

A.No.23 of 2020 in A.No.1702 of 2013
in
C.S.No.247 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 26.10.2021

ORDER PRONOUNCED ON : 09.11.2021

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in
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in
C.S.No.247 of 2013

1.R.Mathiazhagan

2.Rajinish Kumar Rai

3.M.Kumar

..Applicants/ Respondents/ Defendants

1.P.J.Ethiraj

2.P.E.Naveenkumar

3.S.V.Tamizhselvan

Vs.

..Respondents/ Applicants/ Plaintiffs

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PRAYER:- This Application has been filed under Order XIV Rule 8 of the Original Side Rules, Clause XII of the Letters Patent Act read with Order III Rule 1 of the Original Side Rules seeking to revoke the leave obtained by the plaintiffs on 09.04.2013 in Application No.1702 of 2013.

For Applicants : Mr.D.Nellaiappan
For Respondents : Mr.N.Jothi
for Mr.M.C.Govindan

ORDER

This application is taken out by the defendants in the suit in C.S.No.247 of 2013 seeking revocation of leave to file the suit in this Court granted under Clause XII of the Letters Patent on 01.04.2013.

2. The suit in question has been filed by the respondents as an under-chapter suit under Order XXXVII of the Code of Civil Procedure seeking a money decree for a sum of Rs.5,70,00,000/- with interest at 18% per annum on Rs.4,50,00,000/- from the date of suit till date of payment.

3. According to the plaintiffs, the defendants have received monies from the plaintiffs under the pretext of buying properties at Pondicherry for the business of the plaintiffs. During September 2011, the defendants have proposed that the plaintiffs could purchase land measuring about 8 ½ acres situate at Villiyanur in Pondicherry belonging to the 3rd defendant. Believing the representations made by the defendants, the plaintiffs have parted with a sum of Rs.3 Crores by raising money from their relatives, friends and others for the purchase of the lands.

4. To their surprise, the plaintiffs learnt that the 1st defendant had in fact arranged for taking the sale deed in the name of the defendants 1 and 2. when this act was questioned, the 1st defendant represented that the 3rd defendant was not prepared to sell the land to others and hence the sale deed has to be taken in the name of the defendants 1 and 2. After several rounds of discussion between the parties at the house of the 1st plaintiff at T.Nagar,

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Chennai, it was agreed that the sale deeds are to be taken in the name of defendants 1 and 2 and they shall in turn execute irrevocable power of attorney in the name of the plaintiffs 2 and 3. They would also deposit the title deeds relating to the property with the plaintiffs. On the same day, the defendants would also execute the agreement acknowledging the borrowing and promising to re-pay the same.

5. Consequent upon such an agreement, the sale deeds were executed and registered on 17.10.2011 as Doc.Nos.5826/2011 and 5827/2011 in the Office of the Sub-Registrar, Villiyannur, Pondicherry. On the same day, the defendants had executed irrevocable power of attorney in favour of the plaintiffs 2 and 3 and the same was registered in the Office of the Sub-Registrar at Villiyannur as Doc.No.522/2011. They also executed an agreement acknowledging the debt and agreeing to re-pay the same at Chennai in the house of the 1st plaintiff. The said document has also been produced as suit document.

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6. Since the defendants did not honour the commitment made by them and did not re-pay the money as promised, the plaintiffs have come up with the above suit. Along with the suit, the plaintiffs have filed an application in A.No.1702 of 2013 seeking leave to institute the suit in this Court under Clause 12 of the Letters Patent, contending that, inasmuch as the defendants executed the agreement dated 17.10.2011 at Chennai and deposited the title deeds relating to the properties in the house of the 1st plaintiff at Chennai, a part of the cause of action had arisen within the jurisdiction of this Court.

7. The suit was filed as a summary suit and an exparte order came to be passed in the suit on 22.09.2014. An application was filed before the learned Master seeking to set aside the exparte order. The learned Master allowed the application on condition the applicants viz., the defendants deposited a sum of Rs.3 Crores to the credit of the suit on or before 06.04.2015. The said order came to be passed by the learned Master on 23.02.2015.

