

# **M/S.Sharon Solutions Ltd vs Davy Ashmore India Ltd And Another on 10 December, 2012**

**Author: Vinod K.Sharma**

**Bench: Vinod K.Sharma**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2012

CORAM

THE HON'BLE MR.JUSTICE VINOD K.SHARMA

A.No.1318 of 2012

in

C.S.No.76 of 2011

WATCHDATA TECHNOLOGIES PVT LTD  
SINGAPORE,  
REP. BY ITS DIRECTOR MR.YU ZHILU,  
NO.10, EUNOS ROAD, 8-12-05,  
SINGAPORE POST CENTRE,  
SINGAPORE -408 600.

WATCHDATA TECHNOLOGIES INDIA PVT LTD.,  
REP.BY ITS CEO AND DIRECTOR MR.VIJAY PARTHASARATHY,  
681, 6TH C MAIN, 14TH CROSS, JP NAGAR,III PHASE,  
BANGALORE,  
KARNATAKA - 560 078.

VS

M/S.SHARON SOLUTIONS LTD.,  
REP. BY ITS DIRECTOR MS.UMA MAHESWARI,  
NO.48/3, THOMAS NAGAR, LITTLE MOUNT,  
SAIDAPET,  
CHENNAI-15.

## ORDER

M/s.Sharon Solutions Ltd., have filed a suit for recovery of Rs.7,00,00,000/- (Rupees Seven Crores only) as damages by pleading, that the plaintiff is a Public Limited Company incorporated under the Companies Act. The suit is filed against defendants / respondents, who do not reside within the territorial jurisdiction of this Court.

2. The suit has been filed in this Court, by pleading that 3rd and 4th defendants have ventured into establishing their own business in the same field as that of plaintiff in gross transgression and blatant breach of the terms and commitments agreed upon by the 1st defendant under the two Memorandum of Understanding (MOUs) dated 20.12.2004 and 21.12.2005 and the non disclosure agreement dated 15.03.2007.

3. In Para 19 of the plaint, it is pleaded by the plaintiff / non applicant, that the defendants having achieved their collective mission in an unholy manner by entrenching upon the business substratum of the plaintiff, the 1st defendant by way of adding insult to injury sought to pre-empt any legal action on the side of the plaintiff by moving the Court at Singapore against the guarantors invoking the laws of Singapore for the recovery of the debt. It is learnt that they have also obtained a decree regarding which legal steps are being initiated as advised by their Attorneys at Singapore, therefore, the said dispute has no relevance or bearing upon the present claim of the plaintiff, especially having regard to the nature of agreements entered between the parties at different points of time.

4. In para-26 of the plaint, the stand of the plaintiff / non applicant is that the cause of action for the suit arose in Chennai within the territorial jurisdiction of this Court, where the plaintiff company is incorporated and having its registered office, and that the MOU was executed between the plaintiff and the 1st respondent at Chennai, thereafter, on various dates when purchase orders were placed at Chennai and supply and delivery were effected by the 1st defendant at Chennai. On 17.03.2007, when the third and fourth defendants were inducted as representatives nominees of the 1st defendant as per resolution passed by the plaintiff, when the 1st defendant had through their representative nominees jointly managed and controlled the business of the plaintiff company at Chennai, when the third and fourth defendants indulged in acts of acquisition of information, concepts and devices, customer profiles and the entire gamut of the business operations of the plaintiff in August 2007 when the 1st defendant promoted the 2nd defendant company in India through the third defendant, when the 2nd defendant started having direct business transactions with the customers/clientele of the plaintiff during the period of the contract and six months after the expiry thereof, when the plaintiff suffered loss to the tune of 29.04 crores as estimated under their Auditor Certificate on account of the breach of contract by the 1st defendant and when the other defendants contributed to the said breach, on 4.1.2010 when the plaintiff issued legal notice to the defendants, on 19.1.2010 when the 2nd defendant issued a reply notice denying the liability to

pay damages, and subsequently when the claim of the plaintiff remains undischarged by the defendnats.

