IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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CCCA No.88 of 1997

Between:

M/s. Associated Traders & Engineers Ltd. …. Appellant

And

M/s.The New India Assurance Co.Ltd.

and others … Respondents

DATE OF JUDGMENT PRONOUNCED: *29.09.2015*

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. ***Whether Reporters of Local Newspapers***

   may be allowed to see the judgments? Yes / No

2. ***Whether the copies of judgment may be***

   marked to Law Reporters / Journals? Yes / No

3. ***Whether Their Lordship wish to***

   see the fair copy of the Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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Between:

M/s. Associated Traders & Engineers Ltd. …. Appellant

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and others … Respondents

! Counsel for Appellant : Sri K.Surender

^ Counsel for Respondent Nos.1 & 2 : Sri K.Krishna Mohan

< Gist:

> Head Note:

? Cases referred:

[1] (1996) 6 SCC 660

2 1983 LS (SC) 101

3 1991 ACJ 1001 (SC)

4 1991 ACJ 944 (AP)

5 (2000) 4 SCC 553

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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CCCA No.88 of 1997

Judgment:

This appeal is preferred by the first defendant aggrieved by the judgment dt: 04.03.1987 in O.S.No.1964 of 1987 passed by the learned II Additional Judge, City Civil Court, Hyderabad whereby and whereunder learned Judge decreed the plaintiffs' suit for recovery of Rs.1,40,617.50 with proportionate costs and interest @ 6% p.a from the date of suit till the date of realisation.

2) The factual matrix of the case is thus:

a) The second defendant is the consignor who dispatched consignment of 450 cases of safety razor blades valued at Rs.10,94,750/- through the first defendant—common carrier on 10.11.1984 from Calcutta to Hyderabad to the second defendant who is the consignee for door delivery. The consignment was received by the first defendant in a proper and secured condition. It was loaded in lorry bearing No.TRL 2452 and during the transit the said lorry involved in accident in Orissa State on 12.11.1984 and so the consignment was transhipped through another truck which reached Hyderabad on 23.11.1984. The second plaintiff requested first defendant to give open delivery and first defendant gave shortage certificate on 26.11.1984. The second plaintiff got the goods surveyed by M/s.J.B.Boda Marine General Survey Agencies Pvt. Ltd, who gave report to the effect that there was shortage of 5650 packets of blades worth Rs.1,39,567.50. So the second plaintiff made a claim of Rs.1,39,567.50/- + incidental charges towards cost of cartons repacking etc., at Rs.14,016.75/- totalling Rs.1,54,679.25/- against first defendant. The first defendant did not pay the amount, so the second plaintiff who insured the consignment with the first plaintiff preferred the claim with his under writer for Rs.1,54,579.50/- and first plaintiff paid the said amount and second plaintiff executed a letter of subrogation in favour of the first plaintiff on 09.05.1985. Further, second plaintiff executed power of attorney in favour of first plaintiff. The plaintiffs issued notice to second defendant on 24.08.1987 but he did not reply, hence the plaintiffs filed suit for recovery of the suit amount.

b) The second defendant remained *exparte*.

c) The first defendant resisted the suit on several contentions viz., i) the consignment was booked at the owner's risk and so the carrier will not attain any liability ii) the Court at Hyderabad has no jurisdiction because as per L.R, the disputes are subject to Delhi jurisdiction iii) no suit notice was issued to him within six months as contemplated under Sec.10 of the Carriers Act, iv) suit is barred by limitation v) the shortage was due to accident which was not under his control vi) the survey was done behind his back and hence he was not bound by the survey report and the alleged shortage etc.

3) A perusal of the judgment would show that the trial Court having regard to the facts and evidence, negatived all the contentions put-forth by the first defendant and decreed the suit as stated supra.

Hence the appeal by first defendant.

4) Heard argument of Sri K.Surender, learned counsel for appellant and Sri K.Krishna Mohan, learned counsel for R1 and R2. Notice sent to R3 served but no representation on his behalf.

5) The point for determination is"

"Whether the judgment of the trial Court is factually and legally sustainable?"

