

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2021

Pronounced on : 22.01.2021

CORAM

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

A.No.2419 of 2020

in

C.S.(Comm.Div.) D.No.69754 of 2020

Innvector Info Solutions Pvt. Ltd.,
Rep.by its Director Mr.M.V.Ravindrababu
Having Registered office at
Plot # 815, 3rd Floor, BVL Complex,
Ayyappa Society, Madhapur,
Hyderabad 500 081, Telangana, India.

... Applicant / Plaintiff

Vs.

1.K.N.Ramanathan

2.Lakshmi Ramanathan

3.Innvector Softech Private Limited

Rep. by its Director,
Having Registered office at
Plot # 815, 3rd Floor, BVL Complex,
Ayyappa Society, Madhapur,
Hyderabad 500 081, Telangana, India.

4.Praveen Ramanathan

5.B.G.Tilak

... Respondents / Defendants

Prayer:- This original application filed under Order XIV Rule 8 and Order III Rule 1 of the Original Side Rules read with Clause 12 of the Letters Patent, praying to grant leave to the applicant herein to sue the 3rd, 4th and 5th Respondents.

For Applicant / Plaintiff : Mr.M.S.Bharath

For Respondents / Defendants : Mr.K.Rajasekaran

ORDER

This Application has been filed under Clause 12 of the Letters Patent, seeking leave to institute the suit against the 3rd, 4th and 5th Respondents before this Court.

2.In the affidavit filed by M.V.Ravindrababu, in support of the said application, it had been stated that the Applicant is in the business of Information Technology (IT) consultancy, computer technology consultancy, consultancy in the design and development of computer software and hardware and related fields and conducting business under the trademark 'Innvectora'. It was stated that the said mark is an arbitrary mark conceived and adopted in December 2003 by the Director of the Applicant. The domain name 'www.innvectora.com' was also registered in December 2003. The

Applicant had also established goodwill and reputation and this is evident from their annual turnover / sales, which was Rs.2,71,22,833.00/- for the financial year ending 31.03.2019. The Applicant had also filed applications for registration of the mark 'Innvectra' in classes 9 and 42 of the Trade Marks Act, 1999. The Applications for registrations are pending.

3.It had been further stated that the Applicant had come across a business proposal advertisement issued by the 1st Respondent in Chennai. The Applicant contacted the 1st Respondent, K.N.Ramanathan and also got acquaintance of his son, the 4th Respondent, Praveen Ramanathan. They claimed to own a company, Ayantek LLC (USA) and were looking out for partners to take work from and on behalf of their only client Anaqua Inc. The Applicant commenced to provide services to Ayantek LLC (USA) and had raised several invoices. Thereafter, in 2009, the Applicant and the 4th and 5th Respondents decided to create a new company and the 3rd Respondent, Innvectra Softech Private Limited was incorporated, in which the Director of the Applicant, M.V.Ravindrababu and the 1st Respondent, K.N.Ramanathan were Directors. The Applicant had issued No Objection Certificate to facilitate incorporation of the 3rd Respondent in the same name as that of the Applicant. It was thereafter decided to dissolve the 3rd

Respondent and a special resolution dated 30.11.2011 was passed. An Agreement of Settlement was entered into on 21.07.2018 at Chennai, between M.V.Ravindrababu and K.N.Ramanathan in their capacity as directors of the 3rd Respondent.

4.The Applicant had then withdrawn all permissions granted to the Respondents to use the mark 'Innvectora'. However, the 3rd Respondent had issued a cease and desist notice on 08.01.2020 to the Applicant alleging infringement of the mark 'Innvectora'. The Applicant issued a reply notice on 31.01.2020 denying the claims of the 3rd Respondent. A rejoinder was issued on 06.03.2020 by the 3rd Respondent. The Applicant had issued a Legal notice on 08.02.2020 to the 1st Respondent claiming breach of contract and trust and reply was issued on 06.03.2020. A rejoinder dated 30.05.2020 was issued by the Applicant herein.

5.It is the grievance of the Applicant that though the Respondents had agreed to dissolve the 3rd Respondent company, they are still continuing to run the company using the mark 'Innvectora' which the Applicant claims as prior user and as first user. It is under these circumstances, that the suit had been filed as against the Respondents.

6. With respect to the jurisdiction, it had been stated that the Settlement Agreement was entered into at Chennai. Quite apart from the claim of the proprietorship of the trademark 'Innvectora', it had been stated that the 1st and 2nd Respondents are in Chennai and the activities of the 3rd Respondent were controlled by the 1st Respondent, who also actually has an address at Chennai. However, since the 3rd, 4th and 5th Respondents are outside the Jurisdiction of this Court, this Application had been filed seeking leave.

