



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.04.2021	Pronounced on: 19.04.2021
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THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.Nos.485 & 486 of 2021
in C.S. No.445 of 2018

1. Pronk Multi Service India Pvt Ltd.,

Rep. by its Authorised Signatory,
No.797, Thiruvallur High Road,
Andersonpet, Nemam,
Chennai – 600 0124.

2. Pronk Multi Service India Pvt Ltd.,

Rep. by its Authorised Signatory,
No.35, Electronic City II Phase,
Industrial Area, Konappanna,
Agrahara Village, Beguru Hobli,
Hosur Road, Bengaluru,
Karnataka – 560 100.

... Applicants/1st and 2nd defendants

/versus/

1. Camfil Air Filtration India Pvt Ltd.,

Rep. by its Authorised Signatory,
Mr.Sanjay Sharma,
S.F.No.107/37, Devarayaneri Road,
Asoor Post, Tanjore Highway,
Trichy – 620 015, Tamil nadu.

2. Mr.Shailendra Anand,

Director, Pronk Multi Service India Pvt Ltd.,
No.35, Electronic City II Phase,
Industrial Area, Konappanna,
Agrahara Village, Beguru Hobli,

Hosur Road, Bengaluru,
Karnataka – 560 100.

3. Mr.Marcel Pronk,
Director, Pronk Multi Service India Pvt Ltd.,
No.35, Electronic City II Phase,
Industrial Area, Konappana,
Agrahara Village, Beguru Hobli,
Hosur Road, Bengaluru,
Karnataka – 560 100.

.... Respondents/3rd & 4th Defendants

Prayer in A.No.485 of 2021:-Application is filed under Order XIV and Rule 8 of Original Side Rules read with Order III Rule 1 of the OS Rules and Clause 12 of the Letters Patent.

To Revoke the leave granted to sue dated 27.03.2018 in Application No.2485 of 2018 in C.S.No.445 of 2018.

Prayer in A.No.486 of 2021:- Application is filed under Order XIV and Rule 8 of Original Side Rules read with Order VIII Rule 11 of the Code of Civil Procedure, 1908.

To reject the plaint in C.S.No.445 of 2018.

For Applicants/Defendants : Mr.Vijay Narayanan, Senior Counsel
for Mr.P.Giridharan

For Respondent/Plaintiff : Mr.K.Jagannathan

COMMON ORDER

These two Applications are filed by the defendants to revoke the leave granted to sue and to reject the plaint on the ground that this Court lacks jurisdiction to hear the suit and there is no factual basis to maintain the suit against the defendant Nos.3 & 4, who are the Directors of the defendant Nos.1 & 2 Company.

2. For sake of convenience and clarity parties are referred as per their status and ranking shown in the plaint.

3. The brief facts of the case as found in the plaint is that, the plaintiff Company is manufacturer of Air Filtration equipments. It engaged the 1st defendant company having Office at Andersonpet, Nemam, Chennai, for seaworthy package of the material and equipments to be transported to Italy. The contract for package was given to the 1st defendant, after negotiation of the terms and conditions. The purchase order dated 22.01.2016 followed by an amendment dated 25.04.2016 was issued by the plaintiff to the 1st defendant. According to the terms of contract, the defendants have to conduct and complete seaworthy packaging of 11 units comprising approximately 150 boxes

and deliver it at Port. As per the agreement, the product has to be packed as per the international standards and technical specification. A total sum of Rs.85,20,204/- was fixed for the said service contract. The package of the equipments commenced on 27.04.2016 and same was despatched to Italy in two batches. The first batch comprising of 5 units on 01.06.2016 and the Second batch comprising of 6 units on 07.08.2016 were despatched from Chennai Port to Livorno, Italy. To shock and surprise to the plaintiff, on arrival of the consignment at Port of Livorno Italy, they found that thermo shrink wrap which was one of essential material for packaging had become extremely brittle and had broken off at various places. The packing by the 1st defendant were not in consonance with international standards and technical specifications. The packaging was done with inferior and substandard material. The report in this regard was submitted by the plaintiff client on 19.10.2016. The plaintiff called upon the defendant to reimburse the expenses incurred by the plaintiff since the damaged boxes were repacked with assistance of another company. Hence, the suit for recovery of a sum of Rs.4,66,68,026.62 together with interest @ 18% p.a.

