

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : **28.07.2017**

CORAM

THE HON'BLE MR.JUSTICE **P.KALAIYARASAN****C.S.No.1002 of 2007**

M/s. Rarefield Engineers Pvt., Ltd.,  
Rep. by its T.M.Unnikrishnan  
General Manager (Technical)  
GB Bhageeratha Residency,  
124, Marshalls Road,  
Egmore, Chennai - 600 008. .. Plaintiff

vs

1. M/s. Ten Ocean Marine Limited,  
3rd Floor, Solitaire Corporate Park,  
M.Vasanji Road, Chakala,  
Andheri East, Mumbai - 400 093.
2. Peter Gabriel  
M/s. Gabriel Law Corporation  
20, Malacca Street, 008-00, Malacca Center,  
Singapore - 048 979.
3. M/s. Leo Cruise and Entertainment Private Limited  
C/3, Vanarai Nivas Co-operative Housing Society Ltd.,  
Caranzalem Port, Goa - 403 002. .. Defendants

Civil Suit filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of O.S.Rules, seeking for a judgment and decree against the defendants jointly and severally for a sum of Rs.1,33,05,305/- with further interest at 18% per annum from the date of plaint till full payment and for costs.

For Plaintiff : Mr.T.V.Badrinarayanan  
For Defendants : Mr.S.Raghunathan for D1  
Mr.K.Harishankar for D2  
D3 - Exparte

**JUDGMENT**

This suit is for recovery of a sum of Rs.1,33,05,305/- with further interest at 18% p.a, and costs from the defendants.

2. The plaint averments are as follows :

(i) The plaintiff is a company in the business of ship repairing and other associated services since 2000. The plaintiff while dealing with a vessel ABG Kesava during October 2004 in Chennai Port, officials of the first defendant and Captain Rohit Himat Singhani suggested to the technical team of the plaintiff to also undertake work in another vessel M.V.Cappadocia then lying at Port of Panaji for installing air condition system for the whole ship. After preliminary discussion in Chennai with the first defendant's official during October, a meeting was held at Goa, Panaji on 07.10.2014 between plaintiff's technical team and the management staff of the first defendant. They inspected the vessel M.V.Cappadocia on board on 10.10.2004 at 10.30 a.m. The technical team of the plaintiff along with another of its official Mr.Scott John met the second defendant at Hotel Lapaz at Vascodagama. The second defendant introduced one Capt. Manish as attending Superintendent of the vessel. The second defendant explained to the technical team in detail about the nature of air condition installation works.

(ii) The plaintiff at the request of the defendants 1 and 2 submitted a quotation for Rs.2,01,49,610/- in their letter dated 16.10.2004 to the first defendant. The Managing Director of the first defendant wanted to reduce the machine capacity to bring down the expenditure. The plaintiff submitted a revised quotation for Rs.87,74,000/- in its letter dated 21.10.2004. It was personally handed over to the second defendant and he accepted the same. The first defendant issued written work order confirmation dated 08.12.2004 which was received by the plaintiff at Chennai.

(iii) On request of the plaintiff, the second defendant arranged for payment of Rs.24,89,910/- for procurement of air condition. This amount was remitted to the plaintiff's bank account in ICICI Bank Ltd., Chennai on 18.12.2004. The second defendant also arranged for the payment of second instalment of Rs.20,10,168/- and the same was paid into the plaintiff's account in the Catholic Syrian Bank Ltd., Chennai on 25.01.2004.

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(iv) The plaintiff commenced the installation work in November 2004 and completed the same on 31.03.2005. The second defendant personally visited the vessel on board, supervised the work

and suggested modifications from time to time. The work done certificates have been issued to the plaintiff by the master of the vessel evidencing the completion of the work including the additional work. The plaintiff raised an invoice for Rs.1,47,93,829/- including the amount of Rs.44,99,358/- already paid and including charges for additional works on one M/s. Lion Shipping Private Limited at the specific request of the defendants 1 and 2. When the plaintiff pressed for payment, the defendants 1 and 2 were evasive. On 16.03.2006, the plaintiff received a email from Capt. Rohit of the first defendant directing the plaintiff to approach the second defendant for payment. On 27.03.2006, the second defendant sent a email in reply to the demand of the plaintiff that he would meet the General Manager of the plaintiff but he did not meet. The defendants 1 and 2 always dealt with the plaintiff as the principal parties.

