

***** vs M/S.E-Logistics Private Ltd on 10 April, 2014**

Author: M.Jaichandren

Bench: M.Jaichandren, M.Venugopal

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:10.04.2014

Coram

THE HONOURABLE Mr. JUSTICE M.JAICHANDREN
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

O.S.A.No.12 of 2014

M/s.@Road Inc.,
now known as M/s.Trimble Navigation Limited,
935, Stewart Dr.Sunnyvale,
CALIFORNIA, Chinnammal 94085,
The United States of America.
... Appellant/Applicant/1st Defendant

V.

M/s.e-Logistics Private Ltd.,
No.44, Second Floor,
1st Main Road, Gandhi Nagar,
Adyar, Chennai 600 020.
represented by its Managing Director,
Mr.V.Sanjeevi
... Respondent/Respondent/Plaintiff

Prayer: Appeal filed under Order XXXVI Rule 1 of the Original Side Rules and Clause 15 o

For Appellant : Mr.G.Kalyan Jhabakh
For M/s.Surana & Surana

For Respondents : Mr.V.Srikanth

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL,J.) The Appellant/Applicant/ 1st Defendant has projected the present Original Side Appeal as against the order, dated 07.03.2013, in Application No.1958 of 2011, in C.S.No.120 of 2011, passed by the Learned Single Judge, in rejecting the Application.

2.The Learned Single Judge, while passing the impugned order, in Application No.1958 of 2011, in C.S.No.120 of 2011 (filed by the Appellant/1st Defendant), on 07.03.2013, has, inter alia, observed that 'the cause of action, for filing of the suit viz., is the Agreement dated 08.09.2007, which relates to the business activity in India, hence, this Court has no hesitation to come to the conclusion that no leave is required to maintain the suit, more so when the address of the 1st Defendant is clearly mentioned in their own documents as situate at Taramani, Chennai only because the address shown in the agreement is the Head Quarters at United States of America, that by itself will not entitle the Applicant/1st Defendant to raise the plea that leave has to be taken and the said plea is factually incorrect and has no basis.'

3.According to the Learned Counsel for the Appellant/1st Defendant, the order of the Learned Single Judge, dated 07.03.2013, in Application No.1958 of 2011, in C.S.No.120 of 2011, in rejecting the Application, is contrary to law, weight of evidence and probabilities of the case.

4.The Learned Counsel for the Appellant/1st Defendant urges before this Court that the Learned Single Judge, while rejecting the Application, has rendered a finding beyond the suit pleadings itself. Further, it is the stand of the Appellant/1st Defendant that nowhere in the Plaint, the Respondent/Plaintiff has pleaded that the entire cause of action had arisen within the jurisdiction of this Court and/or that the Appellant/1st Defendant has its place of business at Chennai.

5.Advancing his arguments, the Learned Counsel for the Appellant/1st Defendant contends that the Learned Single Judge failed to appreciate that the Respondent/Plaintiff itself claimed M/s.@ Road Inc., a Trimble Company, being c/o At Road Software India (P) Limited and in fact, the Company referred to in the documents/brochure of the Appellant/1st Defendant is only that of its Subsidiary, and the same being a separate legal entity. In effect, the plea of the Appellant/1st Defendant is that, by no stretch of imagination, it could be said that the Appellant/1st Defendant has its place of business at Chennai within the jurisdiction of this Court.

6.However, the Learned Counsel for the Appellant/1st Defendant submits that 2nd and 3rd Defendants are separate entities in the eye of law and in fact, the Appellant/1st Defendant has the subsidiary companies in India.

7.The primordial submission of the Learned Counsel for the Appellant/1st Defendant is that since the Appellant/1st Defendant is a company incorporated in U.S.A. [outside the jurisdiction of this Court] in terms of ingredients of Clause 12 of the Letters Patent, leave ought to have been obtained by the Respondent/Plaintiff to entertain the Suit filed by it. In the instant case, since the Leave was not obtained for filing of the Suit by the Respondent/Plaintiff as a condition precedent, the Appellant/1st Defendant, as Applicant, filed Application No.1958 of 2011, to dismiss the Suit.

