

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.1622 of 2011

M/s.Sai Shipping Co. (Madras) P. Ltd.,
No.2, Jaffar Syrang Lane,
2nd Floor,
Chennai 600 001.

... Appellant/Appellant/1st
Defendant

Vs.

1. M/s.Sun Paper Mills Ltd.,
rep. by its Secretary,
No.46, New No.86,
E.V.K. Sampath Road,
Chennai 600 007.

... 1st Respondent/1st Respondent/
Plaintiff

2. CI - Line, Cargo-Levent
Schiffahrtsgesellschaft MBH,
D-2800 Bremen I,
rep. by their present Agent,
M/s.Sai Shipping Co. (P) Ltd.,
No.2, Jaffar Syrang Lane,
2nd Floor, Chennai 600 001.

... 2nd Respondent/2nd
Respondent/2nd Defendant

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 24.10.2009 in A.S.No.190 of 2007 passed by the V Additional Judge, City Civil Court, Madras, confirming the judgment and decree dated 23.08.2005 passed in O.S.No.7285 of 1996 by the XVI Assistant Judge, City Civil Court, Madras.

For Appellant : Mr.K.Bijai Sundar

For 1st Respondent : No appearance

J U D G M E N T

The 1st defendant in the suit is the appellant herein. Aggrieved by the judgment and decree dated 24.10.2009 made in A.S.No.190 of 2007 by the V Additional Judge, City Civil Court, Madras, confirming the judgment and decree dated 23.08.2005

passed in O.S.No.7285 of 1996 by the XVI Assistant Judge, City Civil Court, Madras, the 1st defendant has come up with the present Appeal.

2. The 1st respondent herein viz. M/s.Sun Paper Mills Ltd. is the plaintiff in the suit. According to the 1st respondent/plaintiff, they booked a consignment of wood pulp on 24.10.1988, freight fully paid, to be delivered at Madras Port from SETUAL Port in Portugal, through the defendants. The appellant/1st defendant is the agent of the 2nd respondent/2nd defendant. The goods were sent through the Ship M.V.ALGENIB and a Bill of Lading bearing No.01, dated 24.10.1988 was issued in favour of the 1st respondent/plaintiff, through the defendants. The Ship M.V.ALGENIB arrived at the Madras Port in the last week of November 1988, but could be berthed only on 8th December 1988 for want of accommodation. The appellant/1st defendant unloaded the goods and informed the 1st respondent/plaintiff that as per clauses 11C and 12 of the Bill of Lading, unless the strike detention charges of Rs.1,26,943.02 are paid, their Principal, i.e. the 2nd respondent/2nd defendant Carrier had instructed them not to release the goods to be delivered to the 1st respondent/plaintiff. Along with the said consignment, the defendants had brought other consignments to be delivered to three other parties. The appellant/1st defendant represented to the 1st respondent/plaintiff that similar charges had been collected from the other consignees also.

3. Believing the words of the appellant/1st defendant and having no other alternative, the 1st respondent/plaintiff paid the said sum of Rs.1,26,943.02 as demanded by the appellant/1st defendant, as otherwise, they would have to pay the demurrage and other charges to the Port Trust. Only after receiving the said strike detention charges, the appellant/1st defendant delivered the goods to the 1st respondent/plaintiff's clearing Agents.

4. Thereafter, the 1st respondent/plaintiff made inquiries with the Madras Port Trust and found that the representations made by the appellant/1st defendant were not correct. The Carrier M.V.ALGENIB could be berthed at the Madras Port, in the normal course on 8th December 1988 only and at that time, there was no strike in the Port Trust. The plaintiff also came to know that similar strike detention charges were not collected by the appellant/1st defendant from the other consignees, but, they were allowed to take delivery of goods. According to the 1st respondent/plaintiff, in any event, the defendants could not have acted under clause 11 and the claim made under clause 11 is wholly unsustainable in law and on facts and it is not binding on the plaintiff. Hence, according to the 1st respondent/plaintiff, the defendants are liable to refund the amount with interest at 18% per annum. Though the 1st respondent/plaintiff

caused a legal notice to the appellant/1st defendant calling upon them to refund the strike detention charges, the defendants failed to refund the money. Hence, the plaintiff filed a suit in O.S.No.7285 of 1996.