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8. Aggrieved by the said conditional order, the defendants 1 and 2 challenged the same in A.Nos.2182 and 2183 of 2015. By order dated 23.04.2015, this Court allowed those applications and while setting aside the order of the learned Master, imposed the condition for payment of Rs.25,000/- as costs. It is not in dispute that the said amount was deposited into Court since the plaintiffs refused to receive the same on the ground that they intend filing an appeal against the said order.

9. It will not be out of place to point out that the defendants have also filed an application seeking leave to defend the suit in A.No.6034 of 2017 and the same is pending. The plaintiffs have filed another application in A.No.1809 of 2013 under Rule 6 of Order XII of the Code of Civil Procedure seeking a decree on admission. Since the very jurisdiction of this Court is disputed by the defendants in the application in A.No.23 of 2020, the said application alone is taken up for disposal.

10. I have heard Mr.D.Nellaiappan, learned counsel appearing for the applicants and Mr.N.Jothi, learned counsel for Mr.M.C.Govindan, learned counsel appearing for the respondents.

11. Mr.D.Nellaiappan, learned counsel appearing for the applicants would submit that the monies were advanced at Thindivanam and Puducherry. The documents were executed at Villianur within the Union Territory of Puducherry. Therefore, according to him, no part of the cause of action had arisen within the jurisdiction of this Court, in order to enable this Court to entertain the suit upon granting leave under Clause 12 of the Letters Patent. He would also point out that the stamp papers for the agreement dated 17.10.2011 have been purchased at Pondicherry and therefore the claim of the plaintiffs that the said documents were executed at Chennai cannot be accepted.

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12. He would also point out that the power of attorney document dated 17.10.2011 that has been registered as Doc.No.522 of 2011 was presented for registration between 3.00 p.m and 4.00 p.m in the Office of the Sub-Registrar at Villiyanur. Therefore, it would not have been possible for the parties to have traveled to Chennai on the same day for executing the agreement which is sought to be relied upon to invest jurisdiction in this Court.

13. As regards the delay in filing the application, Mr.D.Nelliappan would submit that the defendants were set exparte and the exparte order came to be set aside only in the year 2015. He would also point out that the 1st defendant was arrested on a complaint lodged by the plaintiffs and was incarcerated, which prevented him from taking effective steps to defend the suit. Therefore, according to the learned counsel, the delay alone cannot be made a ground for dismissing the application for revocation of leave.

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14. He would also rely upon the judgment of the Hon'ble Supreme Court in *Patel Roadways Limited, Bombay Vs. Prasad Trading Company* reported in *AIR 1992 SC 1514*, for the proposition that the parties by agreement cannot invest jurisdiction in a Court which does not otherwise have jurisdiction. According to Mr.D.Nelliappan, since the entire transaction has taken place outside the original jurisdiction of this Court, this Court Cannot entertain the suit by granting leave under Clause 12 of the Letters Patent.

15. Contending contra Mr.N.Jothi learned counsel appearing for the respondents would submit that while granting leave or while considering the application for revocation of leave, the Court has to assume that the claims in the plaint are true. If, on such an assumption, it is shown that a part of the cause of action, however minuscule it may be, had arisen within the jurisdiction of this Court, this Court can entertain the suit by granting leave under Clause 12 of the Letters Patent.

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16. He would also point out that Sections 16, 17 and 20 of the Code of Civil Procedure which deal with the jurisdiction of Civil Courts do not apply to the High Court on its original side. Therefore, according to Mr.N.Jothi, there are clear averments in the plaint to the effect that the agreement dated 17.10.2011 was executed at Chennai and the documents of title were deposited with the 1st defendant in his house at Chennai. These two factors would be sufficient to confer jurisdiction on this Court.

17. On the claim that it will be inconvenient for the defendants to travel from Pondicherry to Chennai, Mr.N.Jothi, learned counsel appearing for the plaintiffs would submit that the principle of forum convenience would not apply to civil jurisdiction. He would also point of that even in *M/s.Duro Flex Pvt. Limited Vs. M/s.Duroflex Seatings System* reported in *2014 (5) LW 673*, a Full Bench of this Court has only said principle akin to forum convenience could be invoked by the civil Court. Mr.N.Jothi would

also point out that the distance between Pondicherry and Chennai is not much and it is just about 160 Kms and therefore the question of forum convenience would not arise in the case on hand.