8.Lastly, the Learned Counsel for the Appellant/1st Defendant submits that the Learned Single Judge failed to take into account of a very vital fact that the Annual Report was of the Trimble Group, which invariably would also refer to its wholly-owned Subsidiary which is a separate legal entity. Also that, the Subsidiary's place of business could not be termed as 'the place of business of the Appellant/1st Defendant'.

9.The Learned Counsel for the Appellant/1st Defendant cites the decision in Devidatt Ramniranjandas V. Shriram Narayandas, AIR 1932 Bombay 291, wherein it is held that 'Under Clause 12 of the Letters Patent, the obtaining of leave to sue, in a case where the cause of action has arisen in part within the local limits of the original jurisdiction of the High Court, is a condition precedent to the entertainment of the suit, and the condition is not one which it is competent to the Court to ignore or for the parties to waive'.

10.Conversely, the Learned Counsel for the Respondent/Plaintiff refers to the paragraph No.25 of the Plaint, wherein the Respondent/ Plaintiff had averred as follows:

"25.The Plaintiff submits that on further verification, it came to light in July 2010 that the 1st Defendant has directly used the Plaintiff's confidential information and trace secrets and also disclosed the same to the 2nd and 3rd Defendants and their employees. The Defendants also commenced their marketing activities in India to the very same clients of Plaintiff through its subsidiaries namely the 2nd and 3rd Defendant who operate from Chennai and New Delhi and with the set of confidential information of Plaintiff viz., industry inputs, information, opportunities chart, threats, strength of competitors, customer list including their key officials and introduction they had through the plaintiff. The Defendants had approached the very same clients of Plaintiff in blatant breach of the Non-Disclosure Agreement dated 80.09.2007 and their repeated assurances and undertakings to that effect, marketed their products and garnered orders."

11.Added further, the Learned Counsel for the Respondent/ Plaintiff draws the attention of this Court to the averments made by the Respondent/Plaintiff, in the Plaint, wherein, in paragraph No.27, it was mentioned as follows:

"27.The Plaintiff further submits that the Defendants also poached upon one of Plaintiff's key officials by name Mr.Ravindran B Natarajan who joined the Plaintiff as Chief Marketing Officer in March 2006 and was promoted as Chief Operating Officer by January 2007 with an emolument of Rs.10 Lakhs p.a. He was inducted as a Director of the Plaintiff in February, 2007 and actively participated in the discussions, presentations, visitations of the 1st Defendant. The said official was the one, who closely co-ordinated and participated in each and every part of discussions and client meetings and was instrumental in client co-ordination and procuring orders. The said Mr.Ravindran was induced to resign from the Plaintiff company on 26.08.2009 by the Defendants and was recruited by the Defendants and on their rolls and is being used to subvert the Plaintiff's business and potentials."

12. That apart, the Learned Counsel for the Respondent/Plaintiff has referred to, in paragraph No.29 of the averments of the Plaint, which runs as follows:

"29. The Plaintiff submits that the Plaintiff's estimates of business income for the financial year 2010 was Rs.2,50,00,000/-. Due to the blatant and outrageous breach of trust and breach of Non Disclosure Agreement by the 1st Defendant by floating the 2nd and 3rd Defendants and competing with the Plaintiff with the wealth of information provided by the Plaintiff with the Plaintiff's own customers that were disclosed to them, the Plaintiff has suffered loss to the tune of at least Rs.1,50,00,000/- and is likely to suffer irreparable loss and injury to its business and reputation."

