



AS No.119 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                                  |                                   |
|----------------------------------|-----------------------------------|
| Reserved on<br><b>02.07.2024</b> | Delivered on<br><b>19.07.2024</b> |
|----------------------------------|-----------------------------------|

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**  
**and**  
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

**A.S.No.119 of 2021**  
**and CMP No.7342 of 2021**

1. M/s.Gammon India Limited,  
Rep. by its Managing Director,  
Having their office at Gammon House,  
Veer Savarkar Marg, P.B.No.9129,  
Prabha Devi, Mumbai 400 025.

2. M/s.Gammon India Limited,  
Rep. by its Assistant General Manager,  
Having their place of business at  
Jindal Civil Works,  
Toranagallu Village and Post Office,  
Sandoor Taluk, Bellari District,  
Karnataka.

... Appellants/Defendants

Vs

V.Lawrance,  
S/o.Vanathaiyan, Proprietor  
M/s. Jessi Constructions,  
having his place of business at  
No.10, Anna Gramam,  
(Opp to Neyveli Arch Gate)  
Gandhi Nagar 607 308, Neyveli.

... Respondent / Plaintiff



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**Prayer**: This appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the decree and judgment dated 02.03.2020 passed in O.S.No.167 of 2013 on the file of Principal District Judge, Cuddalore.

For Appellants : Mr.P.J.Rishikesh

For respondent : Mr.Chirag Gupta

### **J U D G E M E N T**

*(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)*

The defendants in OS No.167 of 2013 on the file of the Principal District Court, Cuddalore, are on Appeal. Aggrieved by a decree granted in the said suit for payment of a sum of Rs.88,55,120/- with interest on Rs.58,00,000/- at 12% from the date of plaint till date of decree and thereafter at 6%.

2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

<https://www.mhc.tn.gov.in/judis> 3. The suit was launched by the plaintiff carrying on business



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within the jurisdiction of the Principal District Court, Cuddalore, seeking a decree as aforesaid contending that the defendants had hired Schwing Truck Mounted Concrete Pump, Model No.S-17 on a monthly rent of Rs.4,25,000/- for a period of 24 months, commencing from 20.12.2007. The said contract was evidenced by a letter of request made by the plaintiff offering the services of the above said machinery at a rent of Rs.4,75,000/- on 08.10.2007.

**3.1.** The defendants accepted the said offer and agreed to pay Rs.4,25,000/- as rent instead of Rs.4,75,000/-. It was also agreed that the defendants would pay for grease and oil consumed by the machinery. Pursuant to the said letter of acceptance the machinery was despatched to the work site of the defendants at Bellary on 17.12.2007 and it became operational from 20.12.2007. The Truck was used in Bellary till March 2008 and thereafter due to moderation in the work at Bellary done by the Principal of the defendants, the Machinery was sent to Cudappah from April 2008, where it was operational till the end of the contract period viz. December 2009.



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**3.2.** According to the plaintiff, though the defendants have been paying the monthly rental for the machinery for a period of eight months by cheque which was encased by the plaintiff at Neyveli, they stopped payment of rent from September 2008. Various e-mails sent by the plaintiff demanding rent were not responded to. Thereafter the plaintiff issued a legal notice on 21.01.2010 calling upon the defendants to pay a sum of Rs.68,00,000/- with interest. In response to the said notice, the second defendant vide its letter dated 02.02.2010 required the plaintiff to meet its Officers and the first defendant requested time to look in to the issue.

**3.3.** The plaintiff sent another notice on 07.04.2010 to the defendants calling upon them to make the payment. The defendants, however, made a part payment of Rs.10,00,000/- through RTGS to the plaintiff's Bank Account on 07.08.2010. Since the defendants did not come forward to pay the balance of rent, the plaintiff unable to pay the equated monthly installments was forced to sell the machinery to settle the outstanding loan. Contending that the defendants failure to pay the rents is unjust and that part of the cause of action arose within the jurisdiction of the District Court, Cuddalore, the plaintiff had sued for



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recovery of money as aforesaid.

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4. The suit was resisted by the defendants contending that the District Court at Cuddalore has no jurisdiction to entertain the suit. According to the defendants, the suit should have been instituted either at Mumbai where the defendants' Company is carrying on business or at Bellary or at Cudappah where the machinery was actually put into use. It was claimed that the suit is barred by limitation. The defendants would further contend that the defendants have not produced his statement of accounts to show non-payment.