4. The defendant despite receipt of the suit summons had not filed the written statement within the time prescribed under the law. Hence, they have forfeited the right to file written statement. This Court recording the same,

has referred the matter to Additional Master – I for recording evidence. On behalf of the plaintiff, one witness was examined in Chief and adjourned for cross examination by the defendants. The defendants have not cross examined P.W.1 and the matter was sent back to Court for further proceedings. At this juncture, the application to revoke the leave on the ground that the plaintiff/Company is at Trichy and the 1st defendant to whom the purchase order was issued is at Andersonpet, Neman, Chennai, which is outside the jurisdiction of this Court. Further, the 2nd defendant is at Karnataka. No party carry on business within the jurisdiction of this Court and no cause of action arose within the jurisdiction of this Court. That apart the plaint has to be rejected as against defendant Nos.3 and 4 since they are not necessary or proper parties. They are individuals and Directors of the defendant's Company. The Company alone is liable under contract and not the individuals.

5. In the counter filed by the plaintiff, it is stated that the invoice issued by the applicant confers jurisdiction to Court at Chennai and after opting the jurisdiction to the Chennai Court, the defendants are estopped from challenging the jurisdiction of this Court. Without filing written statement, after examination of PW.1, the present applications are filed belatedly with intention to protect the proceedings and not with bonafide intention hence to be

dismissed with costs.

6. The Learned Senior Counsel appearing for the applicant would submit that neither the plaintiff nor the defendant carrying on business within the jurisdiction of this Court and no part cause of action arose within the jurisdiction of this Court. Even by consent, if jurisdiction is conferred to a Court where no part cause of action arisen and ousting the jurisdiction of the Court where cause of action arose, such ouster of jurisdiction is illegal and contrary to Section 23 & 28 of Indian Contract Act,

7. The Learned Senior Counsel for the applicants referred the following judgments of the Hon'ble Supreme Court, in support of his submissions.

(i). *A.B.C.Laminart Pvt. Ltd and another -vs- A.P.Agencies* reported in **1989 (2) SCC 163**.

(ii). *Saleem Bhai & others -vs- State of Maharashtra and others* reported in **2003 1 SCC 557**.

(iii). *Interglobe Aviation Limited -vs- N.Satchidanand* reported in

2011 (7) SCC 463.

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(iv). ***Dura Flex Private Limited -vs- Duroflex sittings system***
reported in **2014 (6) CTC 577**.

8. The Learned Senior Counsel appearing for the applicants would further submit that in ***Madanlal Jalan -vs- Madanlal and others*** reported in ***AIR 1949 Cal. 495***, has enunciated the following legal principles in respect of revocation of leave.

(a) that an application lies for revoking leave granted under clause 12 of the Letters Patent;

(b) that such an application should be made at an early stage of the suit and delay and acquiescence may be a bar to such an application;

(c) that if the application depends on difficult questions of law or fact, the Court should not revoke leave on a summary application but should decide the question at the trial;

(d) that if the defendant shows clearly that no part of the cause of action arose within jurisdiction, the leave should be revoked as a matter of course;

(e) that if only a part of the cause of action arose within jurisdiction, then it is a question of discretion for the Court to give or refuse leave or where leave has already been granted to revoke or maintain the leave;

(f) that assignment is a very important part of the
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cause of action in a suit by the assignee;

(g) that in giving or refusing leave or maintaining or revoking leave the Court will ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the defendant, apply the doctrine of forum conveniences;

(h) that the Court may refuse leave or revoke leave on the ground of balance of convenience although there be no evidence of bad faith or abuse of process on the part of the plaintiff;

(i) that if the cause of action is founded on an assignment within jurisdiction of a negotiable instrument, the Court will, in recognition of the principle of negotiability, insist on a far greater degree of balance of convenience in favour of the defendant and will more readily give or maintain leave than in other cases of assignment;

(j) that if the Court is satisfied that the suit has been filed malafide for the purpose of harassing or oppressing the defendant or might result in injustice the Court should in all cases readily refuse leave or if leave has already been granted revoke the leave as a matter of course.

