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A.No.1771 of 2017
in C.S.No.160 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 22.04.2024

Delivered On : 30.04.2024

CORAM:

THE HON'BLE MR.JUSTICE P.B.BALAJI

Application No.1771 of 2017
in C.S.No.160 of 2012

M/s International Industry Equipments Ltd.,
Registered Office at Intertust Buildings,
P.O.Box No.1336, The Valley, Anugilia
Rep by Nazeer Hussain, S/o A.Zabbar
R/o.74-3-1, Pandaripuram, Vasantha Nagar,
Vijayawada-520 007

.. Applicant/first defendant

..Vs.

M/s Parklane Consultants Ltd.,
Rep by its Managing Director Hardeep Safri
Through Power of Attorney Holder Mr.Balwant Singh ... Respondent/Plaintiff

Prayer: Original Petition has been filed under Order XIV Rule 8 of Original Side Rules read with under Order VII Rules 11 read with Section 151 of Civil Procedure Code seeking to reject the plaint in C.S.No.160 of 2012.

For Petitioner : Mr.B.Manoharan

For Respondent : Mr.Kundan Kumar Mishra



WEB COPY



A.No.1771 of 2017
in C.S.No.160 of 2012

ORDER

The first defendant has taken out the above application, seeking rejection of the plaint, invoking Order VII Rule 11 of the Code of Civil Procedure. The sum and substance of the grounds on which rejection of the plaint is sought for are that:-

- (i) the suit is barred by limitation;
- (ii) the entire transactions took place outside the jurisdiction of this Court;
- (iii) there is no cause of action for the above suit;
- and
- (iv) the suit is barred by principles of *res judicata*.

2. The plaintiff has filed a counter stating that the goods, which form the subject matter of the suit claim, are very much lying in the Chennai Port Trust and therefore, this Court certainly has jurisdiction to try the suit. The plaintiff has also stated that the first defendant has never denied the amount due and payable to the plaintiff and therefore, the question of limitation also can only be tested during the trial.



A.No.1771 of 2017
in C.S.No.160 of 2012

WEB COPY

3. Insofar as *res judicata*, it is stated that the present suit is for damages and the said issue was never directly or indirectly involved or substantially an issue in the earlier suit and therefore, the question of *res judicata* also will not arise.

4. Lastly, it is stated that the cause of action for filing the suit is very much alive and on all these grounds the application for rejecting the plaint is sought to be dismissed.

5. I have heard Mr.B.Manoharan, learned counsel appearing for the applicant/first defendant and Mr.Kundan Kumar Mishra by Video Conference (through V.C), learned counsel appearing for the respondent/plaintiff.

6. Mr.B.Manoharan, learned counsel for the applicant would reiterate the grounds set out in the affidavit, in support of the application, for rejection of the plaint. He would take me through the final agreement between the parties dated 15.11.1997, the Invoice dated 17.11.1997 and also the order of the



A.No.1771 of 2017
in C.S.No.160 of 2012

Jurisdictional Court at Saarbrücken Regional Court dated 13.05.2002. He would also invite my attention to C.S.No.144 of 1999, which was filed by the applicant/first defendant before this Court and the order passed in Application No.3948 of 2001 dated 24.06.2005, granting permission to sell the second hand blast furnace.

7. Per contra, the learned counsel for the respondent/plaintiff would submit that even though admittedly the agreement was entered into outside the jurisdiction of this Court, when the cranes have been shifted to Port of Chennai and have been lying there, part of cause of action has arisen only within the jurisdiction of this Court and therefore, this Court has jurisdiction to try the suit.

8. Learned counsel would also refer to the order of the jurisdictional court to fortify his contention that the claim in the said proceedings was entirely different than the one in the present suit and therefore, the question of *res judicata* cannot be put against the plaintiff.

9. Learned counsel would further submit that limitation is a mixed



A.No.1771 of 2017
in C.S.No.160 of 2012

WEB COPY

question of law and fact and therefore, on the strength of the pleadings available in the plaint, the plaint cannot be dismissed as barred by limitation and he therefore prayed for dismissal of the application.