(v) The vessel M.V.Cappadocia is of Turkish origin. As such its owner is also a foreign entity. The entrustment of the vessel was done by the defendants 1 and 2. At no point of time, the defendants 1 and 2 disclosed who was the principal. All of a sudden, the second defendant for the first time in his reply notice, dated 28.06.2006 would claim that he only acted as charterer's agent, which is the third

defendant. In view of the communication of the second defendant dated 28.06.2006, the plaintiff has impleaded the third defendant, alleged charterer making it also jointly liable for the plaintiff's claim. In spite of the repeated demands and request, the defendants have been evading the calls of the plaintiff. In fact, the office of the first defendant disappeared all of a sudden. The third defendant is also not found in the address available on record of the Registrar of Companies Affairs. Therefore, the plaintiff has come forward with this suit.

3. The contentions of the written statement filed by the first defendant are as follows :

(i) All the defendants are admittedly carrying on business outside the jurisdiction of this Court and no part of the cause of action has arisen within the jurisdiction of this Court. The first defendant had only acted as Manager of the vessel M.V. Cappadocia and in such capacity had called upon the plaintiff to furnish a quotation for providing a centralised water cooled air conditioning plant to be installed, commissioned on board the said vessel. The plaintiff had also submitted a quotation on 16.10.2004. The first defendant while providing the job scope had made known to the plaintiff the fact that the first defendant was only acting as the Managers / Agents of the

said vessel by clearly putting them on notice that the installation of the equipment should be to the satisfaction of the owners / The Managers of the said vessel. The service contract with the plaintiff was on behalf of the said vessel and her owners / charterers.

(ii) The remittances were made not by the first defendant but by the other parties interested in the said vessel. The invoices in respect of the services were raised initially on M/s. Sea Gate Shipping Pvt., Ltd., Mumbai and to Lion Shipping Pvt., Ltd. There is no privity of contract between the first defendant and the plaintiff. The suit is also bad for misjoinder of party. Merely because a work order was placed by the first defendant on behalf of the vessel would not make liable for the payment of the said vessel. Even according to the averments in the plaint, the part payments have only been made by the owners. The first defendant denies the allegation that the first defendant had dealt with the plaintiff on a principal to principal basis. The first defendant never promised the plaintiff that they would settle the claim of the plaintiff. The plaintiff should only look to the owners and the master of the said vessel for payment of the amounts and nothing prevented the plaintiff from arresting the vessel if the amounts due to them had not been paid by the owners or the persons liable for payment of the

amounts, which cannot include the Managers of the said vessel. Hence, the suit is to be dismissed.

4. The contentions of the written statement filed by the second defendant are as follows :

(i) The suit has been filed without territorial jurisdiction. Even as per the plaint averments, the major part of cause of action for the suit arose outside the jurisdiction of this Court either in Mumbai where the confirmation of the contract was given or at Goa where the contract work was carried out.

(ii) The second defendant is neither a proper nor a necessary party, as there is no privity of contract between the plaintiff and the second defendant. The suit is bad for misjoinder of parties. The second defendant as a practising Advocate has been involved in negotiations and dealings between the plaintiff and the third defendant, the charterer of the vessel M.V.Cappadocia in a representative capacity. The correspondences exchanged between the second defendant and the plaintiff is also in the capacity of a lawyer of the third defendant. The second defendant denies having given his personal undertaking towards payments. The second defendant denies

the allegation that he supervised the work undertaken by the plaintiff and he did not make any request to the plaintiff to raise invoice in the name of M/s. Lion Shipping Pvt., Ltd or Seagate Shipping Pvt., Ltd. The second defendant agreed to meet the plaintiff on his visit to India through email dated 27.03.2006 to resolve issues relating to the loss of earnings caused to the third defendant owing to the delay caused by the plaintiff in executing the installation works in representative capacity acting on behalf of the third defendant.

(iii) If at all any payments were due to the plaintiff, the same had to be recovered from the third defendant as the repair works were carried on for the third defendants. The allegation that payments for repairs was made by the second defendant is false. In fact the payments was made by one M/s.Paladine Grande Ltd. The entrustment of the vessel was made by the first defendant and the second defendant has nothing to do with it. All the negotiations were also held with the first defendant and there is no evidence to show that the second defendant is in any way personally involved. All along the plaintiff was very well aware of the fact that the first defendant was only the agent of the vessel. Being experienced ship repairers the plaintiff knew that a ship repairer can have access to the vessel's

documents which will clearly give the details about the ownership of the vessel. If monies are payable to the plaintiff for the work done, the same ought to be collected from the first defendant and not from the second defendant as there is no privity of contract between the plaintiff and the second defendant. Therefore, the suit is to be dismissed.