7. Notice has been directed and learned counsel had entered appearance on behalf of the Respondents.

8. A counter affidavit had been filed by the 3rd Respondent / Defendant, which had been sworn by the 5th Respondent. However, arguments were advanced on behalf of all the Respondents. In the counter affidavit, it had been stated that the Settlement Agreement dated 21.07.2018 relied by the Applicant has no connection with the dispute between the Applicant and the 3rd Respondent. It was stated that the said agreement provides for an Arbitration clause to resolve disputes and that the seat of

Arbitration had been determined to be in Hyderabad. It was also stated that the registered office of the 3rd Respondent is in Hyderabad. It was also stated that the 1st Respondent is based in USA and does not perform any executive role on behalf of the 3rd Respondent. The 2nd Respondent is also based in USA.

9. It was further stated that the Chennai property mentioned in the plaint is a temporary residence in Chennai. It was further stated that the Applicant company is also incorporated in Hyderabad and has its registered office at Hyderabad. It was stated that the Applicant has grievance only against the 3rd Respondent. It was stated that in the agreement dated 21.07.2018, there is no mention about the Applicant's company. It was purely an agreement by M.V.Ravindrababu and K.N.Ramanathan in their capacities as Directors of the 3rd Respondent. It was stated that this agreement cannot give any cause of action for filing the suit in Chennai. It was also stated that the office cum guest house at Chennai was closed in October 2017 and there are no employees or staff and all tangible assets used in Chennai office were either sold / transferred to shareholders as per Board decision or scrapped. It was stated that the 3rd Respondent has no assets at Chennai.

10. Heard arguments advanced by Mr.M.S.Bharath, learned counsel for the Applicant and Mr.K.Rajasekaran, learned counsel for the Respondents.

11. The Court also had the benefit of examining the intended plaint filed in C.S.D.No.69754 of 2020. The suit had been instituted by the Plaintiff, Innvectra Info Solutions Pvt. Ltd., a company registered under the Companies Act, 1956, represented by its Director M.V.Ravindrababu. The registered office of the Plaintiff is at Hyderabad. The 3rd Defendant company, Innvectra Softech Private Limited, against whom leave has been sought to institute the suit is also a company registered under the Companies Act, 1956, and is represented by its Director. The registered office of the 3rd Defendant is at Hyderabad. The 4th Defendant, Praveen Ramanathan who is the son of 1st Defendant has address at Massachusetts, United States. The 5th Defendant, B.G.Tilak has address at Mumbai, Maharashtra State. The leave to institute the suit has been sought against the 3rd, 4th and 5th Defendants.

12. Clause 12 of the Letters Patent is as follows:

“12. Original jurisdiction as to suits.-

And we do further ordain that the said High

Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court: or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.”

सत्यमेव जयते

13. When the 3rd Defendant company was incorporated, the name 'Innvecra' was used. The Plaintiff had to give a No Objection Certificate, so that the company may be registered by the Registrar of Companies in view of Section 20 of the Companies Act, 1956.

14. Sections 20 Companies Act, 1956 is as follows:

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

“Section 20. Companies not to be registered with undesirable names.

(1) No company shall be registered by a name which, in the opinion of the Central Government, is undesirable.

(2) Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, may be deemed to be undesirable by the Central Government within the meaning of sub-section (1).”

15. Thereafter, differences had occurred between the two directors of the 3rd Defendant, M.V.Ravindrababu, who is also the director of the Plaintiff and K.N.Ramanathan, the 1st Defendant. They entered into an Agreement of Settlement on 21.07.2018. This agreement was entered into at Chennai. This agreement was with respect to the further functioning / non-functioning of the 3rd Defendant. Among other terms it was decided to dissolve the 3rd Defendant company. It was also agreed that the Plaintiff, M.V.Ravindrababu would use the trade name 'Innvectra'. It was also agreed that the Plaintiff, M.V.Ravindrababu can apply for registration of the trademark 'Innvectra'. It was also agreed that the 1st Defendant

K.N.Ramanathan would not object to such registration. Very crucially if any dispute arose out of the said agreement, then the parties had agreed to resolve the dispute through arbitration. This naturally means that the scope of a Civil Court to examine the terms of the agreement are ousted.

16.In *Vidya Drolia Vs. Durga Trading Corporation* reported in (2020) SCC Online 1018, a Three Bench of the Hon'ble Supreme Court, had very categorically held that if in an agreement there is an arbitration clause, then the Court shall refer the dispute to arbitration and the onus is on the Arbitral Tribunal to decide whether the issues are arbitrable or not. The hands of the Court are tied even in deciding whether the issues are arbitrable or not. It is for that reason that the Plaintiff has not stated that the said agreement dated 21.07.2018 is the cause of action for institution of this suit. Though that agreement had been entered into at Chennai, reliance placed on by the learned counsel for the Plaintiff on that agreement is misplaced. Allegations of violation of this agreement should be referred to arbitration. This Court cannot examine any allegation regarding violation of terms of the said agreement.