4.1. It was claimed that the plaint is vague and ambiguous. The very agreement to pay the rent at Rs.4,25,000/- per month was disputed. It was contended that there was a breach of contract on the side of the plaintiff. It was claimed that there was no notice to the defendants. It was claimed that the plaintiff had not obtained the approval of the Competent Officer for the bills and therefore, the bills were not payable. It was also prayed that the issue relating to jurisdiction should be taken as a preliminary issue. On the above contentions, the defendants sought



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for dismissal of the suit.

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5. On the pleadings, the learned Principal District Judge, Cuddalore framed the following issues:

- 1. It is true to say that this Court has no territorial jurisdiction to try the case?*
- 2. Whether the suit is barred by limitation;*
- 3. Whether the suit is bad for estoppels;*
- 4. Whether the Plaintiff is entitled to get a sum of Rs.88,55,120/- with rate of interest at 12% p.a., from the date of 04.08.2013 till the date of realisation;*
- 5. To what other reliefs, the plaintiff is entitled to?*

The issues were recast as follows:

- 1. Whether the plaintiff is entitled for the suit claim with interest;*
- 2. It is true to say that this Court has no territorial jurisdiction to try the case?*
- 3. To what other reliefs, the plaintiff is entitled to?*

6. At trial, the Proprietor of M/s.Jessi Constructions Thiru.V.

Lawrance was examined as P.W.1 and one Prakash, an ex-employee of



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the defendants' Company, was examined as D.W.1. Exhibits A1 to A18 were marked on the side of the plaintiff. No documentary evidence was placed by the defendants.

7. On the recast at Issue No.1, the learned Trial Judge found that the documents produced particularly the reply notice dated 02.02.2010 and the letters dated 08.10.2007 and 16.10.2007 which were marked as Exs. A8, A1 and A2 respectively would demonstrate that there was a concluded contract for hiring the machinery between the plaintiff and defendants. The learned Trial Judge also took into account the evidence of D.W.1 where D.W.1 had admitted that the machinery was in fact hired by the defendants and the portion of the evidence of D.W.1 where he had specifically admitted the liability to pay rents. On the above evidence, the learned Trial Judge concluded that the defendants are liable to pay the suit claim.

7.1. On the issue of jurisdiction, the learned Trial Judge found that since the Cheque was issued at Neyveli and the same was en-cashed at Neyveli within the jurisdiction of the Principal District Court, Cuddalore,



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the Principal District Court, Cuddalore would have jurisdiction to entertain the suit. On the above findings, the learned Trial Judge granted a decree as prayed for. Aggrieved the defendants are on Appeal.

8. We have heard Mr. P.J.Rishikesh, learned counsel appearing for the appellants and Mr. Chirag Gupta learned counsel appearing for the respondent.

9. Mr. P.J.Rishikesh, learned counsel appearing for the appellants would vehemently contend that though the machine was hired which was not put to use for throughout the hire period. The learned counsel would submit that the machine had broke down at Cudappah and therefore, as per the contract between the parties as evidenced by Ex.A2, the defendants are not liable to pay if there is a break down for more than a day. Therefore, according to the learned counsel, since the machinery broke down, the plaintiff is not entitled to rents as per the agreement. The learned counsel would also further submit that the machinery was not used at Bellary, since the scope of the contract was modified by the Principal at Bellary, out of goodwill and in view of the long standing relationship between the parties, the defendants had transported the



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machinery to Cudappah and used it there. This was done only with a view to honour the commitment under the agreement.

10. It is also the further submission of the learned counsel that mere en-cashment of cheque at Neyveli would not confer jurisdiction on the Courts at Cuddalore. He would also rely upon the following judgments in support of his case.

1. *A.B.C.Laminart Pvt. Ltd. and another v. A.P.Agencies, Salem*, reported in (1989) 2 SCC 163;
2. *Mountain Mist Agro India (Pvt) Ltd & another v. S.Subramaniam*, reported in ILR (2008) II Delhi 301;
3. *Arinits Sales Pvt. Ltd., v. Rockwell Plastic Pvt. Ltd & Ors.*, reported in ILR (2008) II Delhi 325;
4. *Smriti Debbarma (Dead) Through Legal Representative v. Prabha Ranjan Debbarma and Others*, reported in (2023) SCC Online SC 9; and
5. *Anil Rishi v. Gurbaksh Singh*, reported in (2006) 5 SCC 558



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**11.** Contending contra Mr. Chirag Gupta, learned counsel appearing for the respondents would submit that the evidence of D.W.1 coupled with contents of the reply notices marked as Exs.A8 and A9 would demonstrate that the defendants have never denied the contract or their liability to pay the rent. The learned counsel would also submit that there is no plea regarding break down in the written statement. He would also point out that there is not even a scrap of paper to show that the defendant had complained of the machinery breaking down during the course of the entire contract period for 24 months. The learned counsel would also submit that D.W.1 in his evidence has categorically admitted that the defendants are liable to pay the arrears of rent and they only sought for waiver on the ground that the machinery was not put to use in Cudappah.

