in newspaper it is sufficient to prove that the paper was delivered within the jurisdiction of that Court.

15. In *Dr. Subramaniam Swamy v. Prabhakar S. Pai* (1984 Cr LJ 1329) (Bom) an alleged defamatory statement was made by the accused in press conference called by him at Chandigarh. The said defamatory statement was reported in Delhi edition of Indian Express. That Delhi edition of Indian Express was circulated for sale at Bombay. The complainant filed the complaint for the offence under section 500 I.P.C. in the court at Bombay. The jurisdiction of the court at Bombay to try the offence was challenged before the Bombay High Court and the main ground urged was that as the statement was made at Chandigarh and the publication took place at Delhi the court at Bombay had no jurisdiction. The contention was negatived and it was held that the Indian Express in which the impugned news item was published was circulated and read in the city of Bombay where the complainant was

residing, that the consequence of the statement made at Chandigarh had been completed at Bombay by circulation of the said newspaper and therefore the offence of defamation was completed in city of Bombay. It was held that the courts both at Bombay and Chandigarh had jurisdiction to entertain the complaint. In *Sardar Diwan Singh Magtoon v. Emperor* (AIR 1935 Nagpur 90) : 36 Cri LJ 744) it has been held that every publication or circulation of libel constitute a fresh and distinct act and therefore a separate offence.

16. The above authorities would clearly indicate that where a newspaper containing a defamatory article printed and published at one place and is circulated or should at other places by or on behalf of the accused responsible for the printing and publishing the newspaper, then there would be publication of the defamatory article in all such other places and the jurisdictional Magistrate can entertain the complaint for defamation."

27. Only with regard to the acquisition of those shares in the 1st defendant company, the 2nd defendant had issued the alleged misleading and malicious net publication as if the 2nd defendant directly dealt with the plaintiff. It is pertinent to note that the 2nd defendant in paragraph No. 13 of the affidavit to revoke the leave stated that they are not party to the share transaction between the 3rd defendant and the plaintiff. Therefore, the share purchase agreement dated 07.09.2015 and 16.09.2015 and subsequent transfer of shares cannot be divested from the disputed statement made by the 2nd defendant. The facts are interconnected. Unless they are pleaded in the plaint, it would not give a correct picture. Otherwise, it would amount to suppression of material facts.

28. Even though the respondents would state that net publication has been made throughout the world and there is no pleading in the plaint that effect has been felt in Chennai and therefore, the suit is not maintainable, it is a fact that the share purchase agreements dated 07.09.2015 and 16.09.2015 were executed at Chennai and shares were purchased by the 3rd defendant only at Chennai from the appellant and the appellant company is at Chennai. Hence, the net statement issued by the 2nd defendant would take effect only in Chennai as the appellant company is having business only in Chennai and no other part of the world, would feel the effect.

29. Further, in paragraph No.13, is has been pleaded as follows:

"The plaintiff states that the misrepresentations and press released regarding the purchase of shares of

Hermes by defendant No.2 have caused grave prejudice to the business and huge loss both financial and otherwise to the plaintiff. The statements have already affected credibility of the promoters of the plaintiff. Further, the unjust, unfair and arbitrary acts of defendants have caused the bankers to restrict financial facilities enjoyed by the plaintiff."

The above pleadings certainly are material statements with regard to the effect. In fact, the plaintiff pleaded about restriction of Bank facilities enjoyed by the plaintiff/appellant. What is to be seen is only whether the material fact has been pleaded or not. From the above statements, it is clear that proper pleadings are available in the plaint with regard to "Doctrine of Effect" felt at Chennai. One cannot expect pleading to his expectation. If more statements are given, in detail, it would be like pleadings in the form of evidence in the plaint. Therefore, this Court is of the opinion that the "Doctrine of Effect" has been pleaded in the plaint. Moreover, the place where it can have effect is only at Chennai where the plaintiff is having office and carrying on business and where grave prejudice to the plaintiff business and huge loss is sustained.

30. Karur Vysya Bank, the Bankers of the plaintiff restricted the financial facilities. Consequently, cause of action arises at Chennai to maintain the suit. In Dr. Subramaniam Swamy V. Prabhakar S. Pai and another reported in MANU/MH/0019/1983, it has been held that, "in cases of defamation, the statement made in Chandigarh have effect in Bombay and the Bombay Court has got jurisdiction to take cognisance of the offence." In this case, though net publication has been made from Germany on the internet platform, it can be accessed anywhere in the world. But the effect has been felt by the plaintiff/appellant in Chennai as aforesaid. Hence, the Chennai Court has got jurisdiction.