13. Also, the Learned Counsel for the Respondent/Plaintiff has referred to the following averments made by the Respondent/Plaintiff, in paragraph No.30, which runs as under:

"30. ... The Annual Reports of the 1st Defendant for the last few years shows that they had established Indian operations only at or about the time they commenced dialogues with the Plaintiff and remained dormant until they gathered entire information and business model from the Plaintiff."

14. The Learned Counsel for the Respondent/Plaintiff refers to paragraph No.35 of the Plaint, which deals about the cause of action and the same is as follows:

"35. The cause of action arose at Chennai when the Defendant contacted the Plaintiff on 06.09.2007 for a business tie-up; on 08.09.2007 when the Plaintiff and 1st Defendant entered into a Non Disclosure Agreement that was signed by Plaintiff at Chennai; on subsequent dates when the Plaintiff and Defendant exchanged numerous email correspondence; Plaintiff was visited by the Defendants' officials and the Plaintiff parted with its confidential information, trade secrets with the 1st Defendant; during 2007 & 2008 when the Plaintiff's officials visited USA and London to meet up with the Defendant's officials; on various dates between 2007 & 2008 when the Plaintiff introduced its customers, clients and associates to the Defendant's officials, during August, 2008 when the Defendants clandestinely enticed and took away one of the Plaintiff's Directors with them; during August, 2010 when the Defendant appears to have commenced its marketing competitive business with the confidential information and trade secrets provided by the Plaintiff; during July to October 2010 when legal notice, reply and rejoinder were exchanged and caveat petitions were filed by 2nd and 3rd Defendants. The cause of action arises de die in diem until the Defendant complies with the reliefs prayed for herein."

15. The prime submission of the Learned Counsel for the Respondent/Plaintiff is that this Court has jurisdiction to try and entertain the Suit as the Respondent/Plaintiff and the Appellant/1st Defendant and other Defendants are located at Chennai within the Jurisdiction of this Court and also most part of cause of action arose at Chennai within the jurisdiction of this Court.

16.The Learned Counsel for the Respondent/Plaintiff submits that the 1st Defendant filed a Caveat Petition under Section 148 A of C.P.C. before the City Civil Court, Chennai against the Respondent/Plaintiff. Also, it is represented on behalf of the Respondent/Plaintiff that for the legal notice dated 10.07.2010 issued by the Respondent/Plaintiff, the Appellant/1st Defendant has not issued a reply. But, a reply dated 19.10.2010 was issued by the Counsel on behalf of the 2nd Defendant.

17.The Learned Counsel for the Respondent/Plaintiff cites the decision of the Hon'ble Supreme Court, in Laxman Prasad V. Prodigy Electronics Limited and Another, (2008) 1 Supreme Court Cases 618, at Special page 620, whereby and whereunder, it is held as follows:

"There is considerable force in the submission of the respondent Company that what was agreed upon was not territorial jurisdiction of a court but applicability of laws. "Cause of action" and "applicability of law" are two distinct, different and independent things and one cannot be confused with the other. The expression "cause of action" has not been defined in CPC. It is, however, settled law that every suit presupposes the existence of a cause of action. If there is no cause of action, the plaint has to be rejected [Rule 11(a) of Order 7]. Stated simply, "cause of action" means a right to sue. It consists of material facts which are imperative for the plaintiff to allege and prove to succeed in the suit."

18.The Learned Counsel for the Respondent/Plaintiff relies on the Division Bench decision of this Court, in Wipro Limited V. Oushadha Chandrika Ayurvedic India (P) Limited, rep. By its Managing Director, K.S.Kochumon, Azad Road, Irinjalakuda 680 125, 2008 (3) CTC 724, at page 725, wherein, it is laid down as follows:

