

COMMERCIAL COURT, EGMORE, CHENNAI - 08.

**Present : Tmt. Deepthi Arivunithi, M.L.,
District Judge**

Thursday, the 06th day of June 2024.

C.O.S. S.R. No. 1330/2023

M/s. Sooriya Traders,
Rep. by its Partner,
Elayathambi Thavagnanasuriyan and
having Office at
No. 191, 5th Cross street,
Colombo - 11, Sri Lanka.
Rep. by its Power Agent,
Stephan Paul,
S/o. Paul Manoharan,
No. 1/1, Mathiyas Nagar,
St. Thomas Mount,
Chennai - 600 016.

... Plaintiff

Vs.

1. M/s. Devganesh Exporters,
D. No. 2-221, Sivareddy Palem,
Guntur, Andhra Pradesh - 522 509.
Also at:
Radhakrishna Cold Storage, Uppara,
Palam, v, Mandal,
Guntur District, Andhra Pradesh - 500 005.

2. Subba Rao,
Proprietor of M/s. Devganesh Exporters,
Radhakrishna Cold Storage, Uppara
Palam, Yadlapadu, Mandal,
Guntur District, Andhra Pradesh - 500 005.

3. Anka Babu,
S/o. Subba Rao,
Authorized Representative of M/s. Devganesh Exporters,
Radhakrishna Cold Storage, Uppara,
Palam, Yadlapadu, Mandal,
Guntur District, Andhra Pradesh - 500 005.

4. J S T Maritime Pvt., Ltd.,

Rep. by its Senior customer Service Mr. Raj kumar,
New No. 24, Old No. 322,
Thambu Chetty Street, Chennai - 600 001.

... Defendants

ORDER DATED: 06.06.2024

1. Heard the plaintiff counsel on maintainability. The plaintiff has filed the present suit under Order XXXVII Rule 1 of C.P.C. for recovery of money as against the defendants 1 to 3. The 1st defendant is a proprietary form represented by the 2nd defendant who is its proprietor and the 3rd defendant is the authorised representative of the 1st defendant. According to the plaintiff, they were doing the business of selling dried chillies in Sri Lanka. They approached the 1st defendant for buying chillies at wholesale rate and to export the same to the plaintiff. The order was placed by the plaintiff on 30.11.2022 and a sum equivalent to Rs.35,91,661/- was paid to the defendants 1 to 3. After the order was placed, the dried chillies were shipped by the defendants 1 to 3 through the 4th defendant who is a shipping agency. 560 gunny bags of dried chillies were exported by the defendants 1 to 3 through the Chennai port with the assistance of the 4th defendant shipping agent. When the consignment reached the Colombo Port, as per norms, a part of the consignment was sent to chemical analysis and it was found that the chillies contained heavily overdosed content of Aflatoxin, Aflatoxin B1 and Aflatoxin B2 and hence, the consignment was not released. Due to this the plaintiff sustained heavy loss. The defendants did not bother to reply to the communication sent by the plaintiff or did not respond to the legal notice.

2. Since no part of the transaction took place in Chennai, a query was raised by this Court on the jurisdiction aspect. The learned counsel for the plaintiff has pointed out that since the consignment was sent to Sri Lanka through the Chennai Port Trust, a part of cause of action arose at Chennai. In his support, he would rely upon the invoice raised by the 1st defendant in which the name of the port is mentioned as Chennai. Apart from this a prayer was also added by the plaintiff seeking a direction

to the 4th defendant to re-export the consignment on payment of the due charges. It is admitted by the plaintiff that there is no contract or agreement/memorandum of understanding or any other arrangement between the 4th defendant and the plaintiff and it is also apparent that there is no arrangement between the 4th defendant and the 1st defendant with regard to the delivery of the consignment. Even as per the averments in the plaint, the consignment was loaded with the assistance of the 4th defendant shipping agency and consignment was loaded at Chennai. Now, it has to be seen whether this fact can be considered to be a 'part of cause of action' arises in terms of s. 20 of the Civil Procedure Code, 1908.

3. In this regard, this court finds it relevant to refer to the decision of the Hon'ble Supreme Court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu reported in 1994 SCC (4) 711, wherein it was observed as follows.

"It is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kaur v. Pratap Singh, 1889 (16) Calcutta 98 at 10, Lord Watson said :

" the cause of action has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action or in other words to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a Writ Petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition."

While taking note of this decision, this Court is conscious of the fact that the above decision was rendered in respect of the jurisdiction of the High Court under Art. 226 of the Constitution of India, 1950. However, even in the said decision, the scenario

was likened to one under the Civil Procedure Code, 1908 and therefore, the said decision is taken note of to decide the present question on jurisdiction. A reading of the above decision would show that the question of jurisdiction based on cause of action has to be determined based on the facts of the case and on assuming that the averments made in the plaint are true. In the present case, it is to be noted that the defendant is a business concern situated in Andhra Pradesh and it is also to be noted that the plaintiff is a business concern situated and undertaking business at Colombo, Sri Lanka. The invoices would also show that it was raised by the 1st defendant concern in favour of the plaintiff. The only aspect based on which the present suit is filed in Chennai is that the name of the port in the invoice is mentioned as Chennai. It is the case of the plaintiff that the cargo was loaded into the vessel with the help of the shipping company.

4. The learned counsel for the plaintiff would state that a part of the cause of action arises in Chennai and therefore that the suit is maintainable. In the present case, as is already apparent, neither the plaintiff nor the defendants 1 to 3 reside or carry on business in Chennai. It is not their case that the invoice was raised at Chennai or that any transaction relating to the supply of goods took place in Chennai. Upon placement of order, the defendants 1 to 3 are said to have sent the consignment through the Chennai Port. When the consignment reached Sri Lanka, it was subject to a routine chemical analysis. The said analysis showed that the chillies contained Aflatoxin chemical in high quantity and therefore the goods were ordered to be re-exported or destroyed. On perusal of the plaint, it is seen that there is no averment raised regarding whether the 4th defendant shipping agency had any role to play in the transaction except facilitating the loading of the cargo. It is also relevant to note that even in the customs declaration given at the Colombo Port, the representative is mentioned as G& G Cargo Agency, Rajagiriya in Sri Lanka and it is mentioned that the port of loading is at Chennai.

5. The suit is for recovery of money based on the purchase order placed with the defendants 1 to 3 who are carrying on business at Andhra Pradesh and the supply of goods to Sri Lanka through a shipping agency of Sri Lanka from the port of Chennai and the rejection of goods at the Sri Lankan Port by the officials concerned. The payment for the said order is also said to be paid by the plaintiff directly to the 1st defendant. Thus, it is apparent from the averments in the plaint itself that no significant cause of action arose in Chennai. The mere fact that the goods were loaded at Chennai cannot clothe the Commercial Court situated at Chennai with jurisdiction since it is not an integral part of the cause of action as held by the Hon'ble Supreme Court in Alchemist Limited And Another vs State Bank Of Sikkim And Others reported in AIR 2007 SC 1812.

6. For the foregoing reasons, this court finds that it lacks territorial jurisdiction to entertain the claim of the plaintiff. Accordingly, the plaint is ordered to be returned in terms of Order VII Rule 10 CPC to be presented before the appropriate forum as per the rules prescribed.

Dictated to Steno-typist, typed by him, corrected and pronounced by me in the open Court this the 06th day of June 2024.

**District Judge,
Commercial Court,
Egmore, Chennai - 600 008.**

Draft/Fair/ Order of

**C.O.S. S.R.No.
1330/2023**

Dated: 06.06.2024

Commercial Court,
Egmore,
Chennai - 08.