



A.No.1655 of 2021
in C.S.No.418 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 06.07.2021

Pronounced on: 14 .07.2021

Coram::

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.No.1655 of 2021
in C.S.No.418 of 2018

1. J.N.Jahathramjee,
No.4/60, Venkatnarayana Road,
T.Nagar, Chennai – 600 017.
2. Sai Sri Lakshmi Ramjee,
No.4/60, Venkatnarayana Road,
T.Nagar, Chennai – 600 017.
3. LSR Properties India Pvt Ltd.,
No.4/60, Venkatnarayana Road,
T.Nagar, Chennai – 600 017.

... Applicants

/versus/

1. Y.K.Mohanrao,
No.12, Rajendra Colony,
Saligramam, Chennai – 600 093.
2. Y.S.Lakshmi,
No.12, Rajendra Colony,
Saligramam, Chennai – 600 093.
3. Y.Rajeswararao,
No.28/36, Chakrapani Street,
West Mambalam,
Chennai – 600 033.

(All three plaintiffs are represented by their
Power Agent Y.Nagarajesh),



4. Y.Nagarajesh,
No.12, Rajendra Colony,
Saligraman,
Chennai – 600 093.

... Respondents

Prayer:

Judge's summons under Order 14 Rule 8 of O.S.Rules 1956 read with Order VII Rule 10 of C.P.C.

- a). This application should not be treated as urgent?
- b). To allow this application to return the plaint under Order VII Rule 10 of C.P.C.?

For Plaintiffs : Mr.T.Mohan

For Defendants : Mr.K.V.Babu

ORDER

The suit filed by four plaintiffs against three defendants for recovery of Rs.31,40,06,037/- (Thirty One Crores Forty Lakhs and Six Thousand Thirty Seven only). The parties in the suit are all resident of Chennai falling within the territorial jurisdiction of this Court. The pecuniary jurisdiction also is exclusively within the original jurisdiction of the Madras High Court. The plaintiffs laid the suit before the Commercial Division claiming their dispute as a Commercial dispute falling within definition under



section 2(1)(c)(1) of the Commercial Courts Act (in short), 2015 and above the specified value.

2. The suit filed on 22.06.2018 and came for admission on 06.07.2018 along with application for interim injunction. The defendants entered appearance through their Counsel on 30.07.2018. Pending suit, it was contended by the Counsels that the parties have entered into a Memorandum of Understanding on 16.02.2019 and took time for reporting settlement. For the said reason, the suit was listed on several dates between 21.03.2019 and 25.09.2019. Suddenly, the defendants denied the voluntary execution of Memorandum of Understanding dated 16.02.2019. Therefore, vide order dated 01.10.2019, this Court thought fit to decide whether the settlement is valid. Ordered examination of witnesses to prove the Memorandum of Understanding. When some difficulty was expressed on behalf of the defendants for the physical presence of the witness, this Court appointed an Advocate commissioner on 19.11.2019 to record the evidence of one Varatharajan as DW-2. In spite of extension of warrant, the Commissioner was not able to record evidence of the said Varatharajan due to the illness of the proposed witness. Hence, this Court vide order dated 21.01.2020, recording the said fact, directed the parties to proceed with the suit instead of side tracking



the issue by testing the alleged Memorandum of Understanding entered pending suit.

3. The written statement of the defendants dated 11.11.2019 along with Application No.8587 of 2019 to condone delay of 59 days in filing the written statement was taken up for consideration by this Court and a detailed order was passed on 30.09.2020 allowing the condone delay petition in the light of the Hon'ble Supreme Court Judgment in **SCG Contracts India Pvt Ltd -vs- K.S.Chamankar Infrastructure Pvt Ltd and others**, qua limitation provided by the proviso to Rule (1) of Order VIII C.P.C., as applicable to the Commercial Suits. The written statement was taken on record subject to payment of costs of Rs.25,000/- on or before 16.10.2020.

4. The Court, after receiving the memo reporting compliance of the conditional order adjourned the case to for affidavit of admission and denial. At this juncture, the present application dated 21.01.2021 is filed under Order 14 Rule 8 of Original Side rules r/w Order VII Rule 10 of C.P.C., to return the plaint.