31. Even otherwise, in the suit for compensation, for wrong done to a person or movable property, the suit is maintainable either within the jurisdiction of the defendant where he resides or carries on business or at the option of the plaintiff, where wrong is done to a person or to immovable property. Section 19 of CPC reads as follows:

"19. Suits for compensation for wrongs to person or movable. Where a suit is for compensation for wrong done to the person or to movable property, 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 Courts.

Illustrations

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi."

In this case, though the Internet publication has been given from Germany, it was read by the plaintiff at Chennai and the effect was felt at Chennai as plaintiff suffers loss of reputation, business etc., Therefore, even as per Section 19 of CPC, the suit is maintainable before this Court.

32. The Honorable Delhi High Court in M/s.Frank Finn Management Consultants v. M/s.Subhash Motwani and Another reported in 2008 SCC OnLine Del 1049 has held that as the defendant made allegedly libelous articles in the magazine "Opportunities Today" published from Mumbai against the plaintiff which has got registered office at Delhi filed a suit for compensation. The defendants contended that the defendants are having office at Mumbai and published the article only at Mumbai and therefore, the Delhi Courts cannot have jurisdiction. Rejecting the argument, the Hon'ble Delhi High Court held that the impugned article besides publication in the Magazine was also put by the defendants on its website and the magazine is circulated all over India and that the plaintiff noticed the said article in the magazine at Delhi and therefore, the Delhi Courts have got jurisdiction. It was further held that by putting the Magazine on the internet, the Magazine cannot be said to be having circulation only at Mumbai and concluded to be having circulations all over India and the wrong within the meaning of Section 19 CPC in an action for defamation is done by the publication. The Court further held that under Section 19 of CPC which is in relation to suits for compensation for wrong done to the person or to movable property and confers choice on plaintiff to sue either within the local limits of the defendant or where the wrong was done. Since the plaintiff therein read the Magazine at Delhi and the wrong was done at Delhi, it was held that the Delhi Court has got jurisdiction. The above judgment would categorically hold that where the effect is felt, the suit can be filed and where the wrong is done as per Section 19 CPC, the suit can be filed. The relevant paragraphs of the said judgment is usefully extracted hereunder:

"7.I have drawn attention of the counsel for the defendants to Section 19 of the CPC which is in relation to suits for compensation for wrong done to the person or

to movable property and confers choice on plaintiff to sue either within the local limits of the jurisdiction of the court where the defendant resides or carries on business or within the local limits of jurisdiction of the court where the wrong was done.

9. The plaintiff has invoked the jurisdiction of the courts at Delhi on the plea that the plaintiff has its office at Delhi and the impugned article besides publication in the magazine was also put by the defendants on its website and the magazine is circulated all over India; that the plaintiff noticed the said article in the magazine at Delhi and, therefore, the cause of action had arisen at Delhi.

16. From the evidence aforesaid, it stands established that the magazine was being or could be subscribed at Delhi. The magazine itself states that it is available at all railway stalls and reputed outlets and the version of the defendant No. 2 that the reference was to railway stalls and reputed outlets within Mumbai only, without it being so printed is unbelievable. Thus, it stands established that the plaintiff has its registered office at Delhi and the magazine has circulation at Delhi and is also put up on the website of the defendants. Even otherwise growing number of readers prefer to read newspapers and magazines via internet rather than in hard form. By putting the magazine on the internet, the magazine cannot be said to be for circulation within Mumbai only and is concluded to be having circulation all over India. The next question which arises is that if the magazine has circulation in Delhi, will any article in the magazine defaming a resident of Delhi, give jurisdiction, in an action for damages for defamation, at Delhi or the plaintiff will have to rush to Mumbai to sue the defendants."

33. Similarly, the Hon'ble Gauhati High Court in the case of State of Meghalaya v. Jyotsna Das reported in AIR 1991 Gauhati 96 held that wrong done includes and covers the effect of the act.

34. Further, the Hon'ble Delhi High Court in Indian Potash Ltd. v. Media Contents and Communication Services (India) Pvt. Ltd., reported in 2009 IV AD (Delhi) 28 has dealt with cause of action in detail. In the said case the plaintiff filed a suit claiming damages at Delhi against the defendants, which is having registered office at Noida, UP to the tune of Rs.11 Crores on the ground that the defendant telecasted a feature on its news channel making defamatory and false allegations of plaintiff's indulging into manufacturing synthetic milk. The

contention of the defendant that no cause of action has arisen in Delhi as the defendant is carrying on business at Noida and from the way news was telecast was rejected by the Delhi Court and the said order was challenged before the Delhi High Court. The Hon'ble Delhi High Court held that if publication of defamatory material against the plaintiff is made at a place different from where the plaintiff lives or defendant lives, the Court at that place will have the jurisdiction to entertain the suit for compensation on the ground of defamation where the defamatory material is printed in books, newspaper is published through electronic media on TV and the defamatory material directly hits the reputation demolishing the esteem and standing of the plaintiff. Since the telecasting of a feature on TV by the channel which is for Indian audience and has all India viewers, the plaintiff has a choice to file the suit at those places where the plaintiff has been hit the most. In that case, the plaintiff was supplying milk to many organizations and institutions and marketing companies in Delhi. The business of the plaintiff was allegedly hit by broadcasting of such publication in Delhi and therefore, the suit filed by the plaintiff therein at Delhi is held to be maintainable. From the above, it is clear that the parties can invoke the jurisdiction of the Court where the effect is felt. Paragraph 7 of the order reads as follows:

"7. The above Section makes it abundantly clear that any suit for compensation for wrong done to a person can be filed either within the territorial limits of the jurisdiction where the defendant resides or carrying on business or it may be instituted at the option of the plaintiff if the wrong done was within the local limits of the jurisdiction of the Court. In the event of publication of defamatory material, the wrong is done where the defamatory material is communicated and the moment the same is received by the persons, for whom it has been written. The publication of defamatory material against a person gives rise to a cause of action only when it is made known to the third party. The place of the third party and the place where it is known to a third party gains importance. The plaintiff may be living at any place. If publication of defamatory material against him is made at a place different from where the plaintiff lives or defendant lives, the Court at that place will have the jurisdiction to entertain the suit for compensation on the ground of defamation where the defamatory material is printed in books, newspaper is published, through electronic media on TV and the defamatory material directly hits the reputation demolishing the esteem and standing of the plaintiff. It is the choice of the plaintiff to file the suit either at the place where publication has been made or the place

where the defendant resides. Since in case of telecasting of a feature on TV by the channel which is for Indian audience and has all India viewers, the plaintiff has a choice to file the suit at those places where the plaintiff has been hit the most. In the present case, the plaintiff was supplying milk to many organizations and institutions and marketing companies in Delhi. The business of the plaintiff was allegedly hit by broadcasting of such publication in Delhi. Therefore, the suit of the plaintiff lies in Delhi and this Court has jurisdiction to entertain the suit. In T.N. Seshan, Chief Election Commissioner v. Dr. M. Karunanidhi, President of Dravida Munnetra Kazhagam Party. 1995 (3) ALT 108 the Andhra Pradesh High Court had similar view and observed as under:

"23. Publication of defamatory matter is communicated the moment the same is received by some person other than the person for whom it has been written. Publication of defamatory matter includes communication to third party. Defamatory matter printed in books and distribute for whatever purpose constitutes publication. All the three defendants must have known that the aforesaid books and, particularly, the contents of chapters 9 and 10 may be read at least by the book sellers immediately on their receipt by them because of their curiosity. In the ordinary course of business, the sending of books containing defamatory matter by post or otherwise from the place where it is published to book distributor of another place is publication of that matter at latter place, particularly/when it is read by them and/or others. Under these circumstances, it can be safely presumed that the importance of the aforesaid book containing chapters 9 and 10 would have aroused the curiosity of at least the book-seller to go through it immediately on its receipt and, therefore, this type of communication amounts to publication at Madras.

24. As noted above, the excerpts of chapters 9 and 10 of the aforesaid book in local newspapers is distinct publication. Much publicity was given for the sale of the book as is evident from the affidavits of the defendants. Therefore, a presumption regarding awareness of the contents of the concerned newspapers can be raised against all the defendants because out of these defendants only the concerned matter would have been passed on to the newspapers concerned and thus all of them, prima facie, appear to be

responsible alike for the publication of the alleged defamatory news item in the local newspapers."

The above judgments also support the view of this Court that cause of action for the present suit arises at Chennai as the effect of the 2nd defendant net publication is felt and the suit is maintainable before this Court.

35. The plaintiff relied upon the e-mail correspondence between the plaintiff and the 2nd defendant seeking particulars regarding the sale of shares by the 3rd defendant to the 2nd defendant as the 2nd defendant deliberately gave false information maliciously to cause damage only to show that there was huge hidden profit. However, the said information was declined to be furnished by the second defendant. The e-mail correspondence also emanated from Chennai and that e-mail correspondences would also give cause of action for the plaintiff/appellant to maintain the suit in Chennai.

36. The learned Single Judge found that no details of misrepresentation said to have been made by the 2nd defendant are given in the plaint, except bald allegations of misrepresentation. However, the plaint has to be read as a whole in a meaningful manner in conjunction with the documents filed with the plaint. In this case, the plaintiff has given the details in paragraph No.11.27 about misrepresentation made by the 2nd defendant through net publication dated 27.10.2015, which has been filed as Document No.21 in the plaint. In paragraph No. 11.26, how the misrepresentations made by the second defendant have been categorically explained. Even a reading of the press release dated 27.10.2015 filed as Document No.21, as explained supra, would give the details of the misrepresentation. Moreover, the learned Single Judge went into the merits of the case with regard to the misrepresentation which is unwarranted while deciding an application to revoke the leave. Therefore, the finding given by the learned Single Judge that no details of misrepresentation have been given in the plaint is perverse and is set aside.