5. Refuting the averments of the plaintiff, the defendants filed a Written Statement before the Trial Court, stating that the suit is barred by limitation. According to them, the 1st defendant, who acted as an Agent for the 2nd defendant, a disclosed Principal, is not personally liable and no personal decree can be passed against the 1st defendant under the provisions of Section 230 of the Contract Act. Therefore, the suit against the 1st defendant is misconceived, not maintainable and liable to be dismissed in limine.

6. It is further stated by the defendants that the 2nd defendant is not the owner of the Vessel, but only the charterers of the Vessel. CL - Line and Cargo-Levent Schiffahrtsgesellschaft MBH are two separate Companies. The Vessel M.V. ALGENIB chartered by the 2nd defendant arrived at the Roads of the Port of Madras on or about 28th November 1988 carrying several consignments of cargo including 313 units (2504 bales) of Wood Kraft Pulp in sheets and Bill of Lading No.01 dated 24.10.1988 was issued. After the Vessel arrived at the anchorage of the Port of Madras, it applied for berth in the usual course, but as the Port was congested, the Vessel had to wait from 28.11.1988 and was expected to be berthed on 04.12.1988, as no berth was available to discharge the cargo. Also, the shore labourers of the Port went on strike from 0.00 hours on 01.12.1988 which lasted till 22.00 hours on 03.12.1988 and during that period, operations of all the Vessels in Port came to a grinding halt. The Vessel was finally berthed on 08.12.1988 and commenced discharge. Consequently, the Vessel was delayed at Madras on account of shore labour strike for 3.667 days and the Carrier was entitled for claim detention charges at the rate of DM2/- per day under clause 12 of the Bill of Lading. In the event of the Ship awaiting a berth, the consignee shall be liable to pay detention charges notwithstanding the fact that freight had been paid and the contract was on liner terms. Thus, according to the defendants, in view of the conditions in clauses 11 and 12 of the Bill of Lading, the plaintiff was liable to pay the detention charges of Rs.1,26,943.02.

7. While denying the allegations of the plaintiff, the defendants also stated that under Clauses 11(c) and 12 of the Bill of Lading, the defendants are entitled to claim detention charges not only for the period of detention, but also for the duration when the Vessel is made to wait to get a berth. There is no convention or international practice by which the Carriers are barred from claiming charges for pre-berthing delays or

delay due to port strike. While the cargo was entrusted to the Carrier, the shippers/consignees were quite aware of the terms and conditions of the Bill of Lading and the liability to pay the charges in certain eventualities. Hence, clauses 11 and 12 cannot be deemed to be voidable or void and hence, the said clauses are valid and enforceable. The defendants are entitled to claim the charges as per the contract of Carriage and as per the terms and conditions of the Bill of Lading and they are not liable to refund Rs.1,26,943.02 or pay interest at 18% of the sum of Rs.1,26,943.02.

8. The Trial Court, on a consideration of the entire oral and documentary evidence, allowed the suit, directing the defendants therein to deposit a sum of Rs.1,72,700/- either jointly or severally together with interest at 18% per annum from the date of filing of the suit till the date of realization of the amount. Aggrieved by the said judgment, the 1st defendant preferred an appeal in A.S.No.190 of 2007 and the First Appellate Court, by a judgment dated 24.10.2009, dismissed the appeal, thereby confirming the judgment and decree of the Trial Court. Challenging the same, the 1st defendant is before this Court by way of the present Second Appeal.