5. On perusal of the pleadings of the parties, the following issues have been framed for trial :

- (1) Whether this Court has jurisdiction to try the suit ?
- (2) Whether the plaintiff is entitled to the suit claim of Rs.1,33,05,305/- with interest ?
- (3) Whether the plaintiff is entitled to interest at 18% ?
- (4) Whether the suit is bad for mis-joinder of parties ?
- (5) Whether there is any privity of contract between the plaintiff and the first defendant ?
- (6) Whether there is any privity of contract between the plaintiff and the second defendant ?
- (7) Whether the defendants are jointly and severally liable to the plaintiff ?
- (8) Relief and cost ?

6. The plaintiff has been examined as P.W.1. and Exs.P.1 to P.26 were marked on the side of the plaintiff. On the side of the defendants, no one was examined. Ex.D.1 was marked on their side.

7. Issue No.1 : The plaintiff filed the suit for recovery of amount for the repairing work done in the vessel. The plaintiff filed the suit before this Court as part of cause of action arose within the jurisdiction of this Court. The defendants 1 and 2 per contra contends that the repair works were performed by the plaintiff in Goa and therefore, this Court has no jurisdiction.

8. Section 20 (c) CPC reads thus :

20. Other suits to be instituted where defendants reside or cause of action arises - Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction -

(a) ...

(b) ...

(c) the cause of action, wholly or in part, arises.

This Section is very clear that suit can be filed where even part of cause of action arises.

9. The learned counsel appearing for the plaintiff as well as the second defendant rely the Judgment of the Hon'ble Supreme Court in **A.B.C.Laminart Pvt., Ltd., v. A.P.Agencies**, reported in **(1989) 2 SCC 163** for the question of jurisdiction. The Hon'ble Supreme Court has held as follows :

"15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of, its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can

always be filed at the place where the contract should have been performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors."

10. Here in this case, the plaintiff submitted revised quotation by handing over personally to the second defendant. The first defendant issued written work order confirmation dated 08.12.2004 which was received by the plaintiff at Chennai. Towards the work two remittances were made to the plaintiff and both the remittances were made one on

18.12.2004 and another on 25.01.2004 in Chennai. Remittances were made into the plaintiff's bank account. Having received the work order confirmation at Chennai and having received the payments in Chennai by the plaintiff, part of cause of action arise within the jurisdiction of this Court and therefore, as per the above Judgment, this Court has got jurisdiction to try the case.

11. Issue Nos. 4,5,6 and 7 :

The case of the plaintiff is that he presented the revised quotation to D2 and written work order was issued by D1. The specific case of the first defendant is that even though D1 issued work order, it has been stated that the work should be carried out to the satisfaction of the owner of the vessel and therefore, there is no privity of contract between D1 and the plaintiff. The specific case of the second defendant is that he as a lawyer represented the charterer of the vessel, namely D3 and there is no privity of contract between D2 and the plaintiff. There is no dispute that the plaintiff undertook repairing work and commenced the work in November 2004 and completed on 31.03.2005. The master of the vessel also issued work done certificate for the work done by the plaintiff.

12. The fact also remains that the plaintiff raised invoice for Rs.1,47,93,829/- including advance and additional work. The work order confirmation issued by the first defendant to the plaintiff is marked as Ex.P.3. The same reads thus :

"Carrying out A/C installation on areas required as mentioned on discussions and on confirmation. After installation commissioning and servicing to the satisfaction of owners and managers.

Job completion certificate will be accepted only after confirmation by the attending superintendent."

Even in the written statement of the first defendant, it is pleaded that D1 acted only as Manager of the vessel. The above said work order confirmation says that the installation, commissioning and servicing to the satisfaction of the owners and managers. Admittedly the vessel is foreign origin. The plaintiff's case is that D1 and D2 never disclosed the principal to the plaintiff. There is no evidence to show that either D1 or D2 disclosed the principal to the plaintiff, excepting the evidence of P.W.1 in cross-examination that the plaintiff came to know the name of the principal through the documents in the vessel.

13. D2 has not denied the discussions made with the plaintiff prior and during the work. Only in reply notice issued by D2, dated 28.06.2006 marked as Ex.P.24, D2 stated that he represented the charterer, ie., Leo Cruises and Entertainment Pvt., Ltd., i.e., after more than a year from the date of completion of the work and after several correspondences between the plaintiff and the second defendant. Ex.P.16 is the email sent by the second defendant to the plaintiff on 03.05.2006. In this it is said that D3 charterer has prepaid for the work done by the plaintiff and they were thinking of meeting the plaintiff to discuss the issues on losses and damages due to delay in the initial costs. However, in this letter the work contract without the involvement of the principal / owner is admitted.