37. Based on the press release dated 27.10.2015 issued by the 2nd defendant, Document No. 21 and another Article in Alphaville published in 2018, the suit has been filed. The learned Judge found that if the press statement made by the 2nd defendant dated 27.10.2015 is a defamatory statement, then the suit should have been filed within one year from the date of publication and the plaintiff cannot rely upon the article by Alphaville as it has not been made by the 2nd defendant and it is only critical in nature. The net press release, though it is

made in 2015, it continues to be in the net. Net publication is not like conventional publications through media and books. Internet is a world wide web available continuously and accessible easily to vast people throughout the world. As long as the press publication remains in the net and accessible at any time throughout the world, it gives rise to continuous cause of action. It is not the case of the 2nd defendant that the press release has been removed from the internet. Therefore, the finding given by the learned Single Judge that the suit for claiming damages should have been filed within one year from the date of the publication has to be set aside, as the limitation point has to be decided only at the time of final disposal, as to whether the nature of statement made by the second defendant has to be classified as "libel" and "slander" as per Articles 74 & 75 or "injurious falsehood" as per Article 113 of the Limitation Act.

38. The contention of the defendants is that the article published in "Alphaville" namely (Part of the House of Wire Card Series) " RE-VISIT WIRECARD'S BIG INDIAN DEAL" by Dan McCrum dated 25.01.2018 is critical in nature about the share transaction and therefore, that net article cannot be made use by the plaintiff for the purpose of limitation. However, a close perusal of the said net article would reveal that it has been titled as "Part of the House of WireCard Series" and was written on January 25, 2018 by Dan McCrum. Below that, it has been stated "Read more articles in House of WireCard Series". The above lines would indicate that it is not a single article regarding the subject share transaction and it is a part of "House of WireCard Series" as mentioned therein. Further, the article invites the visitor to read more articles about the "House of WireCard Series". These words abundantly make it clear that there were many more articles in the past and there would also be articles in future as it is stated as "series of articles". Even in the said article dated 25.01.2018, the malicious, defamatory statement, in the nature of injurious falsehood, as alleged by the plaintiff made by the 2nd defendant in 2015, has been referred to in the body of the article, which is extracted as follows:

"In the deal annexed in letter 2015, Wirecard acquired three businesses: Hermes I Tickets Private Limited, GI Philippines Company (Manila) and Star Global Currency Exchange Private Limited(Bangalore). It also took 60 per cent stake in GI Technology Private Limited (Chennai) through a €15m capital increase.

Wirecard said to be paid € 230m upfront including capital increase and would pay as much as €110m in further "earn outs" subject to profitability. The seller was said to be " Great Indian (GI) Retail Group"

The reference of the 2nd defendant statement dated 25.10.2015 in the article dated 25.01.2018 would prove that it was not only in 2015, but also in the subsequent years, namely, in 2018, the 2nd defendant's statement was accessed and relied on by the author of the article in "Alphaville" and published it. Even in 2018, the said article is proved to be available on the internet and thereafter also. Hence, the 2nd defendant's statement which had continued to be available on the net from 2015 onwards would give rise to continuous cause of action. Though the learned counsel for the defendants would rely upon the judgment in 2013 (139) DRJ 157 (Khawar Butt V. Asif Nazir Mir and Others) to stress the point that limitation for claiming damages based on libellous posting on internet is one year and only single publication rule is applicable rather than multiple publications rule, the contention of the plaintiff is that internet statement of the 2nd defendant has been continuously accessed is evident from the net article made in Alphaville in 2018 wherein the earlier net statement of the 2nd defendant has been referred to. The said argument of the plaintiff cannot be ignored. The net statement of the 2nd defendant is accessed and made use of continuously and that would definitely give cause of action to the plaintiff. In any event, it is a matter to be decided by this Court as to whether the limitation is one year as per Articles 74 & 75 which are applicable in the case of "libel" and "slander" or Article 113 of the Limitation Act for injurious falsehood. It is a triable issue and therefore, only at the time of trial, the applicability of the correct provision of Limitation Act can be decided.