18. In support of his submission that the plaint allegation will have to be taken to be true while deciding the question of grant or revocation of leave, Mr.N.Jothi would rely upon the judgment of the Hon'ble Supreme Court in *Indian Mineral and Chemicals Co. and others Vs. Deutsche Bank* reported in 2004 (12) SCC 376. He would also point out that the said judgment has been re-affirmed by the Hon'ble Supreme Court in *Isha Distribution House Private Limited Vs. Aditya Birla Nuvo Limited and another* reported in 2019 (12) SCC 205.

19. Support is drawn by Mr.N.Jothi from the judgment of the Division Bench of this Court in *PT.Ummer Koya Vs. Tamil Nadu Chess Association* reported in 2005 (3) CTC 86 to buttress his submission that the

defendants have acquiesced to the suit filed in this Court and they having filed applications seeking leave to defend, cannot at their leisure after 7 years after the filing of the suit come up with the application for revocation of leave.

20. I have considered the submissions of the counsel for the parties.

Clause 12 of the Letters Patent reads 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

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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 hundred rupees.

21. Sections 16, 17 and 20 of the Code of Civil Procedure which deal with the jurisdiction of a Civil Court to entertain suits are made in-applicable to the High Court in exercise of its original civil jurisdiction by Section 120 of the Code of Civil Procedure. Therefore, it is well open to the High Court in exercise of its original civil jurisdiction to receive and hear suits for which even a part of the cause of action had arisen within its jurisdiction, despite the fact that the defendants therein do not reside or carry on business within its jurisdiction.

22. A reading of Clause 12 of the Letters Patent extracted above would show that all that is required of a plaintiff, in order to maintain a suit on the original side of the Court, is to show that a part of the cause of action had arisen within the jurisdiction of this Court.

23. As rightly pointed out by Mr.N.Jothi, learned counsel appearing for the plaintiffs, this Court cannot consider the evidence on record or decide the issue of jurisdiction, while considering the application for revocation of leave. The scope of enquiry in an application for revocation of leave is very limited, inasmuch as the Court has to take the allegations in the plaint as true and see whether the plaintiff has demonstrated that any part of the cause of action had arisen within the original jurisdiction of this Court. A roving enquiry on the evidence available, the effect of the evidence or the probabilities of the case cannot be conducted while considering the application for revocation of leave.

24. In *Indian Mineral and Chemicals Co. and others Vs. Deutsche Bank* reported in *2004 (12) SCC 376*, the Hon'ble Supreme Court had in fact made it clear that while considering the application for revocation of leave granted under Clause 12 of the Letters Patent, the assertion in the plaint must be assumed to be true for the purpose of determining whether the leave is liable to be revoked on the point of demurrer. After setting out the basis on which the plaintiff had claimed that the part of the cause of action had arisen within the jurisdiction of the High Court of Calcutta, the Hon'ble Supreme Court went on to hold that, once from a reading of the plaint it is shown that the part of the cause of action had arisen within the jurisdiction of the Calcutta High Court, the Division Bench of the Calcutta High Court was not justified in revoking the leave.

25. The Hon'ble Supreme Court had in fact reiterated the observations of Rankin, C.J. In *Secretary of State Vs. Golabrai Paliram* decided as early

as in 1932 reported in **AIR 1932 Cal 146**. The said observations are as follows:

“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.”