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5. In the affidavit filed along with the application, the defendants contend that the suit is not maintainable as a Commercial dispute within the meaning of section 2(1)(c) of the Commercial Courts Act, 2015. The signature in the suit documents namely the Memorandum of Understanding dated 27.06.2013 was obtained by force and intimidation. The other Memorandum of Understanding dated 21.05.2014 never existed and there was no commercial transaction took place between the plaintiffs and the defendants. The immovable property referred in the plaint not been exclusively used for trade and commerce to determine the jurisdiction under section 2(1)(c)(vii) of the Act or the Memorandum of Understanding and the alleged cancellation of Memorandum of Understanding are not mercantile documents to fall under section 2(1)(c)(i) of the Act. Therefore, the plaint has to be returned to be presented in the Court where the suit should have been instituted.

6. In the counter affidavit, the plaintiffs have stated that, under Order XLIX Rule 3 of the C.P.C., the application of Order VII Rule 10 of C.P.C., is excluded for Chartered High Court. Hence, this application filed under Order VII Rule 10 C.P.C., is to be dismissed at the threshold. On facts also the prayer in the application is not sustainable.

7. In the year 2007, the plaintiffs financed the defendants for their



Mega Shopping Mall project at Devadhanam and Panyakurichi Villages, at Tiruchy District. The defendants 1 and 2 have executed several sale agreements, General Power of Attorney and Affidavits in favour of the plaintiffs on various dates in respect of the properties situated in those two Villages and also handed over the original title deeds pertaining to said properties. The funds were diverted by the defendants and the defendants could not complete the project even after several years. In the said circumstances, two MoU's dated 27.06.2013 and 21.05.2014 were entered between the parties. The defendants 1 and 2, later executed two promissory notes dated 26.12.2014 and a letter of undertaking to pay the dues on or before 28.02.2015. The first defendant through e-mail dated 23.01.2018 had acknowledged the debts. The cheques given by the defendants to discharge the debts returned due to insufficient fund and hence, the suit for recovery of money under the Commercial Courts Act, 2015, being a commercial dispute falling within section 2 (1)(c)(i) of the Act.

8. The preliminary objection by the respondents/plaintiffs Counsel regarding this application is on its maintainability in view of Order XLIX Rule 3 of C.P.C., which says this rule is not applicable to Chartered High Court. This legal issue settled in negative by the Division Bench of this Court headed by

Hon'ble Justice Rajamannar as early as 1952 in ***R.P.C' Connor -vs- P.G.***



Sampath Kumar reported in *AIR 1953 Mad 897*. Hence, this objection is not sustainable.

(i). Lordship Justice Rajamannar CJ, writing for the Bench narrates the facts of the case in nutshell and the point for reference to the larger Bench in the following words, “The applicant filed a suit on the original side of this court for the recovery of a sum of Rs.6720 alleged to be due on a promissory note executed by the defendant in favour of his mother. The defendant pleaded 'inter alia' that the court had no jurisdiction to entertain the suit as the defendant was a permanent resident of Bangalore and the promissory note and the endorsements thereon were made outside the limits of the original jurisdiction of this court. Thereupon, the applicant took out an application praying that the plaint which he had filed should be returned to him. In the affidavit filed by him in support of the application he stated that in order to enable him to pursue his remedies it is necessary that an order should be made directing the return of the plaint to him and this court had jurisdiction to return the plaint for presentation to the proper court once it found it had no jurisdiction to entertain the suit. The application came on before Panchapakesa Ayyar J. who heard counsel on both sides and directed the papers to be placed before me for constituting a Full Bench to consider this point.



I have however thought it was unnecessary to constitute a Full Bench because there was no conflict of decisions of Division Benches in our Court.