39. The finding of the learned Single Judge that the suit for damages has to be filed within one year from the date of the publication is as per Articles 74 and 75 of the Limitation Act, which deal with "libel" and "slander" whereas the case of the plaintiff/appellant is that the statement of the 2nd defendant is defamatory, malicious besides being in the nature of "injurious falsehood". The learned counsel for the plaintiff would argue that the law of limitation does not provide any provision for "injurious falsehood" as it is an emerging tort for the time being and it will only fall under Article 113 of the Limitation Act which is usefully extracted as follows:

PART X - Suits for which there is no prescribed period

11 3.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.
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The "defamation" refers to a statement that is published in the net and is harmful to someone's reputation whereas "injurious falsehood" refers to statements that may actually cause reputation damage and in this case, the focus is on the effect of the false malicious publication on the commercial interest of the company rather than any personal set back, which is considered in cases of defamation. Hence, Article 113 of Limitation Act is applicable to cases coming under "Injurious Falsehood".

40. The learned counsel for defendants would submit that the issue would not come under Commercial Dispute as defined under Section 2(1)(c) of Commercial Courts Act and relied upon the judgment of Honourable Delhi High Court in Perpetuuti Technosoft Service Private Limited V. Sanovi Technologies (India) Pvt. Ltd and Others (MANU/DE/3048/2016), in which it has been held that "circulation of notice by other means, which according to the plaintiff is tortuous interference in the conduct of business of plaintiff, consequently filing suit for permanent injunction and damages of a sum of Rs. 1 crore would not come under Commercial Dispute and it cannot be viewed as a matter connected with or incidental to an ordinary transaction of a merchant or trader. Section 2(1)(c) of Commercial Courts Act is extracted as follows:

" (c) "commercial dispute" means a dispute arising out of--
(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;
(ii) export or import of merchandise or services;
(iii) issues relating to admiralty and maritime law;
(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
(v) carriage of goods;
(vi) construction and infrastructure contracts, including tenders;
(vii) agreements relating to immovable property used exclusively in trade or commerce;
(viii) franchising agreements;
(ix) distribution and licensing agreements;
(x) management and consultancy agreements;
(xi) joint venture agreements;
(xii) shareholders agreements;"

The above Section makes it clear that the present suit issue would definitely come under Section 2(1)(c)(i) and (xii) of Commercial Courts Act, i.e., "ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents and " shareholders agreements".

Even the object of " Commercial Courts Act" would support the case of the plaintiff, which is extracted as follows:

"An Act to provide for the constitution of Commercial Courts (Commercial Appellate Courts), Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected herewith or incidental thereto."

The plaintiff's case is that net publication constitutes statement of injurious falsehood and interferes with their business, reputation, causing financial loss. Therefore, it should be viewed as a matter connected with or incidental to an ordinary transaction of a traders. Hence, this Court is not in agreement with the judgment rendered by the learned Single Judge of Delhi High Court.

41. In Mahon V. Mach 1 Financial Services Pty Limited (No.2), reported in (2013) NSWSC 10, Justice McCallum of Supreme Court of New South Wales reiterated that four key elements are required to succeed in an action for injurious falsehood:

- (i) There must be a false statement of or consisting the plaintiff's goods or business;
- (ii) The defendant must have published that statement to a third person;
- (iii) There must be malice on the part of the defendant and
- (iv) The plaintiff must prove that there has been actual damage as a direct result of the statement.

Prima facie, the above elements are found in the publication dated 27.10.2015 and therefore, there is force in the argument of the learned counsel for the appellant that it will not fall under Articles 74 or 75 of the Limitation Act and it would come under Article 113 of the Limitation Act. In any event, it has to be dealt with or gone into only at the time of trial. It is a triable issue as to whether which provision of law of limitation could be invoked to the facts of the case. Therefore, the conclusion reached by the learned Single Judge that this suit for damages based on defamatory statement after one year is not maintainable is set aside.

42. Regarding maintainability of the suit, with regard to damages for injurious falsehood and for injunction, learned counsel for the plaintiff relied upon the judgment of the Honourable Bombay High Court in 2005 SCC OnLine Bom 110 : (2005) 3 Bom CR 41 (Villa Mode General Trading Co.V. Chordia Fashions Pvt. Ltd.). In the said case, the plaintiff therein had sought several injunction with regard to interpretation of confidentiality clause in the agreement entered between the plaintiff and the defendant therein as to whether the defendant has to obtain necessary permission from the Government

Authorities in India as per clause 2.1.1 of the agreement or the plaintiff has to obtain rights/authorisation for use of the brands from the brand owners of the goods. Subsequently, the plaintiff therein terminated the franchisee agreement on the ground of breach of the agreement. Violating the confidentiality clause, the defendant therein wrote to the brand owners directly that the plaintiff wrongly terminated the agreement and started negotiations with some of the brand owners directly. Therefore, the suit was filed claiming various injunctions including injunction restraining the defendant from committing tort of highly injurious falsehood by alleging in any correspondence that it is not the defendant, but it is the plaintiff who committed breach of the confidentiality clause in the agreement. The injunction application was opposed by the defendant. While refusing to grant injunction the Court held that the plaintiff has to prove the existence of malice at the time of trial. The Bombay High Court had categorically held in paragraph Nos. 12 and 13 as follows:

"12. After the plaintiffs terminated the franchise agreement dated 4th November 2003, they wrote letters to the various brand owners owning the said brands that the agreement has been terminated on account of the breach committed by the defendant. On becoming aware of such letters, the defendant responded by writing two letters dated 29th November 2004 (Exhibit-P1 and P2) to two of the brand owners taking exception to the plaintiffs' claim. In the said letters, the defendant inter alia said that inspite of several requests made by the defendant the plaintiffs were not able to complete their part and therefore, the agreement never came into force and that the defendant had not committed any breach of the franchise agreement. The tenure of the letters indicates that the defendant laid the blame for not opening of the stores for retailing of the products of the said brands on the plaintiffs. The plaintiffs have alleged that the defendant is further writing letters to the owners of the said brands for entering into a direct contract with it by making false representations to them that it were the plaintiffs who had committed the breach or in any event it were the plaintiffs who were at fault for non-implementation of the franchise agreement dated 4th November 2003. The plaintiffs have alleged that this claim made by the defendant and likely to be repeated to the other brand owners owning the said brands is not only false but is likely to injuriously affect the plaintiffs in their business. Because of this false representation made and/or likely to be made by the defendant to the various brand owners owning the said brands the business relationship of the plaintiffs with those brand owners is likely to be soured thereby causing injuriously affecting

their business. The plaintiffs therefore claim injunction restraining the defendant from making false representations about the breach/termination of the franchise agreement dated 4th November 2003 to the various brand owners owning the said brands or to anybody else. A tort of injurious falsehood can be distinguished from the tort of defamation or slander. While in both cases the tort feaser makes a statement which is false or untrue in the case of defamation or slander the false statement is likely to lower the person, against whom false imputations are made, in the estimation of others. It affects reputation of the person. In case of the tort of injurious falsehood, the false statement made may not lower the injured person in the estimation of others but it may affect him in his business. In both torts, a misrepresentation is made by the tort of feaser but in the former it is the character or reputation of the injured person that is affected; in the latter the business of the injured person is affected. Salmond and Heuston on "The Law of Torts" (Nineteenth Edition) succingly points out the difference in the two torts in para No. 147 at page 446, which reads as follows:-

"This wrong of injurious falsehood is to be distinguished not only from the wrong of deceit, but also from that of defamation, to which it is analogous, but from which it is distinct. Both in defamation and in injurious falsehood the defendant is liable because he has made a false and hurtful statement respecting the plaintiff; but in one case the statement is an attack upon his reputation, and in the other it is not. The distinction is clearly made in the following quotation. "Thus the malicious publication in a newspaper to the effect that Y, the famous popular singer, had commenced his novitiate with a closed order of monks would not lower him in the esteem of right-thinking people -quite the reverse possibly - but would lose him engagements and therefore money, and therefore be actionable at this suit." It should be noted that no action lies for such a statement is made maliciously: here, as in some other branches of law of torts, carelessness alone, however gross, does not suffice to establish liability".

13. No action lies for an untrue statement which constitutes a tort of injurious affection unless it has been made maliciously. Here, as in some other branches of law of torts, carelessness alone would not be sufficient to establish the liability. The remedy for a tort of injurious affection would be both in damages as well as

in injunction preventing further dissemination of the statements. However, the essential things which the plaintiff would be required to prove in a tort of injurious affection are (i) falsity, (ii) malice and (iii) damage. The plaintiff first would be required to prove that the statement is untrue. He would further be required to prove that the statement was made not merely out of the carelessness but was made maliciously ; there must exist a malice in law, if not in fact. The onus of proof of existence of malice is on the plaintiff. The plaintiff would further be required to allege and prove special damage to claim damages, though a mere possibility of a special damage would be enough for an injunctive relief."

Though injunction was declined in the said suit, the maintainability of the suit was upheld. Similarly, this Court in S. Abdul Subhan V. A.R. Mahaboob Jaani (2007 3 CTC 259) held that the suit for compensation for having caused defamation by the defendant residing at Arakkonam, Vellore District, Tamil Nadu, who caused defamatory notices which were received by the plaintiff at Chennai as well as by the Chief Minister's Office at Chennai is maintainable before this Court as cause of action arose at Chennai.