5. A.No.1318 of 2012 has been moved by the 2nd defendant to reject the plaint, on the ground, that all the defendants are residing and have office outside the jurisdiction of this Court and that no cause of action has arisen within the jurisdiction of this Court.

6. It is submitted, that cause of action took place at Singapore outside the jurisdiction of this Court, therefore, this Court has no jurisdiction to try this case. The plaint is sought to be rejected, both on the point of jurisdiction and cause of action.

7. It is submitted, that the plaintiff has solely relied upon the alleged MOU dated 20.12.2004, which is a concocted document and created by the plaintiff for filing this case. That the 1st defendant company filed suit No.5571 of 2007/M in the High Court of the Republic of Singapore, which was contested by the Directors of the plaintiff company. The suit was decreed in favour of defendant no.1. The Directors of the plaintiff filed appeal before the Hon ble Supreme Court of Singapore, and the Hon'ble Supreme Court of Singapore, dismissed the appeal and confirmed the decree of Hon ble High Court of Singapore.

8. It is pleaded case of the applicant / 2nd defendant, that the defendants in that suit produced a copy of MOU dated 20.12.2004. The defendant no.1 had denied the execution of the said MOU by taking a plea that the document was concocted one and created for defending the suit. The stand was taken, that alleged signatures on the above said document purported to be signature of the officials of the 1st defendant company, were in fact forged. In the suit, Mr.Paul Westwood, a handwriting expert examined the signatures and reported that the signatures on the MOU of the officials of 1st defendant company were not genuine.

9. It is thus pleaded that the suit is barred by the principle of res judicata. It is also submitted that the present suit by the plaintiff is based on the concocted MOU dated 20.12.2004 and by producing the said document, the plaintiff company is guilty of offence of perjury and on this ground alone, the suit is not maintainable.

10. Therefore, it is submitted that the plaint be rejected;

i)for lack of jurisdiction;

ii)for lack of cause of action; and

iii)on the principle of res judicata.

11. The application is opposed on the ground, that the application is not maintainable in law or on facts. That Sections 16, 17 & 20 of the Code of Civil Procedure have no application by virtue Section 120 of CPC, as the suit has been filed with the leave of this Court.

12. It is also submitted that the case before the Hon'ble Supreme Court of Singapore as well as the Hon'ble High Court of Singapore was on different cause of action in relation to money transactions. Whereas the present suit is on the different cause of action.

13. It is also submitted that MOU dated 15.02.2007 executed between the respondents and 1st defendant and the non-disclosure agreement entered into on 17.03.2007, were executed at Chennai. That in terms of the agreement, one Mr. Yu Zhilu, 3rd defendant was appointed, as one of the Directors of the company as per the resolution of the Board of Plaintiff passed on 17.03.2007, the other Director, being Kamalraj Johnson. In addition to the directorial nominee, a representative nominee was appointed as Vice President (Operation).

14. It is further submitted, that because of those facts, the defendant acquired unfettered access to the entire operations of the plaintiff in all aspects. In the counter, the pleadings in the plaint are also reiterated. It is also submitted that the claim in the suit filed in the Hon'ble High Court of Singapore was against the guarantor and not against the plaintiff.

15. It is also the case of the plaintiff / non applicant , that Section 20 has no application by virtue of Section 120 of the Code of Civil Procedure and the principle of res judicata has no relevance. It is thus submitted, that cause of action to maintain the suit arose at Chennai.

16. Learned counsel for the defendant no.2 / applicant vehemently contended that the reading of the plaint does not disclose any cause of action to have arisen within the territorial jurisdiction of this Court.

17. It was vehemently contended by the learned counsel for the applicant / defendant that the suit for damages is based on the alleged MOU, which was said to have been entered on 20.12.2004. It is submitted that the said MOU is stated to have been executed at Chennai to make out cause of action. Similarly, the MOU entered into on 21.12.2005 is also not the valid document and has been concocted initially to raise objection in the suit filed by the plaintiff / defendant in the Hon'ble High Court and Supreme Court of Singapore and to make out a cause of action, to file this frivolous case.