(ii). The question for decision as framed by Panchapakesa Ayyar J. is as follows :

Whether a Chartered High Court has not got inherent powers under Section 151, C. P. C. to return a plaint entertained by it in the exercise of its ordinary or extraordinary original jurisdiction for presentation to the proper court for the ends of justice despite the provisions of Order 49, Rule 3, C. P. C. "

(iii). Order 7, Rule 10(1) of the Code provides that a plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. Order 49, Rule 3 of the Code declares that this rule among other rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary Original Civil jurisdiction. There is no rule similar to Order 7, rule in of the Code made by this Court in the exercise of its rule making powers. The position therefore is that there is no express provision in the Code or in the Rules framed by this Court for the return of a plaint filed on the Original Side of this Court when it is found that this court has no jurisdiction to entertain the suit. It therefore becomes



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necessary to consider whether Section 151 of the Code can be invoked, that is-to say, whether it, can be held that this Court has inherent power to make an order directing the return of a plaint if it is necessary for the ends of justice or to prevent abuse of the process of Court.”

9. After an erudite discussion comparing the earlier decisions of this Court and other Chartered High Courts, the Letter Patent Act and Stamp Act, concluded that, “It appears clear to me from the authorities above cited that the fact that this court is a court of record does not' necessarily imply that it has no power to return any document presented to it and especially so a plaint which it has no Jurisdiction to entertain. There might have been an impression that as a court of Record this Court should keep on its file all the proceedings before it. But there is nothing either in the Letters Patent or in any Statute which makes it incumbent on this court on its Original Side to retain on its file even plaints which ought not to have been properly presented to this Court”.

10. After giving my full consideration to the matter, I am of opinion that it is open to this court to direct the plaint to be returned to the plaintiff for presentation to the proper court when this Court finds that it has no jurisdiction to entertain it.



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11. The law laid in this judgement by the Division Bench is binding and to be followed. After reading the above judgment, there is no doubt in the mind of this court that, *dehors* of Order XVIX Rule 3 of C.P.C., the Chartered High Court if it comes to the conclusion that it has no jurisdiction to entertain the *lis*, in exercise of the inherent power vested with it, can return the plaint to be presented before the appropriate court and there is no statutory bar to do so. Exclusion of application of certain rules in C.P.C., for Chartered High Court is not with intention to denude the powers of the Chartered High Court but in view of the alternate provisions in the other statute or in Code itself.

12. Further, in this case, the application though filed under Order VII Rule 10 of C.P.C., the affidavit averment as extracted above indicates that the applicant mainly questions the determination of jurisdiction of the suit as Commercial dispute. According to the applicants, the dispute does not fit either into section 2(1)(c)(i) or 2(1)(c)(vii) of Commercial Courts Act, 2015.

13. The specific statement of the plaintiffs in the plaint is that, they financed the defendants for their business venture. The defendants failed to repay the agreed sum despite two memorandum of understanding.

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They executed pro-notes. Gave cheques to discharge the debts, but they all returned for insufficient fund. The power of attorney was executed within the jurisdiction of this Court, the Memorandum of Understanding were entered within the jurisdiction of this Court, the four cheques issued to discharge the debts were from the defendants account maintained at IOB, T.Nagar Branch at Chennai. The cheques were presented in the plaintiffs account in IOB, Saligramam Branch at Chennai.

14. The pleadings as found in the plaint, *prima facie* indicates that the suit arising from an agreement for finance in promoting business/construction of Mega Mall. After execution of Memorandum of Understanding, Letter of Undertaking, power of attorney and deposit of title deed, the defendants have issued cheques and same were bounced without fund. The issuance of cheques and bouncing happened within the jurisdiction of this Court. There is element of financial assistance in the course of real estate business besides enforcement of mercantile documents. Thus, the *lis* falls within the ambit of Section 2(1)(c) (i) of the Act which reads, 'Ordinary transactions of merchants, bankers, financiers and traders such as those related to mercantile documents, including enforcement and interpretation of such document.'



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15. The suit falls within the definition of commercial dispute. The suit claim is above the specified value fixed to be heard by the Commercial Division. The Parties reside/carrying on business within the territory of this Court. The substantial cause of action for the suit falls within the jurisdiction of this Court. Therefore, the application for return the plaint is devoid of merits and hence, liable to be dismissed. In the result, Application No.1655 of 2021 is dismissed. No order as to costs.

Sd./-G.J.J
14.07.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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Jj 19/07/2021