"It is, thus, seen that Section 62 of the Copyright Act and Section 134 of the Trade Marks Act prescribe an additional ground for attracting the jurisdiction of a Court over and above the normal ground, as laid down in Section 20 of the C.P.C. In other words, a special right is conferred on the proprietor of the registered trade mark to institute a suit for infringement of any trade mark or copyright in the district within whose jurisdiction he resides or carries on business. The provision contained in non-obstante clause by using the phrase "notwithstanding anything contained in the C.P.C, 1908 (5 of 1908) or any other law for the time being in force" is made with a view to give a overriding effect to the said provision. It is equivalent to saying that the provision would hold the field notwithstanding anything contained in the C.P.C or any other law for the time being force. Moreover, by virtue of Section 120 of the C.P.C, the provisions of Section 20 are not applicable as far as High Court is concerned. Therefore, the scope of this section cannot be curtailed by reference to Section 20 of the C.P.C or Clause-12 of the Letters Patent. Therefore, in a case of infringement of trade mark or copyright covered by Section 134(2) of the Trade Marks Act or Section 62(2) of the Copyright Act, the question of plaintiff taking prior leave under Clause 12 of the Letters Patent does not arise and the plaintiff need not take leave of the Court under Clause 12 of the Letters Patent even if only a part of the

cause of action or no part of the cause of action arose within the jurisdiction of this Court, if the plaintiff ordinarily resides or carries on business within the jurisdiction of the Court."

19. Apart from the above decisions, the Learned Counsel for the Respondent/Plaintiff cites the following decisions:

(i) In the decision of the Hon'ble Supreme Court, in Patel Roadways Limited, Bombay V. Prasad Trading Company, (1991) 4 Supreme Court Cases 270, at page 271, wherein it is held as follows:

"The Explanation to Section 20 is really an Explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the word "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation, which term, would include even a company such as the appellant. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office". The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business."

(ii) In the decision of this Court in USV Limited, D Block, T. Nagar, Chennai 600 017 and another V. Systopic Laboratories Limited, 2004 (1) CTC 418, at special page 427, in paragraph 22, it is observed as follows:

"22. It is also to be remembered that the defendant did not attribute any oblique motive nor it is his case that the address of the first defendant given in the plaint is a fictitious address. It is not even the case of the defendants that the address of the first

defendant is not an address with which he has no connection since the materials show that he has business connection with the first defendant at the said address, as it is to the very address he has sent goods for distribution. It is also not the case of the defendant that there no service of summons upon him on the said address. In view of the above, we hold that there is no need for the plaintiff to have obtained the leave to sue the first defendant and this point is answered in favour of the plaintiff/appellant."

(iii) In the decision of this Court in Chennimalai Yarns Pvt. Limited V. S.Chandrasekar and others, 2005 (5) CTC 411, at page 415, in paragraph 15 & 16, it is observed and held as follows:

"15.The expression "business" has a very wide import and would compass almost all the activities associated to the company. Business need not be carried on personally in that area. It may be through an agency or manager. The Plaintiff who was the Managing Director of D-1 company had some control over the business and the power of D-1 company. Since the D-1 Company is having its Head Office at Coimbatore and the Plaintiff being the Managing Director, inference could be drawn that D-1 company must have carried on part of its activities in Coimbatore also. In such circumstances, in the absence of a definite clause conferring exclusive jurisdiction on the Courts at Erode, the jurisdiction of Courts at Coimbatore cannot be said to be excluded.

16.Under Section 20(b), C.P.C., the leave must be specifically sought and granted for filing the suit. Leave of the Court may be obtained after institution of the suit. When some of the Defendants reside within the jurisdiction and some of the other Defendants reside outside the jurisdiction, the Court may be granted leave for filing the suit. By exercise of discretion where leave is granted, the Defendants who are residing outside the jurisdiction cannot raise objection. In the absence of any express Clause, conferring jurisdiction upon the Courts at Erode, no valid objection could be raised by the Defendants."

(iv) In the decision Kintali China Jaganadham and others V. K.Laxmi Naidu and others, AIR 1988 Orissa 100, it is held as follows:

"The necessity for obtaining leave of the Court has been imposed with a view to prevent an indefinite number of reckless and harassing suits being brought against the trustees by different persons interested in the trust. The real test for the applicability of S. 92 is to see whether the suit is fundamentally on behalf of the public for vindication of a public right."