18. In support of this contention, learned counsel for the defendant / applicant relied on the judgment of the Hon'ble High Court of Singapore, wherein the Hon'ble High Court of Singapore referred to 2004 and 2005 MOUs, on which reliance is placed for making out the cause of action. The Hon'ble Supreme Court of Singapore held as under:

96. At this point it is apposite to deal with the 2004 MOU as the defendants had averred in their joint affidavit dated 13 December 2007 that the plaintiff would not have signed the 2004 MOU with the India Company if it had not known that the India Company was the principal in the contracts for the supply of SIM cards. The testimony of The and Westwood clearly showed that the 2004 MOU was a fabricated document. The defendants' own constant change in position on when the 2004 MOU was signed was also damning. Furthermore, Neo's evidence on the plaintiff's rubber stamps and Tian's testimony on the signing of the Al Hatim MOU

undermined the defendants' claim that Tec had signed both the 2004 MOU and the Al Hatim MOU on 20 December 2005 using different stamps. The defendants' rather desperate attempt to rely on a fabricated document and the falsehoods they had to tell to establish its genuineness cast serious doubts on their general credibility.

97. I accepted Tian's evidence on the reason for the India Company's name and address being on the 2004 India invoices. The Supply Agreement itself envisaged that the India Company's address would generally be the billing address (see article 3 of the Supply Agreement set out in [7] above). It was particularly significant that the Singapore Company had itself included the 2004 India invoices in its statement of accounts (and as mentioned in [92] above, I did not believe that Singapore Company's statement of accounts was generated by the plaintiff). I concluded that the Singapore Company was liable to pay the plaintiff in respect of the 2004 India invoices. I also found that the plaintiff's explanation (as given by Yu and Neo) of why the statements of accounts were different in each version of the Statement of Claim was sound. Thus, the defendants' reliance on the discrepancies in the various statements to cast doubt on the genuineness of the plaintiff's claim was unsustainable. It was also noteworthy that the defendants had accepted that they owed the sums stated in the audit confirmations (which corresponded with Schedule 2 of the plaintiff's Statement of Claim (Amendment No.2)). It was utterly incredible that the second defendant did not verify the sums by checking the Singapore Company's accounts before signing the audit confirmations. In any case, if she chose not to do so, she could not now disavow her signature on the audit confirmations. The second defendant's uncorroborated testimony, that she only signed the audit confirmations under pressure, was not mentioned in either her or her husband's affidavits and was clearly a weak attempt in trying to cast doubt on the binding effect of her signature on the audit confirmations.

19. Learned counsel for the 2nd defendant / applicant thereafter referred to the mutual non disclosure agreement dated 15.03.2007., which is admitted by the plaintiff / non applicant, as is clear from the pleadings noticed herein above.

20. Learned counsel for the applicant / 2nd defendant referred to the co-operation agreement dated 17.03.2007, executed between the parties, to contend, that it contains a stipulation, that the agreement shall be governed by and construed in accordance with the laws of Singapore and that the parties irrevocably submitted to the non-exclusive jurisdiction of the Singapore Courts.

21. It was therefore contended, that once by agreement of co-operation of parties agreed to submit to the jurisdiction of Singapore Courts, this Court cannot have jurisdiction to maintain or try the suit irrespective of the fact, that whether MOUs on which reliance is placed are forged or not.

22. In support of this contention, learned counsel for the applicant / 2nd defendant placed reliance on the judgment of the Hon'ble Supreme Court in, Angile Insulations vs. Davy Ashmore India Ltd and another, (1995) 4 SCC 153, wherein the Hon'ble Supreme Court was pleased to lay down as

under:

. So, normally that Court also would have jurisdiction where the cause of action, wholly or in part, arises, but it will be subject to the terms of the contract between the parties. In this case, Clause (21) reads thus:

"This work order is issued subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will, therefore, fall within the jurisdiction of the above Court only."