10. The prayer in the above suit in C.S.No.160 of 2012 is for recovery of a sum of Rs.7 crores (Rupees Seven crores only) together with interest at 24% per annum towards the principal amount and damages. There is also an alternative prayer to direct the defendants to return the Cranes which are admittedly lying with the Chennai Port Trust.

11. In fact, in an application in A.No.487 of 2024, taken out by Chennai Port Trust/ sixth defendant in the suit in C.S.No.160 of 2012, the order of attachment was raised by this Court on 04.04.2024 and Chennai Port Trust was directed to sell the cranes in public auction and deposit the entire sale proceeds to the credit of this suit, making it clear that the disbursement of the sale proceeds will depend upon the outcome of the above suit after hearing the parties. In view of the above, it cannot be said that this Court has no jurisdiction to try the suit.



A.No.1771 of 2017
in C.S.No.160 of 2012

WEB COPY

12. Moreover, the applicant, as plaintiff, has admittedly moved only this Court in C.S.No.441 of 1999, seeking the relief of mandatory injunction. Thus, it does not lie in the mouth of the applicant/first defendant to now contend that the present suit cannot be maintained before this Court. The said contention is therefore rejected.

13. With regard to the issue of limitation, on a wholesome reading of the plaint, it is not apparent on the face of the plaint that the suit is barred by limitation. The said issue of limitation can be tested only after the parties lead oral and documentary evidence and not at the threshold. Therefore, the said issue of limitation also cannot be a ground to reject the plaint.

14. With regard to plea of *res judicata*, I find from the order passed by the jurisdictional Court at Saarbrücken Regional Court dated 13.05.2002, the said proceedings are initiated by the plaintiff herein and the first defendant in this suit was the second defendant in the said proceedings. The Regional Court granted a decree, ordering assignment in favour of the claimants, the claim for



A.No.1771 of 2017
in C.S.No.160 of 2012

surrender of possession of the Cranes Link Belt Type LS 518 (No.4EW350) and Liebherr Type LTM 1030 (No.0012549). The said suit was instituted for payment of the purchase price for the two cranes and reimbursement of expenses incurred by the plaintiff.

15. However, the present suit is for recovery of the amounts due and payable by the defendants together with damages or alternatively for return of the Cranes viz., Link Belt Type LS 518 (No.4EW350) and Liebherr Type LTM 1030 (No.0012549). Thus, it cannot be said that the present suit is barred by *res judicata* as the issue involved and decided in the earlier suit was different as discussed above. Therefore, the plea of *res judicata* is also not available as a ground to reject the plaint under Order VII Rule 11 of Civil Procedure Code.

16. With regard to there being no cause of action for filing the suit, excepting for making a false statement that the plaintiff does not have any cause of action, I do not find any supporting averments or allegations in the affidavit supporting the said claim. On a reading of the cause of action paragraph in the plaint, it is seen that the plaintiff has disclosed a cause of action for filing the



A.No.1771 of 2017
in C.S.No.160 of 2012

suit and has also fairly referred to the Saarbrücken Regional Court order as well.

I am unable to countenance the submission of the learned counsel for the applicant/first defendant that there is no cause of action for filing the above suit.

17. In fine, I do not see any merit in the application, seeking rejection of the plaint and all the grounds raised seeking rejection of the plaint are only triable issues which can be decided after the parties lead evidence during trial and it is not a fit case where the plaint can be rejected invoking Order VII Rule 11 of Civil Procedure Code.

18. In the result, the application is dismissed. No order as to costs.

30.04.2024
1/2

Index : Yes/No
Speaking/Non-speaking order
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WEB COPY



A.No.1771 of 2017
in C.S.No.160 of 2012

P.B.BALAJI,J.,

SR

2017
Pre-Delivery Order
in Appn. No.1771 of
in C.S.No.160 of 2012

1/2

30.04.2024