6) Fulminating the judgment, learned counsel for appellant firstly argued that the suit is not maintainable for the reason that there is no proper representation for the 2nd plaintiff. Expatiating it, he submitted that second plaintiff is a company and under Order XXIX Rule 1 CPC when a corporation or company files a suit, the pleadings shall be signed and verified on behalf of the company by specified persons like the Secretary, or a Director or Principal Officer but not a third party. In the instant case, none of the aforesaid persons signed the plaint on behalf of 2nd plaintiff. On the other hand, the Deputy Manager of the 1st plaintiff signed on behalf of 2nd plaintiff also on the strength of Ex.A14—Special Power of Attorney said to be executed by second plaintiff in favour of first plaintiff. He submitted that Ex.A14

is not valid in the eye of law for the reason, under Section 1A of Powers of Attorney Act, 1882, a power of attorney can be executed by one person in favour of another person but not by a company or corporation. So at the outset, there is no proper representation for second plaintiff and without second plaintiff the first plaintiff alone cannot maintain the suit in the eye of law.

7) Per contra, learned counsel for respondents/plaintiffs argued that the power of attorney executed by second plaintiff in favour of first plaintiff is a valid one and on the strength of the same the officer of first plaintiff signed and verified the pleadings on behalf of second plaintiff also.

8) On a perusal of evidence and concerned law, I find no force in the contention of the appellant. Section 1A of Powers of Attorney Act, 1882 reads that "power of attorney includes any instrument empowering a specified person to act for and in the name of the person executing it". It should be noted that the said Act has not defined the word 'person'. Therefore, we have to refer the General Clauses Act, 1897 for this purpose. Section 3(42) of General Clauses Act defines person as 'person shall include any company or association or body of individuals whether incorporated or not'. When this definition is employed in Section 1A of Powers of Attorney Act, 1882, it is clear that the company being a juristic person can execute a power of attorney in favour of another person (vide ***Jamia Milia Islamia v. Sh. Ikaramuddin*** AIR 2012 Delhi 39). Therefore, the Special Power of Attorney executed by second plaintiff in favour of first plaintiff under Ex.A14 is a legally valid document.

9) Then coming to other part of the argument, it is true that Order XXIX Rule 1 CPC specifies some persons who may sign and verify the plaint on behalf of the corporation. It reads thus:

> "**1. Subscription and verification of pleading:--** *In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the cases."*

However, apart from order XXIX Rule 1 CPC, pleadings can be signed on behalf of plaintiff by any authorised person as per Order VI Rule 14 CPC. This provision reads thus:

> "**14. Pleading to be signed:** Every pleading shall be signed by the party and his pleader (if any):
>
> Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf."

So, *de hors* Order XXIX Rule 1 CPC, pleading can be signed by any duly authorised person on behalf of plaintiff. My view gets fortified by the Judgment of Apex Court in ***United Bank of India v. Naresh Kumar***. In that appeal the question before the Apex Court was whether the suit for recovery of money filed by appellant/bank was properly instituted in view of the contention of defendants that Sri L.K.Rohatgi who signed on the pleadings had no authority to sign and file the plaint on behalf of appellant/bank. All the Courts including the Punjab & Haryana High court dismissed the suit on the ground that suit was not properly instituted though they upheld the bank's claim. In that context, the Apex Court while observing that public interest should not be allowed to be defeated on mere technicalities held as follows:

> *"Reading Order 6 Rule 14 together with Order 29 Rule 1 of the CPC it would appear that even in the absence of any formal letter of authority or power of attorney having been executed, a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the CPC, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the CPC.* ***(Emphasis supplied)*** *A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a*

> *Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.*

In view of above legal position, the Deputy Manager of first plaintiff can legally sign the pleadings on behalf of second plaintiff also.

10) The second contention raised by the appellant is that the Court at Hyderabad or other places have no jurisdiction to try the present suit in view of specific mentioning in Ex.A3—LR to the effect all the disputes are subject to Delhi jurisdiction only. It is argued that when the parties by contract limited the jurisdiction to a particular place, the jurisdiction of courts at other places will be ousted. In this regard, he relied upon the decision of Division Bench of Apex Court reported in ***Globe Transport Corporation vs. Triveni Engineering Works Limited***. He submitted that the trial Court without considering this aspect in a proper perspective negatived his contention.