**12.** On the question of jurisdiction, the learned counsel would submit that the offer was made by the plaintiff under Ex.A1 from Neyveli and it was accepted by the defendants vide Ex.A2 dated 16.10.2007. The statement of accounts that has been filed as Ex.A18 would show that the cheques were encashed at Neyveli. He would also point out that these



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facts were never disputed by the defendants. Relying upon Section 20 of the Code of Civil Procedure, the learned counsel would contend that the fact that the plaintiff carries on business at Neyveli and an offer made by the plaintiff from Neyveli was accepted by the defendant coupled with a fact that the cheques issued by the defendants were en-cashed through the plaintiff's Banker at Neyveli would invest the jurisdiction with the Principal District Court, Cuddalore, within which the place of business of the plaintiff is situate. Therefore, according to the learned counsel, there is no cause for us to interfere with the judgment of the Trial Court.

**13.** We have considered the rival submissions.

**14.** On the rival contentions, the following points emerged for determination in the Appeal:

*1. Whether the plaintiff is entitled to a decree for money as prayed for; and*

*2. Whether the District Court, Cuddalore had the jurisdiction to try the suit.*

**Point No.1:**

**15.** The contract for hiring the machinery has been admitted. An



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offer was made by the plaintiff under Ex.A1 on 08.10.2007 and the same was accepted by the defendants under Ex.A2 on 16.10.2007. It is not in dispute that the vehicle was also delivered at Bellary, the work site suggested by the defendants and it was put in use at Bellary, nearly for four months. Thereafter the vehicle was shifted to Cudappah by the Defendants and it was put in use at Cudappah. When the rents were not paid, the plaintiff sent a legal notice on 19.01.2010, the same was replied to under Exs.A8 and A9. In neither of the reply notices is there any claim regarding the fact that the machine has broken down. In fact there is a categorical admission in Ex.A8 that the machine was put to use at Bellary.

**15.1.** It was also claimed that since there was a reduction of work scope by the Principal for whom the defendant was working at Bellary, they were forced to divert the machinery to Cudappah. It is not claimed that there is no liability to pay the rent anywhere it was claimed that the machine was lying idle at Nagpur and therefore, the rents were not paid. Another notice was issued by the plaintiff on 21.01.2013 to which a reply was sent on 14.02.2013 demanding various documents. It is thereafter the plaintiff moved the Court seeking reliefs. It will be useful to refer to



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the evidence of D.W.1 who was examined on the side of the defendants  
in his cross-examination D.W.1 has deposed as follows:

*“I agree that as per the terms and conditions we are bound to pay the monthly rent and the only concession requested to the plaintiff is that to waive the rent for the period when the machine was not put use. I also agree the suit claim made by the plaintiff. The plaintiff had also sent a legal notice on 19.01.20210 under Ex.A7 and reply was also sent under Ex.A8 and A9. The plaintiff has sent another legal notice to Bombay address. I don’t agree that we never informed to the plaintiff company about the breakdown of the machine. I agree that there is no documentary evidence to that effect and there is no pleading also in this regard.”*

**15.2.** From the above evidence, it is crystal clear that the defendants have never complained about the breakdown of the machinery at any point of time during the subsistence of the contract.

We must also point out that there is no plea in the written statement



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regarding break down or un-utilization or under-utilization of the machinery hired. The defendants in fact claim no knowledge regarding the fact as to whether the machinery was put in use in Nagpur or not. Such an ambiguous and nebulous plea without support of documentary evidence cannot be accepted by the plaintiff.

**15.3.** We are therefore constrained to answer Point No.1 in favour of the respondent/plaintiff.

**Point No.2:**

**16.** This issue relates to jurisdiction of the Court. As we have already pointed out Ex.A1 emanated from the plaintiff at Neyveli. The said offer was accepted by the defendants under Ex.A2. The Cheques issued by the defendants for payment of rent were deposited with the Plaintiff's Banker at Neyveli within the jurisdiction of the Principal District Court, Cuddalore. Section 20 of the Code of Civil Procedure, enables the plaintiff to institute a suit at a Court within whose jurisdiction, the cause of action, wholly or in part arises. In the case on hand, the offer was made by the plaintiff from Neyveli within the jurisdiction of the Trial Court. The same was accepted by the defendant.