9. It is the contention of the learned counsel for the appellant that the appellant was only an erstwhile Agent of a disclosed Principal, viz. the 2nd respondent and the appellant, in any event, cannot be held liable for the suit claim, under the provisions of Section 230 of the Indian Contract Act. He further contended that the Courts below failed to consider Ex.A2 - Bill of Lading containing all the terms and conditions of carriage including clauses 11 and 12 therein. According to him, when the Bill of Lading has been accepted by the consignor/1st respondent at the port of shipment without any demur or protest, it is not open for the 1st respondent to allege that the said clause is voidable and unenforceable.

10. On the other hand, learned counsel appearing for the 1st respondent/plaintiff submitted that the appellant/1st defendant played fraud on the plaintiff in collecting the strike detention charges and that the Trial Court rightly directed the appellant/1st defendant to deposit the amount due to the 1st respondent/plaintiff and the First Appellate Court rightly confirmed the same. Hence, he prayed for dismissal of the Second Appeal.

11. The substantial question of law that arises for consideration in this appeal is as follows:

“Whether the First Appellate Court is right in assuming that there was a fraud on

the part of the appellant in the absence of any pleading or evidence in this regard?"

12. Without going into the merits of the case, the legal plea taken by the appellant/1st defendant is that even though none is responsible for the so called incident, when the 1st defendant is only an Agent, no relief can be sought against the appellant/1st defendant. The Trial Court has granted the relief sought by the plaintiff and the First Appellate Court, while confirming the judgment and decree of the Trial Court, referring to the decision rendered in Link International and another vs. Mandya National Paper Mills Ltd. reported in 2004 (6) SCC 516 rendered a finding against the appellant herein on the ground that fraud has been committed by the appellant herein.

13. In the decision referred to above, the Trial Court and High Court concluded that even assuming that the appellants had not entered into the contract on behalf of the Principal, the fact still remains that two Courts have on the basis of evidence, concluded that the appellants facilitated a fraud on the respondent and hence, they would be personally liable to the respondent under Section 233 of the Contract Act, 1872.

14. In the present case on hand, the First Appellate Court, referring to the decision of the Apex Court in Link International case (cited supra) has given a wrong interpretation and has foisted the liability on both the defendants. Admittedly, the 2nd defendant has not filed any appeal. It is also clear from the pleadings that the plaintiff has not pleaded fraud on the part of the 1st and 2nd defendants in order to get the relief in the suit filed by him.

15. In the course of arguments, learned counsel for the appellant has also referred to a judgment dated 05.11.2014 of the Madurai Bench of this Court rendered in S.A.No.438 of 2009, wherein, it is made clear that the Agent is not liable for the acts done by him on behalf of the Principal. However, there are exceptions to the Rule, wherein, the liability can be foisted on the Agent in cases where fraud has been committed by the Agent or when the Agent acts contrary to the Contract entered into between the parties. Such is not the case here. The First Appellate Court has erroneously relied upon the judgment of the Apex Court reported in Link International case (cited supra).

16. Further, it is to be noted that while relying on a judgment, if it is found that the factual situation totally differs, then there is no compulsion for the subordinate courts to blindly rely on the same to arrive at a conclusion, as held by the Hon'ble Supreme Court in the case of Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others, reported in

(2002) 3 SCC 533, relevant portion of which is as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

17. In the light of the above, this Court is of the view that the First Appellate Court was wrong in assuming that there was a fraud on the part of the appellant, when there is no pleading or evidence to that effect. Hence, I find that the judgments of both the Courts below have got to be interfered with. Accordingly, the judgments and decrees of both the Trial Court and the First Appellate Court are set aside. Thus, the substantial question of law is answered in favour of the appellant/1st defendant.

In fine, the Second Appeal is allowed. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The V Additional Judge,
City Civil Court, Madras.

2.The XVI Assistant Judge,
City Civil Court, Madras.

3.The V.R. Section,
High Court, Madras.

+1cc to Mr.K.Bijai Sundar, Advocate, S.R.No.23988

S.A.No.1622 of 2011

SVI(CO)
CA(19/06/2017)