A reading of this clause would clearly indicate that the work order issued by the appellant will be subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will, therefore, be instituted in a Court of competent jurisdiction within the jurisdiction of High Court of Bangalore only. The controversy has been considered by this Court in A.B.C Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem [1989J 2 SCC 163. Considering the entire case law on the topic, this Court held that the citizen has the right to have his legal position determined by the ordinary Tribunal except, of course, subject to contract (a) when there is an arbitration clause which is valid and binding under the law, and (b) when parties to a contract agree as to the jurisdiction to which dispute in respect of the contract shall be subject. This is clear from Section 28 of the Contract Act. But an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void being against the public policy under Section 23 of the Contract Act. We do not find any such in validity of Clause (21) of the Contract pleaded in this case. On the other hand, this Court laid that where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therewith, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves, the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague, it is not hit by Sections 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the statute. Mercantile law and practice permit such agreements.

6. In this view of the law and in view of the fact that the agreement under which Clause (21) was incorporated as one such clause, the parties are bound by the contract. The contract had not been pleaded to be void and being opposed to Section 23 of the Contract Act. As seen, Clause (21) is unambiguous and explicit and that, therefore, the parties having agreed to vest the jurisdiction of the Court situated within the territorial limit of High Court of Karnataka, the Court of subordinate Judge, Dhanbad in Bihar State has no jurisdiction to entertain the suit laid by the appellant. Therefore, the High Court was right in upholding the order of the Trial Court returning the plaint for presentation to the proper Court.

23. Learned counsel for the 2nd defendant / applicant also placed reliance on the judgment of the Hon'ble Division Bench of this Court in M/s.Consolidated Agencies vs M/s. Gujarat Carbon & Industries Ltd., 2002-3-L.W.514, to contend that the leave granted to sue can be revoked, as the clause restraining jurisdiction to a particular Court, cannot be lightly disregarded. The Hon'ble Division Bench of this Court in this judgment was pleased to lay down as under:

Held: It is well settled in law that the issue regarding jurisdiction of the Courts has to be decided upon the facts and circumstances of each case. Equally, it is well settled that where there are two or more competent Courts which can entertain a suit consequent upon a part of the cause of action having arisen within the jurisdiction of each of these Courts, parties to the concerned transaction can contract to vest jurisdiction in one of the Courts to try disputes which may arise as between themselves. Therefore, even though the irregular exercise of jurisdiction is a matter in which the parties can waive as held in Nanak Chand Case, in our considered opinion, if the parties to the contract agree with a consensus on a particular term of the agreement that the dispute shall be decided only by a particular Court having jurisdiction, the ouster or exclusion of the other Courts cannot be lightly disregarded merely because of the absence of the words only or alone in the said clause.

In the instant case, even if the petitioner relies upon either of the agreements dated 1.10.1985 or 1.4.1993, it is beyond doubt that parties to the said agreements have unambiguously, clear and explicitly arrived at a consensus that any dispute under the respective agreements shall be tried only before the Court having a definite jurisdiction mentioned in the said agreements, namely at Vadodara or Baroda, respectively. We are satisfied that the learned Single Judge, rightly, by order dated 29.3.2001 in Application No.3713 of 1998, revoked the leave granted on 2.2.1998 in Application No.304 of 1998 to file the above suit, and in which event, the plaintiff/appellant herein shall not have recourse either under Section 20 of the Code of Civil Procedure or under Clause 12 of the Letters Patent.

24. It was next contended that once no cause of action has arisen within the territorial jurisdiction of this Court, as admittedly none of the defendant resides within the territorial jurisdiction of this Court, leave granted can be revoked by this Court and the plaint be rejected.

