



A.No.407 of 2021
in C.S.No.490 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.07.2021

Pronounced on: 15.07.2021

Coram::

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.No.407 of 2021
in C.S.No.490 of 2019

Mrs.Sandhya Chandrasekar alias Sandhya Ganapathy,
New No.406, Nyasa SNN Raj Lake View, BTM 2nd Stage,
29th Main, Bannerghatta Road, Bangalore – 560 076.

... Applicant

/versus/

1. Sutherland Global Service Pvt Ltd.,
Represented by its authorized person Mr.Raghavan. A.
No.45-A, Velachery Main Road, Vijayanagaram,
Chennai, Tamil Nadu – 600 042.
2. Candor Management Services Private Limited,
Represented by its Managing Director,
Mr.Thirumurugan Subramanian,
No.292, 1st Floor, 1st Main, 7th Cross, Domlur Layout,
Bangalore – 560 071.
3. M/s.SG iConsult Management and Outsourcing Private Limited,
Represented by its Director Mr.Sathyaseelan AthikayanPalliyil,
No.N-406, Raj Lake View Phase, Bilekahalli Village,
Begur Hobli, Bangalore – 560 075.
4. Mr.SathyaseelanAthikayanPalliyil,
Plot No.1, Nandanam behind Nikhil Niwas Apartment,
8th Cross Maruthi Nagar, 10th Main, Malleshpalya,
Thippasandra Post, Bangalore – 560 075.



5. Mr.Ganapathy Ramachandran,
No.N-406, Nyasa SNN Raj Lake View, BTM, 2nd Stage,
29th Main, Bannerghatta Road,
Bangalore – 560 076.

... Respondents

Prayer:

This Application is filed under Order VII Rule 10 read with Section 151 of C.P.C read with order XIV Rule 8 of Original Side Rules.

a). This application should not be treated as urgent?

b). To pleased to either return the plaint filed by the plaintiff to be presented to the Court in which the suit should have been instituted i.e., the Original Side of this Hon'ble High Court or dismiss the present suit as being not maintainable before the Commercial Division.

For Plaintiff : Mr.Prasad Vijayakumar

For D1 : Mr.Ramakrishnan, Senior Counsel
for Mr.S.R.Sundar

For D2 : Mr.Arun Karthick Mohan

For D3 to D5 : Mr.P.Giridharan

ORDER

This application is filed by the 3rd defendant to return the plaint to be presented to the Court in which the suit should have been instituted i.e., the Original Side of the High Court and dismiss the present suit as being not maintainable before the Commercial Division of this Court.

2. The suit is filed by the sole plaintiff against the five defendants.



The plaintiff averments in the nutshell is that the applicant/3rd defendant was employed under the plaintiff as a Vice President between May-2013 and November-2018. In the course of her employment, she fraudulently procured contract in favour of the 1st defendant in the year 2016. Same was renewed and extended till May 2018. Pursuant to the service agreement, the plaintiff and the 1st defendant entered into a statement of work (1) consisting of two projects and statement of work (2) consisting of one project. The 1st defendant was paid as per their invoice. Later, the plaintiff found that the 1st defendant in connivance with the 3rd defendant had overpricing the invoice. The 3rd defendant using her position in the plaintiff's Company had pressurised to pay the 1st defendant. It is a specific allegation made against the 3rd defendant that she had breached the confidentiality obligation by passing off the intellectual property of the plaintiff to other defendants. The 3rd defendant has shared the plaintiff's clients details through her e-mail.

3. The dispute arising out of violation of terms and conditions of the service agreement between the plaintiff and the 1st defendant, for which, the 3rd defendant was instrumental. The defendants conspired together to breach the confidentiality obligation towards the plaintiff and shared the Intellectual Property of the plaintiff to enrich themselves. Hence, suit dispute fall within the



definition of Commercial Dispute.

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4. In the plaint several incidents are stated regarding breach of confidential obligation and sharing of plaintiff's intellectual property with the other defendants. Whereas, the 3rd defendant, who is the applicant contents that the suit is not a Commercial Dispute. The tale of conspiracy and sharing of confidential data are fictional. The service agreement was only between the 1st defendant and the plaintiff. The 3rd defendant is not a party to the said agreement. When she is not a contracting party to the agreement, for the alleged breach of the said agreement, she cannot be held responsible to be arrayed as a defendant in a Commercial dispute. The definition of the Commercial dispute specifically say dispute arise out of an agreement between the parties. Even according to the plaintiff, in the jurisdiction clause at paragraph No.64, there is no reference about the 3rd defendant. While so, the suit will not fall within the ambit of Section 7(1) of the Act and within the definition of Section 2(1)(c)(x) & (xviii) of Commercial Courts Act.

