

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 1st DAY OF JULY 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A. No.2847 of 2020

in

C.S.No.579 of 2019

M/s.The Madras Silks India (P) Limited,
Represented by its Director (Projects)
P.A.Ravindhiran
Having office at No.55, 67, Usman Road,
T.Nagar, Chennai,
Tamil Nadu-600 017.

... Plaintiff

-Versus-

The New India Assurance Company Limited,
Represented by its Senior Divisional Manager,
Having Divisional Office at
No.482/483, SNV Chambers,
3rd Floor, Cross Cut Road,
Gandhipuram, Coimbatore-641 012,
Tamil Nadu.

And also having office at
Claims Hub,
No.21, Pattulos Road,
Chennai-600 002.

... Defendant

A.No.2847 of 2020:

The New India Assurance Company Limited,
Represented by its Senior Divisional Manager,
Having Divisional Office at
No.482/483, SNV Chambers,
3rd Floor, Cross Cut Road,
Gandhipuram, Coimbatore-641 012,
Tamil Nadu.

And also having office at
Claims Hub,
No.21, Pattulos Road,
Chennai-600 002.

... Applicant

Vs

M/s.Madras Silks India Pvt., Limited,
Represented by its Director (Projects)
P.A.Ravindhiran
Having office at No.55, 67, Usman Road,
T.Nagar, Chennai,
Tamil Nadu.

... Respondent

Application praying that this Hon'ble Court be pleased to revoke the leave granted in application No.7330 of 2019 in its order dated 27.09.2019.

This application coming on this day before this court for hearing, the court made the following order:

This application is filed to revoke the relief granted by this Court in A.No.7330 of 2019 vide order dated 27.09.2019, permitting the plaintiff to file single suit joining multiple cause of action.

2.The case of the plaintiff in nutshell is that the premises of the plaintiff wherein he was carrying on textile business and jewellery business guttered in fire on 31.05.2017. The plaintiff had insurance coverage with

the defendant under two different policy. One package policy for the textile stocks and other fittings. The another policy under the jewellers block policy in respect of golden jewels, etc., Since the cause for the fire is one and the same and the Surveyor, who submitted the report for both claims is one and the same, the plaintiff sought for combining the claims under both policies of insurance for complete appreciation of evidence and to avoid overlapping of issues.

3.This Court prima facie being satisfied with the reasons stated in the affidavit, allowed Application No.7330 of 2019 permitting the plaintiff to combine cause of action. This order is now sought to be revoked in Application No.2847 of 2020, on the ground that the two policies under consideration were taken at Coimbatore. There are two different contracts, even though the fire is the common factor. Therefore, the cause of action is different. The Surveyor has given two different reports, one relating to the package policy for textile shop and another relating to the jewellers block policy. The parameters for assessment of loss made by the Surveyor are different. Therefore, the plaintiff cannot have the advantage of combining the cause of action. Further, the learned counsel appearing for the applicant/defendant forcibly emphasised on the point that under clause 14 of

defendant should have been put to notice. In this case, without notice, the exparte order on the application to combine cause of action was passed, which is contrary to law. Learned counsel would also state that the Hon'ble Supreme Court had clearly held that the order in an application to join different cause of action cannot be passed without notice to the respondent. In this case, the order was passed without hearing the respondent. Hence, liable to be revoked.

4.The rival submissions made by the applicant and the respondents counsel heard and perused the records.

5.In the plaint, at paragraph No.93, the statement regarding the cause of action has been stated in the following terms:

“93. The cause of action arose in Chennai where the Plaintiff's insured their showroom in T.Nagar with the Defendant which showroom is within jurisdiction of this Hon'ble Court, when fire occurred on 31.05.2017, where the stocks were stored in the building and these were destroyed in the fire accident and when the Surveyor conducted substantial portion of survey work in Chennai within the jurisdiction of this Hon'ble Court and when the letters of repudiation were issued to Plaintiff at its office in Chennai. Plaintiff is filing application under Clause 12 of Letters Patent as the Defendant has its office in Coimbatore apart

*from its office in Chennai. Plaintiff has also sought for pre-suit mediation with the Defendant and the copy of the said letter is filed as **Plaint Document No.34** Plaintiff is ready and willing for mediation in the dispute. Plaintiff is filing the plaint subject to the outcome of mediation should the Defendant agree for mediation and there is settlement of dispute in such mediation. Plaintiff's Board of Directors has passed resolution authorising filing of the plaint and the said resolution is filed as **Plaint Document No.35**. The Plaintiff has filed leave to Sue Application in A.No.6106/2019 and this Hon'ble Court by order dated 22.08.2019, granted leave to sue the Defendant before this Hon'ble Court."*

6.The relief sought in the plaint are as under:

"a. Judgment and decree as against the Defendant for a sum of Rs.95,42,21,989/- (Rupees Ninety Five Crores Forty Two Lakh Twenty One Thousand Nine Hundred and Eighty Nine Only) comprising of Rs.77,32,23,757/- (Rupees Seventy Seven Crores Thirty Two Lakh Twenty Three Thousand Seven Hundred and Fifty Seven Only) being the principal amount and interest of Rs.18,09,98,232/- at the rate of 12% from 01.09.2017 till the date of the suit and with further interest at 12% p.a from date of plaint till date of realisation payable by the Defendant Insurance Company as per Package Policy No.72160046172480000014.

b. Judgment and decree as against the Defendant for a sum of Rs.30,19,29,672/- (Rupees Thirty Crores Nineteen

Lakh Twenty Nine Thousand Six Hundred and Seventy Two Only) comprising of Rs.24,46,59,240/- (Rupees Twenty Four Crores Forty Six Lakh Fifty Nine Thousand Two Hundred and Forty Only) being the principal amount and interest of Rs.5,72,70,432/- (Rupees Five Crores Seventy Two Lakh Seventy Thousand Four Hundred and Thirty Two only) at the rate of 12% p.a from 01.09.2017 till the date of the suit and with further interest at 12% p.a from date of plaint till date of realisation payable by the Defendant Insurance Company as per Jewellers Block Policy No.72160046170700000010.

c. Costs of the Suit.

d. Such other reliefs as deemed fit in the circumstances of the case by this Court in interest of justice.”

7. Since the relief (a) and (b) arose from two different insurance policy, the plaintiff has though fit to get the leave of this Court to file a single suit combining two different cause of action to avoid multiplicity of proceedings. From the affidavit filed to revoke the leave, this Court understands that the prime objection by the defendant is that they were not put to notice and the policy being different and surveyor reports are different, though the Surveyor is one and the same, there cannot be joint cause of action.

to avoid duplicity of recording evidence and multiplicity of proceedings, if the parties are going to rely upon common material facts, witnesses and evidence. In this case, all the three requirements are fully satisfied. Therefore, there is no sound reason to revoke the leave granted by this Court except to point out that it is an *ex parte* order without notice to the defendant. For the error of the Court, the parties cannot be prejudiced. De hors of the earlier order on independently looking into the facts and the submissions, this Court comes to the irresistible conclusion that the plaintiff is entitled to combine cause of action for the sake of uniformity. Hence, Application No.2847 of 2020 to revoke the leave granted in A.No.7330 of 2019 is dismissed.

8.The parties have already completed the pleadings. Adhering the time schedule prescribed under the Commercial Courts Act, the matter now stands adjourned to **19.07.2021** for affidavit of admission and denial.

Sd/-G.J.J

01.07.2021

Dated this the //Certified to be a true copy//
day of 2020.

JJ 13/07/2021

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.