IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.07.2025**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

A.No.1179 of 2025
in C.S.(Comm.Div.) No.62 of 2025

M/s.Powermax Rubber Factory,

a registered partnership firm having its registered office
at New No.38/Old No.10,

Thandavarayan street, Royapettah,

Chennai-600 014,

Represented by its Managing Partner Mr.Shri Rajesh Jain.

... Applicant/Plaintiff

-vs-

1. United India Insurance Co. Ltd.,
a company incorporated under the Companies Act
Having its registered office at No.24,
Whites Road, Chennai-600 014,
Represented by its authorised signatory.

2. United India Insurance Co. Ltd.,
a company incorporated under the Companies Act
Having its registered office at No.457,
Victoria Extension Road, Tuticorin-628 002
Represented by its authorised signatory. ..Respondents/Defendants

Prayer : Application is filed under Order XIV Rule 1 & 8 Read With Clause 12 of the Letter Patent - High Court of Madras Read With Order II Rule 2 of

CPC, 1908, to grant leave to the plaintiff to file the suit for damages at a later point of time in C.S.(Comm.Div)No.62 of 2025.

For Applicant : Mr.Thirumalai Ravichandran

For R1 : Mr.Keerthikiran Murali

ORDER

The suit was filed challenging the repudiation of the insurance claim and for recovery of sums of Rs.14,09,28,595/- and Rs.63,16,196/- with interest on the respective sums towards claims made under five policies issued by the defendants.

2. By this application, the plaintiff seeks leave under sub-rule (3) of Order II Rule 2 of the Code of Civil Procedure, 1908 (the CPC).

3. Learned counsel for the plaintiff submits that a claim was made under the five insurance policies taken by the plaintiff in March 2021. Such claim was repudiated by letter dated 05.07.2022. He further submits that such repudiation is impugned in the suit by seeking recovery of amounts

claimed under the five insurance policies. After pointing out that the policies were subsequently cancelled under letter dated 13.07.2022, learned counsel submits that the plaintiff seeks leave to challenge the cancellation and claim damages for wrongful cancellation by a separate suit. By referring to paragraph 9 of the counter affidavit of the 1st respondent, learned counsel submits that the said respondent has taken the stand that the cause of action to challenge the cancellation of the policies is the same cause of action as in the case of the present suit.

4. Learned counsel for the defendants refers to the repudiation letter and points out that the repudiation was based *inter alia* on misrepresentation by the plaintiff. Consequently, he contends that the repudiation and the subsequent cancellation are inter related. He further submits that sub-rule (3) of Order II Rule 2 of the CPC deals with the omission to sue for more than one relief in respect of the same cause of action. Since the relief claimed in the suit is for recovery of money and the same relief is sought to be claimed through a separate suit, learned counsel submits that leave cannot be granted under sub-rule (3) for such purpose.

5. On examining the reliefs claimed in the present suit, it is evident that such reliefs are in relation to five insurance policies, the claims made by the plaintiff under such policies and the repudiation thereof by letter dated 05.07.2022. Therefore, the plaintiff has sought a declaration that the repudiation is illegal and consequently seeks to recover amounts due and payable under the five insurance policies. Notice regarding cancellation of these insurance policies was given by subsequent communication dated 13.07.2022 and the cancellation of three insurance policies bearing policy numbers 0901001121P106650963, 0901001121P109482680 & 0901001121P106639653 pursuant to earlier communication dated 13.07.2022 was communicated by letter dated 10.08.2022. The letter of 13.07.2022 refers to clause G condition No.III-2 of the policies, which enables cancellation only on the grounds of mis-representation, non-disclosure of material facts, fraud or non co-operation on the part of the policy holder. Since these letters do not contain any further details with regard to the reason for cancellation, it is not possible to clearly determine whether the cause of action for challenging the repudiation and that for challenging the cancellation of the policies is the same or distinct.

6. It is, however, clear that, in the present suit, the plaintiff is seeking recovery of alleged debts due and payable in terms of the relevant insurance policies, whereas, in the proposed suit, the plaintiff would be making a claim for damages. The nature of evidence necessary to support such claim for damages would be different.

7. In the facts and circumstances outlined above, the plaintiff is entitled to file a separate suit in respect of the cancellation of the policies, including by claiming damages in respect of alleged wrongful cancellation. Therefore, this application is allowed as prayed for.

07.07.2025
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SENTHILKUMAR RAMAMOORTHY,J

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