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through the plaintiff's Banker at Neyveli. Therefore, at least part of the cause of action had arisen at Neyveli within the jurisdiction of District Court, Cuddalore.

**16.1.** The Common Law Rule in England that a debtor should seek the creditor has been accepted and followed in India also. In the case on hand, it is seen that the cheque was en-cashed at Neyveli within the jurisdiction of the Trial Court viz. the Principal District Court, Cuddalore. Therefore, a part of the cause of action has arisen within the jurisdiction of the Principal District Court, Cuddalore.

**16.2.** The learned counsel for the appellant would rely upon the judgment of the Hon'ble Supreme Court in *A.B.C.Laminart Pvt. Ltd. and another v. A.P.Agencies, Salem*, reported in (1989) 2 SCC 163, where the Hon'ble Supreme Court dealt with the jurisdiction of the Court and the term 'cause of action' appearing in Section 20(c) of the Code of Civil Procedure. The substance of the dispute in the above decision before the Hon'ble Supreme Court was as to whether the parties by agreement can confer jurisdiction on a Court which does not otherwise



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possess jurisdiction. After considering the said issue in detail, the Hon'ble Supreme Court concluded that the parties cannot, by agreement, confer jurisdiction on a Court which does not otherwise have jurisdiction. Therefore, the said judgment is not helpful in deciding the present issue.

**16.3.** The next judgment relied upon by the learned counsel is the judgment of the Division Bench of the Delhi High Court in *Mountain Mist Agro India (Pvt) Ltd & another v. S.Subramaniam*, reported in *ILR (2008) II Delhi 301*, that was the case based on a negotiable instrument. Both the parties in that suit were residents of Udagamandalam in Tamil Nadu and were carrying on business at Udagamandalam. A cheque that was issued at Udagamandalam was presented at Delhi and a suit was laid at Delhi. The Division Bench of the Delhi High Court had held that mere presentment of the cheque at a place where none of the parties had any business would not invest jurisdiction in the Court therein. Same position was reiterated by the Delhi High Court in *Arinits Sales Pvt. Ltd., v. Rockwell Plastic Pvt. Ltd & Ors.*, reported in *ILR (2008) II Delhi 325*, in fact the judgment in Mountain West was referred to and relied upon.



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**16.4.** In the case on hand, the facts are slightly different. The offer under Ex.A1 was made from Neyveli and it was accepted, of course from the Head Office of the defendant at Mumbai. The payments were made by the cheques and the cheques were en-cashed at Neyveli. In order to invoke Clause (c) of Sub Section 1 of Section 20 of the Code of Civil Procedure, it is sufficient if the plaintiff is able to demonstrate that at least part of the cause of action arose within the jurisdiction of the Trial Court, in our considered opinion, the fact that the offer was made from Neyveli and it was accepted without any reservation coupled with the fact that the Cheques were encashed at Neyveli would definitely amount to part of the cause of action arising at Neyveli within the jurisdiction of the Trial Court.

**16.5.** In *Navinchandra N.Majithia v. State of Maharashtra*, reported in *AIR (2000) SC 2966*, the Hon'ble Supreme Court has explained the meaning of the expression "cause of action" as follows:

*"In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal; a group of operative*



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*facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person.”*

In view of the above meaning assigned to a term “cause of action” by the Hon’ble Supreme Court, we find that the fact that an offer was made from Neyveli, its acceptance and the fact that the cheques were en-cashed through the plaintiff’s Banker at Neyveli would itself amount to a part of the “cause of action” for the suit for recovery of money, investing the jurisdiction to try it in the Principal District Court Cuddalore. We are therefore unable to accept the contention of the learned counsel for the appellant on the question of jurisdiction also.

17. Hence the Appeal fails and it is accordingly dismissed. However in the circumstances there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

**(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)**  
**19.07.2024**

jv

Index : Yes

Internet : Yes

Speaking order

<https://www.mhc.tn.gov.in/>



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Neutral Citation: Yes

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To

1. The Principal District Judge,  
Cuddalore.

2. The Section Officer,  
V.R. Section,  
Madras High Court, Chennai 104.



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**R.SUBRAMANIAN, J.**

**and**

**R.SAKTHIVEL, J.**

jv

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**and CMP No.7342 of 2021**

**19.07.2024**