11) The trial Court discussed this contention in issue No.2 and held that the consignment was entrusted to the first defendant by the second defendant at Calcutta and goods were delivered by the first defendant to second plaintiff at Hyderabad and the office of the first defendant is also located at Hyderabad and having regard to these facts it cannot be said that the court at Hyderabad has no jurisdiction. The trial Court further held that no part of the cause of action did arise at New Delhi and therefore, even by consent the parties cannot confer jurisdiction to the courts at Delhi. It relied upon the judgment of Apex Court reported in ***M/s.Patel Roadways Limited, Bombay v. M/s. Prasad Trading Company*** and judgment of this Court in ***M/s.East India Transport Agency, Hyderabad v. National Insurance Company Limited***.

Hence, the point is whether the finding of the trial Court in this regard is correct or not.

12) On the face of Ex.A3 it is mentioned "*all the disputes subject to Delhi jurisdiction only*". This condition is stipulated in view of the Head Office of appellant is located at Delhi. Except that, no part of cause of action as admittedly arisen at Delhi. It is trite law that when more than one court gets the jurisdiction due to part of cause of action has arisen within those courts, parties by consent can limit the jurisdiction to one court but however, they cannot confer jurisdiction even by consent to a court which lacks jurisdiction. In that view, generally the courts at Delhi will not get jurisdiction. However, the appellant claims jurisdiction to Delhi not by virtue of any part of cause of action has arisen there but by virtue of appellant/defendant No.1 carries on business at Delhi. As per Sections 19 and 20 CPC suits for compensation for wrongs or movables and suits other than ones mentioned in Sections 15 to 19 CPC can be instituted within local limits of the court in whose jurisdiction either cause of action wholly or any part arises or defendant resides or carries on business or personally works for gain. As per the appellant, since its business Head Quarters is at Delhi that place also gets jurisdiction along with Calcutta and Hyderabad and by virtue of stipulation in Ex.A3, the parties limited the jurisdiction to Delhi. The appellant draws strength from the decision of Apex Court in ***Globe Transport Corporation***'s case (2 supra). In this case the appellant transport company carrying on business in Jaipur. The consignor entrusted goods to the appellant at Baroda for transporting to Allahabad. The goods were damaged in transit. One of the conditions of the consignment note (Clause 17) was that the court in Jaipur will alone have jurisdiction in respect of claims in related matters. However, respondent filed suit for damages against appellant in City Civil Court at Allahabad where delivery of goods took place. The appellant questioned the jurisdiction of the said Court which was turned down by the trial Court and even by the High Court. However, a Division Bench of Supreme Court allowed the appeal with the observation:

> *"It is true and there we agree with the respondents that no part of the cause of action in the present case arose in the City of Jaipur,*

and therefore, the jurisdiction of the Court in Jaipur City could not be invoked on the ground that the cause of action or a part thereof has arisen in Jaipur. But the Jurisdiction of a court whether under Section 19 or Section 20 of the CPC can also be invoked on the ground that the defendant resides or carries on business or personally works for gain within the jurisdiction of the court and here it could not be disputed that the appellant does carry on business in the City of Jaipur and if that be so, there can be no doubt that the Court in Jaipur City would have jurisdiction to entertain the suit filed by the respondents against the appellant. In that event, Clause 17 of the Contract of Carriage conferring exclusive jurisdiction on the Court in Jaipur City and excluding the jurisdiction of other courts would be valid and effective."

a) So, Honourable Apex Court took the place of business of the appellant for conferring jurisdiction on the Court at Jaipur. However, subsequently a larger Bench of Apex Court has explained the meaning of the term "carries on business" appearing in Sections 19 and 20 CPC with reference to explanation provided in Section 20 in the case of ***Patel Roadways*** (3 supra) cited by the respondent which is worth perusal here. In that case the contention of appellant—Patel Road Ways was that in view of specific contract between the parties limiting the jurisdiction to Bombay which was the principal office of appellant, the respondents were not entitled to file suits against it at Madras though part of cause of action has arisen there and also its subordinate office was located. The appellant claimed jurisdiction to Bombay not because of any part of cause of action arisen there but because its business Head Quarter was located there and so the Bombay along with Madras gets jurisdiction. The question before the Apex Court was whether the jurisdiction of the Court at Madras where two suits were instituted was barred by virtue of contract between the parties limiting the jurisdiction to Bombay. The appellant during his argument relied upon the judgment in ***Globe Transport Corporation*** (2 supra) case also.