20.Repelling the submissions of the Respondent/Plaintiff, the Learned Counsel for the Appellant/1st Defendant submits that as per Clause 11 of 8/11.09.2007, a mutual non-disclosure Agreement was signed between the Appellant/1st Defendant and the Respondent/ Plaintiff. All acts and transactions pursuant to the Agreement under rights and obligations of the parties are to be

governed, construed and interpreted in accordance with laws of the State of California without giving effect to the principles of conflicts of law and inasmuch as the Appellant/1st Defendant is not carrying on any business and does not have its office within the jurisdiction of this Court and per contra, only it has office at California in U.S.A., the non obtaining of leave to institute a suit by the Respondent/Plaintiff against the Appellant/1st Defendant is a fatal one.

21.The Learned Counsel for the Respondent/Plaintiff, by means of Reply, submits that the Annual Report for the year 2008 published by the Appellant/1st Defendant indicates that M/s.@Road Inc. was acquired by M/s.Trimble Navigation Limited effective on 16.02.2007 itself and the said M/s.@Road Inc. became part and parcel of Trimble Navigation Limited and due to such acquisition, the office of M/s.@Road Inc. in Chennai became the office of the 1st Defendant Trimble Navigation Limited.

22.That apart, it is the stand of the Respondent/Plaintiff that the Annual Report of Trimble Navigation Limited of the year 2008 discloses that they have their offices of world wide and further, they have office in Delhi and Chennai in India and the same address mentioned in the Plaint cause title is also reflected in the Annual Report.

23.According to the Learned Counsel for the Respondent/ Plaintiff, inasmuch as M/s.Trimble Navigation Limited carries on business in Chennai within the jurisdiction of this Court, no leave to sue was obtained by the Respondent/Plaintiff.

24.It is to be noted that the Respondent/Plaintiff has filed the Suit in C.S.No.120 of 2011 against the Appellant/1st Defendant and 2 other Defendants, seeking for the following reliefs:

"(a) granting a permanent injunction restraining the Defendants, their principals, subsidiaries, associates, directors, partners/proprietors, servants, representatives, employees, successors, agents, dealers and distributors or any of them claiming through them from providing/supplying real-time vehicle tracking system, personal tracker, Mobile Computing, Smart Card/RFID solution, Geo-coding, e-fleet and e-transport solutions, Logistics related Architecture Services such as 4th Party Logistics (Logistic Process Intelligence), Cost Compression, Optimization Solutions, Planning and Scheduling, 4PL Services or connected products and services in India either directly or indirectly in violation of the Non Disclosure Agreement dated 08.09.2007 or otherwise.

b)A preliminary decree be passed in favour of the Plaintiff directing the Defendants to render an account of revenue generated by them directly and indirectly, by sale and supply of real-time vehicle tracking system, personal tracker, Mobile Computing, Smart Card/RFID Solution, Geo-coding, e-fleet and e-transport solutions, Logistics related Architecture Services such as 4th Party Logistics (Logistic Process Intelligence), Cost Compression, Optimization Solutions, Planning and Scheduling, 4PL Services or connected products and services by breach of Non Disclosure Agreement dated 08.09.2007 with Plaintiff and final decree be passed in favour of

the Plaintiff for the amount of the revenue found to have been made by the Defendants after rendering accounts;

c)A Decree directing the Defendants jointly and severally to pay a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) as compensation for damages caused to the Plaintiff."

25.It is not out of place for this Court to make a relevant mention that, according to the the Appellant/1st Defendant, in Application No.1958 of 2011, in paragraph 6, has specifically averred that the Respondent/Plaintiff had deliberately furnished the false address at Chennai 113 and further, the Respondent/Plaintiff admitted, in the Plaint, that discussions had taken place in U.S.A. Furthermore, the Respondent/Plaintiff, in the Plaint, had tacitly admitted that part of cause of action for the Suit had arose within the jurisdiction of this Court at Madras.