17.The learned counsel for the Applicant relied on the judgment of the

Hon'ble Supreme Court reported in ***AIR 2004 SC 3615, Indian Mineral and Chemical Co. and Ors. V. Deutsche Bank***. In that case, a suit was instituted in the High Court of Calcutta and leave had been obtained under Clause 12 of the Letters Patent. Thereafter, the Defendants filed an application for revocation of leave. The application was dismissed by the learned Single Judge, but the Division Bench over ruled that order and revoked the leave granted under the Clause 12 of the Letters Patent. The Hon'ble Supreme Court also held that contingency issues will have to be decided on evidence and cannot be decided on an application for revocation of leave under Clause 12 of the Letters Patent.

18. The Hon'ble Supreme Court relied on the judgment reported in ***AIR 1932 Calcutta 146, Secretary of State V. Golabrai Paliram***, wherein the Hon'ble Chief Justice Rankin, had laid down the following principle:

“I do really protest against questions of difficulty and importance being dealt with by an application to revoke the leave under clause 12 of the Letters Patent and to take the plaint off the file. Normally it is well settled that the proper way to plead to the jurisdiction of the court is to take the plea in the written statement and as a substantive part of the defence. Except in the clearest cases that

should be the course”.

19. Reliance on the said judgment, had again been affirmed by the Hon'ble Supreme Court in **(2019) 12 SCC 205, Isha Distribution House Pvt. Limited., V. Aditya Birla Nuvo Limited. & Anr.**, wherein, again the same proposition had been upheld. The Hon'ble Supreme Court had stated that territorial jurisdiction is essentially a mixed question of law and fact and held as follows:

“20. In our opinion, a plea of territorial jurisdiction is essentially a mixed question of law and fact. It is for this reason, the respondents (defendants) should be allowed to raise such plea in the written statement to enable the Court to try it on its merits in accordance with law in the light of the requirements of Order 14 of the Code of Civil Procedure, 1908 and other relevant provisions governing the issue on merits.”

20. An analysis of the pleadings in the intended plaint in the instant case show that the Plaintiff and the 3rd Defendant are companies registered in Hyderabad. An agreement had been entered into between M.V. Ravindrababu and K.N. Ramanathan to dissolve the 3rd Defendant

company. This agreement was entered into at Chennai. There is an arbitration clause governing resolution of disputes. Any breach or complaint about breach of terms of that agreement, can be determined only through arbitration. The jurisdiction of the Civil Court is ousted.

21. Moreover, in the instant case, this Court is dealing with an application seeking leave to institute the suit. The causes of action had not arisen within the jurisdiction of this Court. The principles laid down, and referred *supra* will apply only when the Defendant seeks to revoke the leave granted. That stage has not arisen.

22. In the cause of action paragraph, the Plaintiff had stated that the cause of action had arisen on 08.01.2020, practically one and half years later than 21.07.2018, the date of the agreement. The cause of action had arisen on 08.01.2020, when the 3rd Defendant had issued a cease and desist notice to the Plaintiff. It had been further stated that the cause of action further arose on 31.01.2020 when the Defendants had refused to comply with the demands made by the Plaintiff in their reply notice. It is stated that the cause of action continues everyday, when the Defendants are continuing to use the mark 'Innvectora'. It must be kept in mind that the suit had been filed only under Section 27 of the Trade Marks Act, 1999, seeking a restraint

against the Defendants from passing of their products / goods / services under the name 'Innvectora'.

23. In the cause of action paragraph, it had been further stated that the Plaintiff had received a notice from WIPO on 01.10.2020, in a complaint given by the 3rd Defendant regarding cancellation of the domain name. The cause of action thereafter again arose when the Plaintiff found that the domain name 'www.innvectora.co.in' had been registered by Upayan Tech Software Private Limited, in which the 1st, 4th and 5th Defendants are directors. Further the domain name 'www.innvectora.co' and 'www.innvectora.net' had been registered by the 3rd Defendant and this was found by the Plaintiff on 31.08.2020.

24. I hold that all these issues should be agitated in the place where the Plaintiff and the 3rd Defendant have their registered office. The claim of the learned counsel that the websites are available in Chennai will take the Plaintiff nowhere, since the websites will also be available in Hyderabad.

25. The cause of action is not based on the agreement dated 21.07.2018. The entire cause for grievance of the Plaintiff arose owing to the

notice issued on behalf of the 3rd Defendant and the registration of the domain name by the 3rd Defendant and Upayan Tech Software Private Limited which is not a party to the suit. The causes of action arose outside the jurisdiction of this Court.

Sd/.C.V.K.J.
22.01.2021

Dated this the _____ day of _____ 2021.

COURT OFFICER(O.S.)

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