b) In that context, the Apex Court tested whether the courts at Bombay also had jurisdiction along with Madras with reference to explanation under Section 20 CPC. Since the appellant in that case like the present appellant is a transport corporation, the Apex Court embarked upon explaining the explanation to Section 20 CPC. The Apex Court held that explanation is in two parts. First part of the explanation applies only to such a corporation which has its sole or principal office at a particular place and the second part of the explanation takes care of the case where the defendant does not have a sole office but as a principal office at one place and has also a subordinate office at another place. Having thus divided explanation into two parts, the term "*carries on business*" was then explained by the Apex Court. It was held that in respect of corporation falling in first part i.e. sole or principle office at a particular place, it will be deemed to have carried on business at that particular place by virtue of fiction, whereas in respect of corporations falling in the second part i.e. corporation having principal office at one place and subordinate offices at different places, it shall be deemed to carry on business at such place i.e. at the place where its subordinate office is located. Giving such clarification the Apex Court ultimately held that the court at Bombay cannot be said to have jurisdiction since the appellant had its subordinate offices at the places where goods in the two cases were delivered for transport and hence the parties cannot confer jurisdiction to Bombay.

b) Applying the above ratio, in the instant case also the appellant/first defendant though has its business Head Quarter at Delhi also has its subordinate offices at Calcutta where the goods were entrusted, at Hyderabad where the short delivery of the goods was made. So, the appellant shall be deemed to be carrying on business through its subordinate offices at those places for the purpose of Sections 19 and 20 CPC and not at New Delhi so as to confer jurisdiction. So, the argument of the appellant is not sustainable.

13) The next contention of the appellant is that the goods were carried at owners risk as is evident from the mentioning on the face of Ex.A3—"*goods received at owner's risk*" and therefore, the appellant cannot be held liable to pay any damages that too when goods were stolen when the lorry met with accident and fell on way side in Orissa and when the accident was '*vis major*'. This argument has no

conviction and cannot be accepted. On number of occasions, the Apex Court has explained the term '*owner's risk*'. For instance in ***Nath Bros. Exim International Limited v. Best Roadways Limited*** the Apex Court considering various decisions on the subject has observed thus:

> *"27. From the above discussion, it would be seen that the liability of a carrier to. whom the goods are entrusted for carriage is that of an insurer and is absolute in terms, in the sense that the carrier has to deliver the goods safely, undamaged and without lose at the destination, indicated by the consignor. So long as the goods are in the custody of the carrier, it is the duty of the carrier to take due care as he would have taken of his own goods and he would be liable if any loss or damage was caused to the goods on account of his own negligence or criminal act or that of his agent and servants.*
>
> *28. Learned Counsel for the respondent contended that the goods were booked at "OWNER'S RISK" and, therefore, if any loss was caused to the goods, may be on account of fire, which suddenly engulfed the neighbouring warehouse and spread to the godown where, the goods in question were stored, the carrier would not be liable."*

As against above argument the Apex Court has explained the term "*owner's risk*" thus:

> *"29. "OWNER'S RISK" in the realm of commerce has a positive meaning. It is understood in the sense that the carrier would not be liable for damage or loss to the goods if it were not caused on account of carrier's own negligence or the negligence of its servants and agents"*

xx xx xx

> In that context, the Apex Court observed that in L***ewis v. The Great Western Railway Company*** (3 QB 195) the words "OWNER'S RISK', were held to mean, <u>'at the risk of the owner, minus the liability of the carrier for the misconduct of himself or servants</u>" (Emphasis supplied).
>
> *The Apex Court ultimately held that the expression "owner's risk" does not exempt a carrier from his negligence or negligence of his servants or agents.*

a) Applying the above ratio, in the instant case the negligence on the part of servants of appellant is writ large from the fact that the driver of appellant caused accident to the vehicle on the way at Orissa. As per Section 9 of Carriers Act, 1865 the suitor need not prove the negligence or criminal act of the carrier or his servants or agents but the burden will be on the carrier to prove his innocence. The appellant has not produced any evidence to show his driver was not responsible for the accident or that he was acquitted of the criminal charges without doing so he cannot simply contend that the accident is a 'vis major'. A man made fault cannot be dubbed as an Act of God. This argument of appellant therefore cannot be appreciated. Hence at the outset, none of the arguments raised by the appellant merits consideration to dethrone the judgment of the trial Court.

14) In the result, this appeal is dismissed by confirming the judgment and decree of the trial Court passed in O.S.No.1964 of 1987. No costs in the appeal.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 29.09.2015

Murthy