26.It is to be borne in mind that 'granting of Leave to Sue' is a condition precedent to the Court having jurisdiction to entertain the suit. Ordinarily, if the order granting leave is void in law, the institution of the suit, numbering and other proceeding is invalid, in the considered opinion of this Court.

27.At this stage, this Court aptly recalls and recollects the decision in Mahomedbhai Husenbhai and others V. Admji Halimbhai and others, AIR 1922 Bombay 152, wherein, it is held that 'Where no part of cause of action arises some of the Defendants reside outside leave to sue, unless they acquiesce should be obtained'.

28.At this juncture, this Court relevantly points out the decision in M.Ponnuswamy V. V.K.T. Periasami Pillai and another, (1980) 2 MLJ 155 at page 156, whereby and whereunder, it is observed and held thus:

"A person is said to 'carry on business' when he controls or directs it or has a voice in its control or a share in the gain or loss. The test of 'carrying on business' is not the continuity or the intermittency of the business, but the fact of owning interest in the business and receiving profits. In order to determine whether a person is carrying on 'business' it must be first ascertained what the particular trade or occupation is and then it must be seen whether the facts proved amount to carrying on that particular business within the jurisdiction. Though ordinarily speaking, business is synonymous with the word 'trade', the former is a wider term in its scope than the latter and it includes every trade. The expression 'carrying on business' as used in ordinary legal parlance will necessarily involve the idea of successive acts. The word 'business' relates to some commercial or gainful activities. The term 'carry on' implies a continuous operation so that a person is said to carry on a trade or business only when he continues that trade or business for some length of time. The term 'carry on business' does not mean the performance of a single disconnected business act, but means conducting, prosecuting and continuing business by performing progressively all the acts normally incidental thereto. Hence the true meaning of the expression

'carrying on business' would be that a person should have been carrying on the said business continuously or successively or regularly at least with such frequency that he could be said to be pursuing the said system or habitually following the particular occupation in the place other than ;he one permitted by the authorities, because the last expression imparts the idea of continuity in operation. As may be seen from the above discussion, the word 'business' in its broad sense is commonly employed in connection with an occupation for livelihood or profit, but it is not limited to such pursuits, for, it has been said that the definition of 'business' by the Lexicographers is sufficiently broad and comprehensive to embrace every employment or occupation, and all matters that engaged a person's attention or require his care without the least regard to trade or business, and hence in this sense and dependent, of course upon the circumstances of the context, it has been held that the term does not necessarily mean in affair for gain or an occupation for profit, It is not confined to an undertaking for money profit, but may embrace any benefit which may enure to the owner. But the said word 'business' in a narrower or restricted sense refers to commercial business in which one engages for the purpose of his livelihood or profit and the like and hence it is applicable to any particular employment, occupation or profession followed as a means of his livelihood. It implies a regular and legal employment pursued for profit and with a view to livelihood or some gain. While the general import of the expression in its broad sense is such as stated above, the phrase 'carrying on business' is used in Section 20(a), Civil Procedure Code, in its narrower or restricted case so as to refer only to commercial business.

Whether a person carries on business at a particular place or not is a question of fact. To constitute 'carrying on business' at a particular place it is conceived that the essential part of the business must take place there. The 'business' one carries must be of a character giving rise to a cause of action which is enforceable in a Court of law, In other words, the business must be one recognised by law of this land. If there is any contract of a business entered into in a foreign country and no part of the cause of action arises within the jurisdiction of any Court in India, it cannot be said that the person is carrying on business within the local jurisdiction of a Court in India. In other words, the Court within whose local limits a business is carried on should have jurisdiction over a matter, if the cause of action relating to the business arises within its local limits or jurisdiction."