5. The Counsel for the applicant rely on the judgment of the Hon'ble Supreme Court in *Ambalal Sarabhai Enterprises Limited -vs-*

K.S.Infraspac LLP and another reported in (2020) 15 SCC 585, which reads

<https://hcservices.ecourts.gov.in/hcservices/>



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13. The learned Senior Advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned Senior Advocate has referred to the Statement of Objects and Reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian legal system. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained



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by the Commercial Courts as intended by the lawmakers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary civil courts wherein the remedy has always existed.

14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition “commercial disputes” as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the mortgage deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in



India to Clients spread across the world. He entered into a service agreement with the 1st defendant for sourcing, screening and referring the suitable categories for potential job position. It is alleged that the 3rd defendant/applicant herein was instrumental for awarding the service agreement to the 1st defendant.

10. The case of the plaintiff is that, the 3rd defendant who was working as Vice President in the plaintiff's Company using her position has allowed the 1st defendant to draw excess amount for the work not done and for poor work. The specific allegation of sharing of data, breaching the confidentiality obligations are made against the 3rd defendant in various paragraphs of the plaint.

11. In her application, to return the plaint, the 3rd defendant admits that the agreement exist between the 1st defendant and plaintiff. Her main contention is that she is not party to the said agreement hence the suit doesn't fall within the definition of Commercial Dispute.

12. The specific allegation against her is the violation of the terms of employment and misuse of her fiduciary position, to the detriment of the



plaintiff's Company. The said allegation is denied by the 3rd defendant.

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13. It is to be noted that the applicant is not the sole defendant.

There are four other defendants. The plaintiff has specifically made allegation of conspiracy against the defendants and also made a *prima facie* case how the defendants are connected. To ascertain, whether the agreement between the 3rd defendant and the plaintiff falls within a service agreement, the terms and conditions of the employment agreement has to be interpreted.

14. The offer of employment given by the plaintiff to the 3rd defendant on 08.03.2013, clause 8 and 10, which reads as below specifically refers about confidential matter and its preservation.

“8. You will maintain utmost secrecy of the affairs or works of the company and should not divulge any information of the Company by any mode of communication to any other person or organization etc., during your employment with us or thereafter.

9.....

10. All inventions, improvements and discoveries made solely by you or jointly while on duty need to be disclosed to the company and the company has the sole



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right, title and interest over such inventions, improvements and discoveries and has the intellectual property rights over them.”

15. In the written statement, the 3rd defendant had stated that she was hired in 2013 by the plaintiff to set up Contract Management function vide offer of Employment dated 08.03.2013. “She was hired by Mr.K.S.Kumar, Chief Operating Officer of the plaintiff, based on her skill, knowledge and experience in setting up the above said function and expertise. It is important to note that the plaintiff did not have internal capability to set up a contract Management function and was looking to hire someone with that expertise. The 3rd defendant had set up a similar function in M/s.Dell India as a Contracts Director and was hence hired for her expertise.”

16. Reading her written statement, clearly indicates that the plaintiff and the 3rd defendant had employment contract in which the 3rd defendant had an obligation of maintaining utmost secrecy of the affairs of the work and all inventions, improvements and discoveries made by her solely or jointly, will be the intellectual property of the plaintiff's.



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gives an impression without doubt that the suit claim is a Commercial dispute, wherein each of the defendants whether party to the contract or otherwise, had directly or indirectly party to the alleged breach of agreements either the Management and Consultancy agreement or the service agreement. Therefore, I finds no merit in the application filed by the 3rd defendant to return the plaint.

18. This Court, on going through the averments made in the plaint and the present application along with the written statement of this defendant and other defendants holds that the suit claim carry the character of the Commercial Dispute wherein, breach of service agreement, consultancy agreement and theft of intellectual property being alleged. Hence, the *Application No.407 of 2021 is dismissed.* No costs.

Sd./-G.J.J
15/07/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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jj23/07/2021