9. Following this judgment in *A.B.C. Laminart Private Limited and another -vs- A.P.Agencies* reported in 1989 (2) SCC 163, the Hon'ble

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Supreme Court, which held as below:-

“21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like “alone”, “only”, “exclusive” and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim “expressio unius est exclusio alterius” - expression of one is the exclusion of another - may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.

10. The Learned Senior Counsel for the applicants reply on the

<https://hcservices.ecourts.gov.in/hcservices/> following observations made by the Hon'ble Supreme Court in **Saleem Bhai**

and others -vs- state of Maharashtra and others reported in **2003 (1) SCC 557**,
at paragraph No.9,

“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

submitted that a petition under Order VII Rule 11 of C.P.C., to reject the plaint can be filed at any time before the conclusion of the trial and therefore, the petitions to revoke the leave and reject the plaint cannot be dismissed on the ground of delay or laches. When the defendant has established that no part cause of action had arisen within the jurisdiction of this Court, leave granted has to be necessarily revoked.

12. Referring the terms of conditions, the Learned Senior Counsel appearing for the applicants would submit that, it has been specifically mentioned in the quotation issued by the 1st defendant that Lifting/Handling of cargo while packing is not under the Pronk Scope. The amended purchase order dated 25.04.2016 also had made clear that the price quoted for package does not include freight. The insurance shall be in Pronk Multi Service Scope till the material is picked up from the plaintiff Plant and loaded into the truck till dispatches.

13. Referring this portion of terms and conditions found in the quoting and purchase order, the Learned Senior Counsel would submit that the materials were packed at the premises of the plaintiff in Trichy and same was loaded into the Truck at Trichy. The responsibility of the defendant stopped on

loading the equipments into the Truck at Trichy therefore, there is no cause of action within the jurisdiction of this Court.

14. Per contra, the Learned Counsel appearing for the respondents/plaintiffs submitted that the invoice of the defendants raised against the plaintiffs are the bills which states, “subject to Chennai jurisdiction”. The defendants themselves has fixed the jurisdiction at Chennai in the invoice. Further, the service of the defendants was engaged for packing the equipments which shall be seaworthy. The dispute now between the parties is that the package was not seaworthy. At the delivery point it was found that out of 140 boxes, 72 boxes were found damaged. 24 months warranty for the package storage outside was assured by the defendants and the destination of the goods was Italy. Having agreed to pack the material seaworthy and after giving warranty for 24 months storage outside, the suit has been filed for the breach of contract at Chennai since, the defendants had fixed the jurisdiction at Chennai and the goods were exported from Chennai port, which is within the jurisdiction of this Court.

15. The defendants want to revoke the leave on the ground that

there is no part cause of action arose within the jurisdiction of this Court.

However, from the plaint averment and the documents, this Court finds that the responsibility of the 1st defendant Company is not merely to pack the material but also to ensure the seaworthiness of the package till the point of delivery. The 1st defendant, aware of the fact that point of delivery Italy. Warranty of 24 months given by the 1st defendant regarding the package storage outside. While so, the cause of action continues from the site of package to the site of delivery till the expiry of warranty period. Thus, loading at port of Chennai for transshipment is one part of cause of action.

16. Therefore, going by the principle laid down by the Hon'ble Supreme Court in the judgments cited above, since part of cause of action arose within the jurisdiction of this Court, this Court had exercise his discretion and granted leave to sue. The case has reached the stage of cross examination of PW.1. Even if applying the principle of forum conveniens, the 1st defendant, who is having its Office just few kilometres outside the jurisdiction of this Court and consciously opted the jurisdiction of this Court in its own document, now cannot at this length of time can question the jurisdiction of this Court where part of cause of action has arisen.

17. Regarding the status of 3rd and 4th defendants, they are