29. One cannot brush aside an important fact that the cause of action in suit for application has no reference to the defence taken in the suit nor is it related to the evidence by which the cause of action is proved, as opined by this Court. The term 'cause of action' means the circumstances forming infraction of the right or immediate occasion for action. But, it is to be determined in every case as to where the cause of action arises. Also that, whether cause of action has arisen at a given place is a question of fact which can be decided after examination of relevant witnesses and marking of documents by the respective parties concerned. Indeed, the term 'cause of action' means that bundle of facts which gives rise to a right of liability.

30.A cursory perusal of the terms of Clause 12 of the Letters Patent and Order III Rule 1 of Rules of the High Court, Madras, Original Side, 1956 points out that granting of 'Leave to Sue' is a condition precedent to the Court having jurisdiction to entertain the suit. In fact, Clause 12 of the Letters Patent deals with 'Original Jurisdiction as to suits'. Indeed, the High Court's Original Side Jurisdiction, subject to conditions in Clause 12, is unlimited, in the considered opinion of this Court.

31.It is by now a well settled principle that 'Leave of Court' is very much required when some of the Defendants are within and others outside jurisdiction. 'Leave may be granted even after the institution of the suit' as per decision *Nayayan V. Secretary of State*, (1906) ILR 30 Bombay 570 and 'even at the stage of Appeal' as per decision *Dwarakadas V. Hanuman Das*, AIR 1961 Rajasthan 187. Undoubtedly, there is an obligation upon the concerned Court before granting leave to consider the position of Non-Resident Defendants, who do not appear as well as to consider the objections of those who appear, and especially, when they are the real contestants, as per decision *Dalsukh Nathmal V. Motilal*, AIR 1938 Nagpur 262. Further, the Non-residents include even residents outside India, as per decision *Swaminathan V. Soma Sundaram*, AIR 1931 Madras 731.

32.Be that as it may, although the Respondent/Plaintiff has categorically averred, in paragraph 36 of the Complaint, that the Respondent/Plaintiff and the Defendants are located at Chennai within the jurisdiction of this Court and further, most part of the cause of action had arisen at Chennai within the jurisdiction of this Court, the same is disputed by the Appellant/1st Defendant, by taking a divergent stand that the Appellant/1st Defendant is not carrying on any business and does not have its office within the jurisdiction of this Court and it has offices at California in the United States and as such, the Leave to Sue should have been obtained by the Respondent/Plaintiff to file the suit against the Appellant/1st Defendant, admittedly, which was not done by the Respondent/Plaintiff. Therefore, these matters, in the considered opinion of this Court, are purely factual aspects, which are necessarily to be gone into/decided after adducing oral and documentary evidence [by examining the necessary witnesses and marking of relevant documents], by the respective parties concerned. However, before the Learned Single Judge, no witnesses were examined in Application No.1958 of 2011 and also no documents were marked on either sides. As such, this Court, without delving deep into the merits of the matter and also not expressing any opinion one way or other, to prevent an aberration of Justice, this Court disposes the Original Side Appeal, by setting aside the order of the Learned Single Judge, dated 07.03.2013, in Application No.1958 of 2011, in C.S.No.120 of 2011, for the reasons assigned in this Appeal. Consequently, the Application No.1958 of 2011 is remitted back for fresh consideration by the Learned Single Judge, in accordance with law.

33.In the result, the Original Side Appeal is disposed of, leaving the parties to bear their own costs. The Learned Single Judge is directed to take up the Application No.1958 of 2011 for fresh consideration, by affording opportunities to the parties to let in oral and documentary evidence, by examining relevant witnesses and marking of documents and to dispose of the same in accordance with law, as expeditiously as possible. Liberty is granted to the respective parties to raise all factual and legal pleas in Application No.1958 of 2011 (including the issue of Court's Jurisdiction).

(M.J., J.) (M.V., J.)
10.04.2014

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Internet : Yes

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AND

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JUDGMENT IN

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