14. The learned counsel appearing for the plaintiff cited the Division Bench Judgment of this Court in **M/s. Phonix Enterprises Co., Ltd., v. Union of India** reported in **1993 (II) MLJ 603** and contended that when the defendants enter into contract with the plaintiff without disclosing the principal, the defendants are liable under Section 230 of the Indian Contract Act. The Division Bench of this Court has held as follows :

"13... Admittedly, the fourth defendant never disclosed its principal. Even in the written

statement the owner is shown as Eastern Glory Enterprises and not the second defendant. In the Landing certificates under Exs.A-24 and A-28, the fourth defendant has simply signed as the agent. Even in Exs.A-30 and A-32, the name of the principal has not been disclosed. We have already referred to the fact that the two documents merely mention that the carrier was not responsible. In the cross-examination D.W.2 states that he does not know who the owner of the ship is and that the fourth defendant did not disclose the name of the owner of the ship to the second plaintiff. Significantly, he has deposed that after this suit, the fourth defendant made enquiries and ascertained as to who was the owner and the owner was in foreign country. The relevant sentence reads thus in Tamil :

தஃஃஃஃ; gpf Owner ahh; vd;W tprhhpj;J bjhpe;J  
bfhz;nlhk;/ Owner me;epa ehl;oy; ,Uf;fpwhh;/

In those circumstances, the fourth defendant cannot claim that it is not liable by virtue of the first part of Sec.230 of the Contract Act."

15. The learned counsel appearing for the second defendant cited Judgment of the Hon'ble Supreme Court in **Cochin Frozen Food Exports (P) Ltd., v. Vanchinad Agencies** reported in **(2004) 13**

**SCC 434** and contended that the only requirement for exception to the general rule is that the principal should be resident abroad. In the above ruling, it has been held as follows :

"5. The section provides that, as a general rule, an agent cannot be liable for a contract entered into by such agent for and on behalf of his principal. There are three exceptions to this general exemption from liability. The first exception is the one with which we are concerned in this case. It provides that if the principal is abroad then the agent could be sued and be made liable on a contract entered into by such agent on behalf of such principal. The second exception deals with the case of an undisclosed principal and the third with the case where the principal's name though disclosed, cannot be sued by reason of any disability. The disclosure or non-disclosure of the principal as far as the first exception is concerned is immaterial. The only requirement is that the principal should be resident abroad."

The general rule is that an agent cannot be made liable for a contract entered into by such agent for and on behalf of his principal. In the above Judgment, the first exception which alone was concerned in that case was dealt with. Section 230 of the Indian Contract Act provides three exceptions for the above general rule and therefore, the above

ruling is not applicable to the facts of this case.

16. Section 230 of Indian Contract Act reads thus :

"230. Agent cannot personally enforce, nor bound by, contracts on behalf of principal - In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary - Such a contract shall be presumed to exist in the following cases : -

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) where the agent does not disclose the name of his principal;
- (3) where the principal, though disclosed, cannot be sued."

17. The second exception provided in the above section is that where the agent does not disclose the name of his principal. Here in this case, as already pointed out, neither D1 nor D2 disclosed the principal, namely the owner of the vessel. D1 and D2 dealt with the plaintiff as principal parties. D3 is the charterer of the vessel. Form 32

of the third defendant is marked as Ex.P.19, wherein D2 is shown as one of the Directors of D3. Thus D2 as Director of D3 charterer was dealing the transaction with the plaintiff and not as a lawyer as alleged by D2.

18. Another contention of the defendants 1 and 2 is that the plaintiff raised invoice in favour of Lion Shipping Pvt., Ltd. It is the specific case of the plaintiff that only at the request of D1 and D2 invoice was raised in the name of Lion Shipping Pvt., Ltd. Memorandum of Association and Articles of Association of Lion Shipping Pvt., Ltd., are marked as Ex.P.20 and Ex.P.21. These documents evince that D2 is one of the Directors of that company. Therefore, the contention of the plaintiff that only at the request of D1 and D2, the invoice was raised in the name of Lion Shipping Private Limited is acceptable, thereby the contention of the defendants deserves to be rejected. सत्यमेव जयते

19. Above all, both the defendants 1 and 2 have not entered into witness box to establish the case set up by them.

20. The learned counsel appearing for the plaintiff cited the

Judgment of the Hon'ble Supreme Court in **Vidhyadhar v. Mankikrao and another** reported in **AIR 1999 SC 1441 (1)**. In this Judgment, it has been held as follows :

"16. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbaksha Singh v. Gurdial Singh, AIR 1927 PC 230."