25. Finally, it was contended that finding of the Hon'ble High Court of Singapore operates as res judicata, as the decree has been passed against the guarantors of the plaintiff, whose liability with the plaintiff / non applicant was joint and several, therefore, it is not open to the plaintiff to contend that the judgment of the Hon'ble Supreme Court of Singapore is not binding on it, being not a party to the suit.

26. The application is opposed by the plaintiff / non applicant by vehemently contending, that for deciding an application for rejection of plaint, the Court can look into the averments made in the plaint and not the defense of the defendants.

27. It was therefore contended, that reading of the plaint shows, that cause of action accrued within the jurisdiction of this Court, therefore, it was open to this Court to allow the application, moved by the plaintiff / non applicant to sue the defendants in this Court, though they are residing outside the jurisdiction of this Court.

28. Learned counsel for the plaintiff / non applicant placed reliance on the judgment of the Hon'ble Supreme Court in *Swamy Atmananda and others vs. Sri Ramakrishna Tapovanam and others*, 2005 (3) MLJ 65 SC, to contend that cause of action means fact or facts, which if traversed would require the plaintiff to prove in order to support his right to a judgment of the Court. It is a bundle of facts, which when taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It cannot be limited to only infringement of the right to sue, including all material facts on which it is founded.

29. The contention of the learned counsel therefore was that the facts pleaded in the plaint are required to be taken on face value, make out a cause of action to maintain the suit in this Court.

30. It was next contended by the learned counsel for the plaintiff / non applicant, the allegations that MOUs are forged and fabricated, cannot be ground to reject the plaint in view of the law, laid down by the Patna High Court in the case of *Kapildeo Prasad and anr vs. Ramanand Prasad and others*, AIR 2007 Patna 1, holding that though fraud vitiates everything, but it cannot extend to rejection of a plaint, as it is to be proved in the course of trial and it is for the Court to accept or to reject the plea. But for rejecting the plaint, Court can only see averments in the plaint and that the defense cannot be looked into. Therefore, once the plaint discloses cause of action and the averments do not show that the suit is barred by any law, the plaint cannot be rejected.

31. Learned counsel thereafter placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Saleem Bhai and others vs. State of Maharashtra and others*, AIR 2003 SC 759, wherein the Hon'ble Supreme Court was pleased to lay down that the application for rejection of plaint can be decided by Court on the basis of averments made in the plaint and that filing of written statement by contesting defendant is not necessary.

32. Reliance was thereafter placed on the judgment of the Hon'ble Rajasthan High Court in the case of *Sukhpal Singh vs. State of Rajasthan and others*, AIR 1998 Rajasthan 103, laying down that validity of documents, if challenged, cannot be the ground to reject the plaint.

33. Reliance was also placed on the judgment of the Hon'ble Bombay High Court in *Nishit M.Prabhu Verlekar vs. Chandranath Vinayak Dhume and others*, AIR 1986 Bombay 46(1), to contend that once the plaint is admitted and summons issued, then defendants without filing written statement cannot by application challenge maintainability of suit. It may be noticed here that this judgment has no relevance, as the applicant / 2nd defendant is seeking rejection of plaint for want of cause of action and jurisdiction of this Court to entertain the suit, by invoking the provisions of Order 7 Rule 11 and not by way of application.

34. Learned counsel for the plaintiff / non applicant also placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Samar Singh vs. Kedar Nath and others*, AIR 1987 SC 1926. In this judgment, the Hon'ble Supreme Court has laid down, that in case of non disclosure of cause of action, the Court can exercise its power under Order 7 Rule 11 and can reject the election petition even after settlement of issues. This judgment cannot be applied to the facts of the case, as the



Hon'ble Supreme Court in the case was dealing with the Election Petition.

35. Reliance was thereafter placed on the judgment of the Hon'ble Full Bench of Punjab and Haryana High Court in the case of Balwant Singh vs. The State Bank of India and others, AIR 1976 Punjab and Haryana 316, to contend that when the plaint discloses cause of action in respect of part of claim against some defendants, the plaint cannot be rejected in its entirety.

36. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of Abdul Gafur and another vs. State of Uttarakhand and others, (2008) 10 SCC 97, wherein it has been laid down as under:

9. It is trite that the rule of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7, Rule 11 of the Code. Similarly, a plea of bar to jurisdiction of a civil court has to be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety and the court would not be justified in determining the question, one way or the other, only having regard to the reliefs claimed de'hors the factual averments made in the plaint. (See: Church of North India Vs. Lavajibhai Ratanjibhai & Ors.6)

37. On consideration, I find that this application deserves to succeed. The reading of the plaint in totality shows, that the cause of action is based on the MOUs said to have been executed between the parties, which were held to be forged and fabricated by the Hon'ble High Court of Singapore.

38. Furthermore, It is not disputed, that the parties had entered into a cooperation agreement. In terms of co-operation agreement, the jurisdiction qua any dispute between the parties is restricted to the jurisdiction of the Singapore Courts alone. It is not the case of the plaintiff / non applicant that under MOU exclusive jurisdiction was given to the Chennai courts, therefore, even of for the sake of argument, it is taken that this Court at this stage cannot look into the defense raised by the defendant / applicant, that the MOUs are genuine documents, still in view of the co-operation agreement entered into between the parties, the jurisdiction of Chennai Court would be barred in view of the law laid down by the Hon'ble Supreme Court in the case of Angile Insulations vs. Davy Ashmore India Ltd and another, (supra).

39. It may also be notice here, that though it is settled law, that for deciding an application under Order 7 Rule 11, the Court can see the pleadings in the plaint and not to look into the defense, but in exceptional cases for deciding the application under Order 7 Rule 11 of CPC, the document and transaction between the parties can be looked into, specially those which are part of the plaint, having been filed in type set of papers in support of the plaint.

40. In this case, it may be noticed here, that not only in the agreement executed between the parties, which is not in dispute, the jurisdiction was restricted to Singapore Courts only, but the Hon'ble

High Court of Singapore in fact has decided the suit, wherein, the MOUs, on which reliance is placed, were held to be forged and fabricated document.

41. If the plaint is read with the document attached thereto, it leaves no manner of doubt, that the jurisdiction of Chennai Court would be barred and only Singapore Courts will have jurisdiction to decide the dispute between the parties, in view of co-operation agreement.

42. However, there is no force in the contention of the learned counsel for the applicant / defendant, that the suit is barred by res judicata, as plea of res judicata be a mixed question of law and fact, cannot be the ground to reject the plaint, by invoking the provisions of Rule 7 Order 11 of CPC.

43. As already noticed above, learned counsel for the applicant / defendant was right in contending that there was no cause of action within the jurisdiction of this Court, and in any case, in view of the co-operation agreement executed between the parties, the jurisdiction of this Court is barred.

44. He was also right in contending that no suit against defendants was competent, as none of them resides within the jurisdiction of this Court, once it is proved, that cause of action had not arisen in this Court.

45. Learned counsel for the applicant / 2nd defendant is also right in contending that leave granted by this Court can be revoked on an application filed by the defendants, in view of the law laid down by the Hon'ble Division Bench of this Court in the case of M/s.Consolidated Agencies vs M/s. Gujarat Carbon & Industries Ltd., (supra).

46. The contention of the learned counsel for the plaintiff / non applicant, that for the purpose of deciding an application, only the pleadings in the plaint have to be seen, cannot be disputed, but this contention cannot be accepted in view of the co-operation agreement entered into between the parties, restricting the jurisdiction to Singapore Courts alone, besides the fact that there is a judgment of the Hon'ble High Court and Supreme Court of Singapore with regard to the dispute between the parties, as the liability of the guarantor is co-extensive with that of the principal.

47. For the reasons stated above, this application is allowed. The plaint is ordered to be returned to the plaintiff for presentation before the competent Court having jurisdiction in accordance with law, if so advised.

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