

A.No.1550 of 2021
in C.S(Comm.Div.).No.669 of 2019

DR.G.JAYACHANDRAN, J.

Heard the learned counsel for the applicant and the learned counsel for the respondents.

2. The transfer petition is filed by the 2nd defendant in C.S.No.669 of 2019 pending on the file of this Court, which is the prior suit, to transfer O.S.No.2818 of 2020 on the file of the XVII Additional City Civil Court, Chennai, the later suit filed by the 1st defendant in this suit against the 2nd defendant and tried along with the prior suit.

3. The plaintiff in prior suit C.S.No.669 of 2019 has made a claim against the defendants for a sum of Rs.2,34,35,476/- (Rupees Two crore thirty four lakh thirty five thousand four hundred and seventy six only) along with 18% interest on the premise that on 17.07.2017, the 1st defendant in the suit advised to raise proforma invoices for the various charges related to the containers, in the name of the 3rd defendant. Later on 26.12.2017, alert notice was issued by the 2nd plaintiff, when the consignment was not claimed and therefore, the demurrage/storage charges were accumulated. Later, the plaintiff came to know that the containers shipped by them were illegally taken delivery by the 2nd defendant (the applicant herein) without payment of charges due and

payable to the plaintiffs. The cargo shipped by the plaintiffs was released on 06.01.2018.

4. Pending this suit, the 1st defendant herein had filed the suit against the 2nd defendant herein before the City Civil Court, Chennai in O.S.No.2818 of 2020 (later suit), claiming a sum of Rs.19,54,468.40 against the 2nd defendant herein. It is to be noted, the money claimed is based on different part of the very same transaction.

5. The plaint in the later suit O.S.No.2818 of 2020, it is stated that eight shipments under 22 Master Bills of Lading containing the textile products were issued in the name of the plaintiff RP Nexus Worldwide Private Limited (who is the 1st defendant in the suit pending before the High Court) who acted as a local freight forwarders in India for M/s.Gold Star Line Limited, Hong Kong. It is alleged that the full freight payments have to be made by the carrier /carrier's agent abroad and upon arrival of the goods in India, the 2nd defendant (who is the applicant herein) was supposed to surrender the house bills of lading to the plaintiff and then approach the carrier's agents in India. On payment of necessary charges to them shall obtain delivery order from them.

6. It is alleged that the applicant herein, who is the sole defendant

in the later suit, cleared 17 consignments from the container freight station at Chennai within the free period and did not clear the remaining 5 consignments and also failed to effect payment for these bills. Therefore, stating that the cause of action which arose on 01.07.2017, the day on which the invoice was raised for the cargo and the default in payment of invoice amount, the later suit is filed before the City Civil Court, Chennai as a commercial dispute.

7. In the transfer petition, it is contended that the later suit in O.S.No.2818 of 2020, is a vexatious suit which is filed to counter blast the suit pending before this Court and also to fix dual liability on the applicant herein. It is also contended that the dispute arose between M/s.R.P.Nexus Worldwide Private Limited / the 1st defendant in the suit pending before the High Court and its Chinese counter part M/s.Link Fast Logistic Company regarding the payment for the material imported to India. When the plaintiff in C.S.No.669 of 2017 refused to discharge the cargo at Chennai, for want of original bills of lading to be submitted by the 1st defendant, being the largest exporters of garments in India, the applicant herein was persuaded to arrange for the delivery of the goods. The applicant herein is unnecessarily dragged in the litigation due to the plaintiff's inexperience in handling the business. The 1st defendant has filed the later suit to wriggle out its liability in the present suit.

Hence withdrawal of the later suit to be tried along with the prior suit is prayed.

8. The respondent herein has filed a counter stating that the suit pending before this Court and the suit which is filed by him before the City Civil Court, Chennai does not arise under the same cause of action. The claims are different and the parties are also different. Due to certain issues raised by the carriers local agent, who is the 2nd plaintiff in the suit pending at High Court, the discharge of 5 consignments out of 17 consignments were delayed and later delivered to the 2nd defendant in collusion with the 1st defendant in the suit. In spite of several demands for payment of bills, the applicant, who is the 2nd defendant in the prior suit, failed to pay the charges and therefore, an independent suit has been filed by R.P.Nexus Worldwide Private Limited for recovery of Rs.19,54,468.40.

9. The transfer application is opposed on the ground that under Clause 13 of the Letters Patent Act, the extraordinary original jurisdiction of this High Court for removal and try any suit without or within the jurisdiction of the Presidency of Madras shall be either on the agreement of the parties to that effect or for the purpose of justice, on recording the reason the High Court can transfer the suit. Whereas, in this case, the parties have not agreed for the

transfer and there is no justifiable cause for such transfer, since the cause of actions are different and the claim is also different, transfer will only delay and complicate the issue.

10. After giving anxious consideration to rival submission and the pleadings, this Court finds that the real issue of payment of bills and the freight charges cannot be dissected or decided by two different forum, which is now pleaded in parts before two different Courts. Unless and until the chain of events are properly placed before this Court and proved, it is difficult for the parties to get complete justice and as far as the powers of the High Court to transfer is concerned, there is no bar under Clause 13 of the Letters Patent, if the Court is of the view for the purpose of justice, the suit can be transferred to High Court. In addition Section 24 of the C.P.C., makes it clear that the High Court has power over the Courts below to withdraw or transfer any suit pending before the subordinate Courts.

11. As far as the facts of the present case is concerned even for the plaintiffs in both the suits, the common defendant is the applicant herein. To fasten the liability and the recovery of money, the transaction and cause of

action commences the day on which the cargo was loaded and culminated the days on which the delivery of the cargo was taken. The facts are intertwined and the parties in the later suit are parties in the prior suit arrayed as defendants 1 and 2 along with other two defendants. To avoid multiplicity of proceedings, joint trial of both the suits will be proper and convenient for the parties. This will avoid duplication of recording the evidence. Therefore, this Court is of the view that this transfer application is to be allowed.

12. Accordingly, the application is allowed. The XVII Additional City Civil Court, Chennai is directed to transfer the records in O.S.No.2818 of 2020 forthwith on receipt of the order copy to the High Court for being tried along with C.S.No.669 of 2019. No costs.

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