21. Here in this case, as already noted the specific case of D1 is that D1 issued written work order confirmation only as an agent of the owner. D2 pleaded that he acted only as a representative of D3 Charterer. According to D1 and D2, there is no privity of contract between them and the plaintiff. To establish the case set up by them they have not entered into witness box and subjected themselves for cross-examination. Therefore, as per the above Judgment, presumption would arise that the case set up by them is not correct. Therefore, viewing from any angle, the defendants are jointly and severally liable and the issues 4 to 7 are answered in favour of the

plaintiff.

**22. Issue Nos.2 and 3 :**

The plaintiff though raised invoice for Rs.1,47,93,829/- which includes advance and additional work. The present claim is for a sum deducting the amount already paid which comes to Rs.1,33,05,305/- including interest at 18% p.a., on 1,02,94,471/- from the date of invoice, i.e., 20.10.2005. The plaintiff is also entitled to the subsequent interest at 12% p.a. The issue 2 and 3 are answered accordingly.

**23. Issue No.8 :**

The defendants 1 to 3 are jointly and severally liable to pay a sum of Rs.1,33,05,305/- with further interest at 12% p.a., from the date of plaint till the date of realisation.

In fine this Civil Suit is decreed with costs, whereby the defendants 1 to 3 are directed to pay the plaintiff a sum of Rs.1,33,05,305/- with further interest at 12% p.a., from the date of plaint till the date of realisation.

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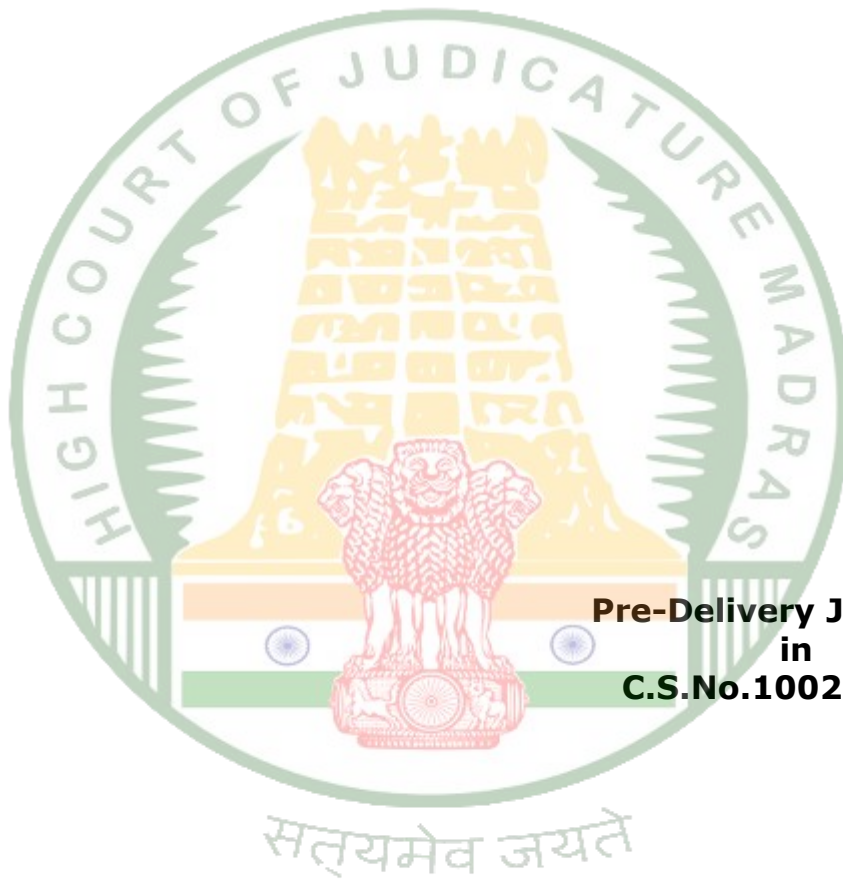
**28.07.2017**

Index : Yes

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**P.KALAIYARASAN, J**

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**Pre-Delivery Judgment  
in  
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**28-07-2017**