43. The learned Single Judge while considering prayer (a) i.e, permanent injunction restraining the defendants from alleging that plaintiff had made any profit /earnout from the sale of shares of Hermes pursuant to the share purchase agreement entered into on 07.09.2015, held that the said prayer is in the nature of a gag order as against the defendants. The said observation regarding prayer (a) has to be set aside. When misrepresentations are being made by the 2nd defendant and the statement suggest huge hidden profit to the plaintiff out of the share transaction with the 3rd defendant, which is false according to the plaintiff and it is in the nature of causing injury and damage to the reputation as well as financial loss to the plaintiff, definitely, the plaintiff has got every right to claim such a relief. There is no prohibition in law to grant such an order which is contemplated under the Specific Relief Act. When a party approaches the Court for permanent injunction and proves his case by evidence, both oral and documentary, consequently, the Court is to pass a decree for injunction and the Court cannot deny the same holding that it is in the nature of a gag order. Therefore, the said finding given by the learned Single Judge is set aside.

44. The learned Single Judge categorically held that the present proceedings is only to overcome the earlier proceedings filed by the promoters including the present plaintiff and to prevent the defendants from producing any materials before the

English Court. In paragraphs 38, 40 and 41 of the order, the said finding has been given without adverting to the facts. The defendants are not parties in the tortious claim filed by the minority shareholders. When such is the position, it is not understandable as to how the defendants could give such materials before the English Court. Therefore, the finding that the present suit is to prevent the defendants from producing the information to the English Court is perverse and set aside.

45. The learned Single Judge would also observe that it is only to re-agitate and overcome the earlier order passed by this Court in C.S.No.192 of 2018, accepting the contentions of the learned counsel for the respondents. Since the earlier anti-suit injunction was filed by the promoters subsequent to the initiation of English Court proceedings by the minority shareholders, this Court rejected the said suit only based on comity and forum conveniens and in fact, this Court only directed the parties to approach the English Court and nothing has been conclusively found against the promoters. The relevant paragraph from OSA 275 to 277 of 2018 are extracted as follows:

"28. Though we have passed above order, in view of the principle of law stated, any observation made by the learned Single Judge or by way of these appeals cannot have any bearing on the respective stands of the parties before the English Court. This, we do so for the reason that once it is held that it is the English Court which has dealt with the contentious issues, the findings and observations rendered by us will have to be confined only for the purpose of deciding the applications filed and therefore not on merits. Hence, the parties are given liberty to raise all the other contentions in the pending claim petition before the English Court"

Therefore, the finding given that to re-agitate the issue decided in the earlier proceedings filed by the promoters, the present suit is filed, is contrary to the records and liable to be set aside.

46. The earlier suit is to prohibit the minority shareholders from proceeding with the tortious claim made before the English Court and the defendants were not parties in the earlier suit. In the present suit, the minority shareholders are not parties. Moreover, the prayers are different. Therefore, the issue in the earlier suit is different and distinct from the present case. Here, in the present suit, preventive injunction, mandatory injunction to withdraw the false and defamatory press release and damages due to defamatory and malicious act on the part of the defendants have been sought. Hence, the finding given by the learned Single Judge that the present suit is to re-agitate the issue already decided in the anti-suit injunction is perverse and is set aside.

47. The case of the plaintiff right from the beginning is that the 2nd defendant made malicious and defamatory press statement dated 27.10.2015 in the internet platform causing serious injury to the reputation and financial loss to the plaintiff company. If really, the 2nd defendant wants to make it clear, they would have disclosed the financial details as to how the plaintiff and its promoters made hidden profit out of the sale of shares of first defendant in 2015 in response to the appellants e-mails dated 04.06.2018, 27.06.2018, 30.07.2018 and 01.12.2018. The 2nd defendant refused to divulge the information through reply email dated 12.12.2018 relying upon the confidentiality clause in the agreement between the 3rd defendant and the 2nd defendant. When the confidentiality clause is there, it is not understandable as to how the 2nd defendant could make such a statement on 27.10.2015 suggesting hidden profit allegedly earned by the plaintiff. On the one hand, the 2nd defendant deliberately made a statement, which according to the plaintiff is false, injurious and defamatory and on the other hand, the second defendant failed to disclose the material details of the transaction, which would only go to show that there is malice or mala fide intention on the part of the 2nd defendant deliberately to cause damage or injury to the plaintiff. Therefore, the plaintiff is justified in filing the suit.

48. The second defendant's press statement dated 27.10.2015 did not mention about name of the third defendant. The statement stated that second defendant would directly acquire shares of the first defendant from the plaintiff directly. At the risk of repetition the relevant portion of second defendant's statement viz., Wirecard dated 27.10.2015 is extracted for proper appreciation:

"Wirecard will acquire 100% of the shares from GI Retail and financial investors of companies operating payment services in India"

However quite surprisingly, in para 9 of the affidavit filed in support to revoke leave, the second defendant stated that it entered into an agreement with the third defendant for purchase of 1st defendant's share on 27.10.2015.

"9. The Applicant/Respondent No.2/Defendant No.2 further submits that the agreement between the Applicant/Respondent No.2/Defendant No.2 and Respondent No.3/Respondent No.3/Defendant No.3, for sale of shares of the Respondent No.2/Defendant No.1, was executed outside India, on 27 October, 2015."