26. The above observations of Rankin, C.J. were reiterated by the Hon'ble Supreme Court in the very recent decision in ***Isha Distribution House Private Limited Vs. Aditya Birla Nuvo Limited and another*** cited *supra*. The Hon'ble Supreme Court after referring to the judgment in ***Indian Mineral and Chemicals Co. and others Vs. Deutsche Bank*** cited *supra*

concluded that, if there is a dispute on the question of fact regarding the jurisdiction of the Court, the approach of the Court should be to allow the defendants to raise the question of jurisdiction in the written statement and decide the same on the evidence, after such evidence is placed on record. The Hon'ble Supreme Court had, in fact, pointed out that once there is a factual dispute on the question of jurisdiction, the Court dealing with the revocation application would do well to defer the decision upon evidence. In fact the Hon'ble Supreme Court pointed out that except in rare cases, the question of jurisdiction, particularly territorial jurisdiction, which depends on the evidence should be decided only along with the other issues in the suit after the evidence is recorded. The revocation of leave in such cases is not advisable.

27. Reliance is also placed by Mr.N.Jothi on the judgment in

M/s.Duro Flex Pvt. Limited Vs. M/s.Duroflex Seatings System cited *supra*,

wherein the Full Bench of this Court had gone into the question as to

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whether the forum convenience will apply to civil cases. I do not think it will be appropriate for me to dwell into the question of forum convenience and the effect of the judgment of the Hon'ble Full Bench of this Court in *M/s.Duro Flex Pvt. Limited Vs. M/s.Duroflex Seatings System* cited *supra*, since the same arises in a totally different circumstance with reference to statutory provisions contained in a Copyrights Act and Trademarks Act.

28. Useful reference could also be made to the judgment of the Division Bench of this Court in *Raghavan Vs. Kalanithi Maran* reported in *2013 (5) CTC 801*, wherein, the Division Bench again pointed out that the Court while deciding the issue relating to revocation of leave cannot go into the evidence, appreciate the evidence and render a finding on the merits of the claim.

29. Coming to the facts of the case on hand, the plaintiffs have come to the Court with a clear case that the agreement acknowledging the

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borrowing dated 17.10.2011 was executed at the residence of the 1st plaintiff in T.Nagar, within the jurisdiction of this Court and the original documents were handed over to the plaintiffs on the said date at the same place. This is a factual assertion made by the plaintiffs, in order to show that part of the cause of action had arisen within the jurisdiction of this Court.

30. Of course, the defendants would vehemently deny the said claim and contend that all the documents were executed only at Pondicherry and therefore no part of the cause of action had arisen within the jurisdiction of this Court. The question whether the particular document viz., agreement dated 17.10.2011 was executed at Chennai in the residence of the 1st plaintiff or it was executed at Pondicherry as alleged by the defendants is a question of fact which will have to be decided on evidence.

31. As I had already pointed out, the Hon'ble Supreme Court has categorically laid down that the Court while deciding the application for

revocation, cannot go into the evidence and decide the question of fact and it has to proceed on the assumption that the allegations in the plaint are true. If we are to test the case on hand as per the principles of law propounded by the Hon'ble Supreme Court in *Indian Mineral and Chemicals Co. and others Vs. Deutsche Bank* cited *supra* it has to be necessarily concluded that the leave granted cannot be revoked.

32. Adverting to the claim that the application is delayed and therefore the leave shall not be revoked, it is the contention of Mr.D.Nellaiappan that the defendants were set *exparte* and only after the order setting them *exparte* was set aside, they took steps to have the leave revoked. The explanation offered for a delay is far from convincing. The *exparte* order was set aside by an order of this Court dated 23.04.2015. The defendants had filed an application in A.No.4719 of 2015 seeking permission to deposit a sum of Rs.25,000/- since there was a refusal on the part of the plaintiffs to accept the costs. Thereafter, the defendants have

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filed application in A.No.6034 of 2017 seeking leave to defend the suit along with an application seeking condonation of delay in filing the application for leave to defend the suit. The application for condonation of delay in filing the application for leave to defend the suit was numbered as A.No.1390 of 2017 and the same was allowed by the learned Master on 21.09.2017. Thereafter, the application for leave to defend the suit was numbered and the same was also prosecuted by the defendants. It is stated that the said application is still pending. No doubt, there was an appeal against the order made in A.Nos.2182 and 2183 of 2015 dated 23.04.2015. But, mere pendency of the appeal can not prevent the defendants from filing this application earlier in point of time.