Further, the second defendant made it clear in Paragraph 13 of the affidavit that it is not a party to the transaction between

the plaintiff and the third defendant. Relevant portion of paragraph 13 is extracted as follows:

"13.The Applicant/Respondent No.2/Defendant No.2 further submits that it is not a party to the transaction of sale of shares of Hermes i.e. Respondent No.2/Respondent No.1/Defendant No.1, by the Respondent No.1/Applicant/Plaintiff to Respondent No.3/Respondent No.3/Defendant No.3."

The above contradictory statements of second defendant would certainly prima facie prove malice on the part of the second defendant in issuing misleading statement suggesting hidden profit allegedly made by the plaintiff in the transaction between the appellant and third defendant especially it reiterates that it is not a party to the said transaction.

49. It is not understandable as to how the 2nd defendant could make a statement on 27.10.2015 suggesting allegedly hidden profit made by the plaintiff, out of the sale of shares by the plaintiff to the third defendant, when the 2nd defendant only entered into an agreement with the 3rd defendant to purchase shares of the 1st defendant.

50. If the 2nd defendant is third party to the transaction between the plaintiff and the 3rd defendant, in any event, it is not prejudiced out of that transaction.

51. In this case, part of cause of action, as already stated, arose at Chennai for the following reasons:

(i) The situs of sale of 1st defendant's shares by the plaintiff/appellant to the 3rd defendant is at Chennai.

(ii) The 1st defendant company, the sale of whose shares forms the basis of the 2nd defendant's net publication dated 27.10.2015 and the present suit, was located at Chennai, in 2015, within the territorial jurisdiction of this Court as per Clause 12 of the Letters Patent.

(iii) The flow of funds regarding sale of shares of the first defendant took place in Chennai.

(iv) The 2nd defendant alleged through net statement on 27.10.2015 as if it acquired the shares of the 1st defendant company located at Chennai from the plaintiff directly at the first instance and plaintiff made huge profit suggesting without role of third defendant, contrary to the facts.

(v) The effect of the malicious press statement of the 2nd defendant dated 27.10.2015 regarding the above sale of shares

has been felt in Chennai as the plaintiff/appellant company is located in Chennai.

(vi)The Bankers of the plaintiff/appellant, located in Chennai, restricted the financial assistance.

(vii)The plaintiff company is located at Chennai.

(viii)The email correspondence dated 04.06.2018, 27.06.2018 and 01.12.2018 emanated in Chennai.

In view of the above reasons, the cause of action arises in Chennai and the suit is maintainable. Hence, the contentions made by the learned counsel for the defendants are rejected.

52. While considering the revocation of leave, the statements made in the application and the pleading in the plaint alone have to be taken into consideration and not the defence taken by the defendants whereas in this case, the learned Judge considered the matter on merits and made unnecessary observations which are liable to be set aside. The Honourable Supreme Court in Abdullah Bin Ali and others V. Galappa and others reported in 1985 (2) SCC 54 held that the jurisdiction does not depend upon the defence taken by the defendants in the written statement.

53. This Court already held that regarding limitation that it is a matter to be considered at the time of final disposal as to whether the suit is barred by limitation or not as the appellant pleads Article 113 of the Limitation Act will be applicable as the press statement of the 2nd defendant dated 27.10.2015 is in the nature of injurious falsehood and not Articles 74 and 75 of the Limitation Act as contended by the defendants/respondents. At the time of deciding the leave, the same cannot be decided.

54. Regarding the nature of the press statement dated 27.10.2015 as to whether it is a malicious and a false statement, in the nature of injurious falsehood or otherwise has to be decided only at the time of final disposal. Whether the 2nd and 3rd defendants conspired to make such a false and malicious statement, which is denied by the defendants has to be decided only at the time of final disposal. This Court holds that cause

of action arises at Chennai to maintain the suit. Therefore, the suit is maintainable.

55. The learned Single Judge exceeded his limits by striking off the plaint from the file of this Court as no such prayer was sought by the defendants. Hence, the applications filed by the defendants are dismissed. The order of the learned Single Judge striking off the plaint is set aside and the application in A.No. 1956 of 2019 filed by the plaintiff for grant of leave is allowed. The suit is restored to file along with injunction granted in OA. No. 266 of 2019 which was in force till the revocation of leave. It is made clear that the findings/observations given/made in this order are confined only to decide as to whether leave could be granted or not and they are not on merits of the suit.

In fine, the Appeals are allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

+3cc to Mr.R.Udhayakumar, Advocate Sr.30013
+1cc to Allwin Godwin, Advocate Sr.30226

सत्यमेव जयते O.S.A.Nos. 213 to 215 of 2019

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