33. In *P.T.Ummer Koya Vs. Tamil Nadu Chess Association* cited *supra*, the Division Bench of this Court had pointed out that the belated application for revocation of leave cannot be entertained and if it is shown that the defendant had acquiesced in the conduct of the suit and had

participated in further proceedings of the suit, such defendant cannot seek revocation of leave. While doing so, the Hon'ble Division Bench had observed as follows:-

“In other words, as rightly pointed out, the appellant herein/ 2nd defendant participated in the proceedings subjected himself by filing counter affidavit for vacation of the same and later on filed petition to revoke the leave to sue. In such a circumstances, as rightly observed by the learned Judge, he (second defendant) acquiesced the jurisdiction of this Court and thereafter in would not open to him to contend that the leave granted is bad. In such a circumstance, Their Lordships have held that the respondent has not only acquiesced in the steps taken by the appellant to carry forward the progress of the suit incurring considerable expenses but, made use of the existence of the suit to obtain such interlocutory reliefs as he though would be to his own

advantage, at the hands of the Court which he now claims should not try the suit. The above position makes it clear that the person aggrieved of the grant of leave has to approach the Court at the earliest point of time and seek for revocation without due participation in the other proceedings. In other words, an application for revocation of leave should be made at the early stage of the suit and delay and acquiescence is a bar to such an application. ”

34. In view of the above settled position of law, I am of the considered opinion that the defendants have not made out a case for revocation of leave and the fact that they had also participated in the proceedings in the suit would dis-entitle them from seeking revocation of leave granted.

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35. For the foregoing reasons, the application for revocation of leave in A.No.23 of 2000 is **dismissed**. However, in the circumstances without costs.

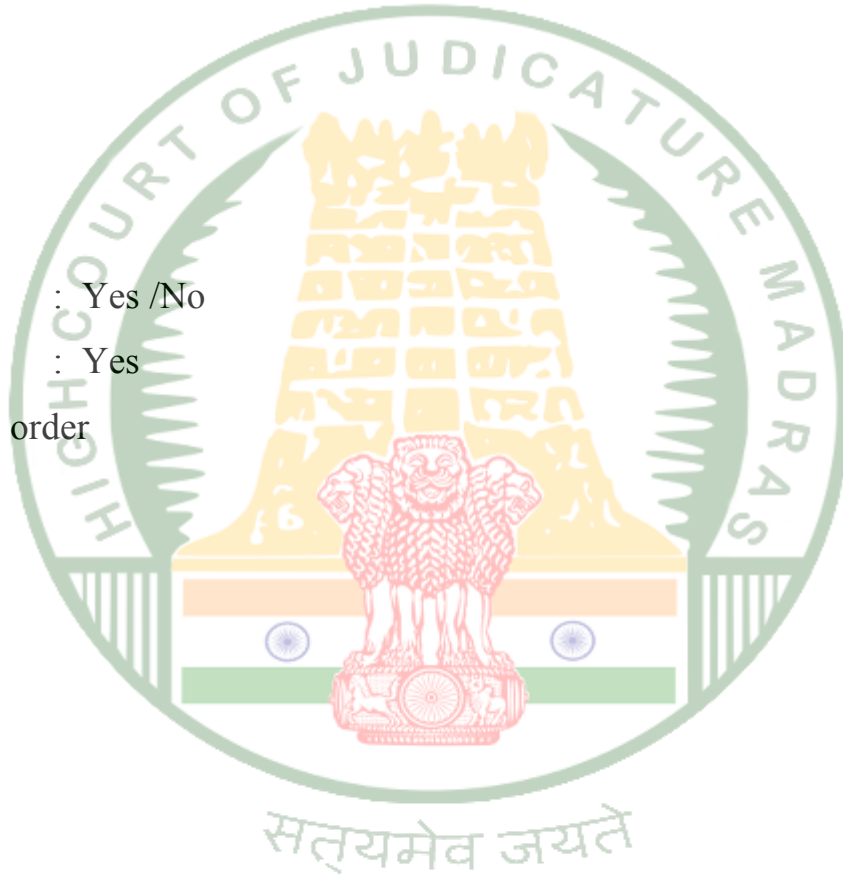
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Speaking order

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