

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.02.2017

PRONOUNCED ON: 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.796 of 2010

J.Jude Vallabadas, Proprietor of
M/s.T&J Shipping and Insurance Services
Chennai-1

Plaintiff

Vs

1. M/s.Sea-Trans Shipping Limited by its
Director Eric J.D'Sa, Mumbai-10
2. The Principal Officer, Mercantile Marine Department
Chennai-1
3. The Chief Terminal Manager, IOCL
Foreshore Terminal, Chennai-13
4. The Chief Terminal Manager, ICOL
Tondiarpet Terminal, Chennai-81

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC for the reliefs as stated therein.

For Plaintiff : Mr.T.V.Vineeth Kumar

For Defendants : DD1,3 & 4-Set Exparte

JUDGEMENT

This civil suit had been filed to pass a judgement and decree, against the 1st Defendant:-

- (a) for a sum of Rs.26,91,204.73/- (Rupees twenty six lakhs ninety one thousand two hundred and four and paise seventy three only) with interest @ 24% from the date of the plaint till

the date of realisation.

(b) for a sum of Rs.10,00,000/- (Rupees ten lakhs only) towards damages.

(c) for costs of the suit.

2. It had been stated in the plaint that the Plaintiff is the authorised agent of the 1st Defendant at Chennai and Ennore Ports for 3 SSL Barges, namely, CHANAK, MAYUR or CHEEL and SANAYA operating under Indian Oil Corporation Limited under Contract No.TNSO/OPS/BARGE-PST for the commercial activities of the 1st Defendant with the Indian Oil Corporation Limited and for attending to statutory licensing work for the Barges of the 1st Defendant. The 1st Defendant is having business contract and association with the Defendants 2 to 4. The 1st Defendant was irregular in making payment of service charges. Till February 2010, there were arrears to the tune of Rs.18,74,538.73/- towards services charges and other expenses. The 1st Defendant tried to transfer the services rendered by the Plaintiff without settling the dues of the Plaintiff to another agency in order to defraud the Plaintiff. The 1st Defendant, after negotiating with the Plaintiff, stating that they were in deep trouble and suffered huge loss, had entered into a fresh memorandum of agreement on 1.3.2010. On the same day, an addendum was also entered into between the Plaintiff and the 1st Defendant. The 1st Defendant negotiated with the Plaintiff to settle the claim to Rs.4,00,000/- on condition that they would continue the business with the Plaintiff.

3. It had been further stated in the plaint that after the said Memorandum of Agreement, the 1st Defendant was settling the service charges

in bits and pieces contrary to the terms of the said MOA. On 19.7.2010, the Plaintiff had received an email, stating that the said MOA had been cancelled, which is contrary to the said MOA, since there was no prior notice. The Plaintiff had also sent a reply dated 27.7.2010, explaining all the details, for which, the 1st Defendant had sent a reply dated 29.7.2010. It had been stated that the 1st Defendant is bound to pay the arrears of services charges with two months service charges before cancelling the MOA and accordingly, the 1st Defendant is bound to pay Rs.18,74,538.73/- as on 31.11.2009 and Rs.8,16,666/- as on 18.7.2010, the date of termination agreement and in all, a sum of Rs.26,91,204.73/-. The Plaintiff had also estimated the damages and loss of business to the tune of Rs.10,00,000/-. The Plaintiff had sent a legal notice dated 6.8.2010, demanding to settle the claim of Rs.26,91,204.73/- with interest at the rate of 24% per annum together with Rs.10,00,000/- as damages, in all totalling Rs.36,91,204.73/- to the Plaintiff. The 1st Defendant is now making attempts to sell its Vessels and also attempting to close down its business in Chennai. In such circumstances, this civil suit had been filed for the reliefs as stated above.

4. Though the Defendants 1, 3 and 4 were served on 2.12.2010 and 2.11.2010 respectively, no written statement had been filed by them. For non filing of the Written Statement, the Defendants 1, 3, and 4 were set exparte by order dated 4.1.2017. However, it had been stated by the learned counsel for the Plaintiff that the relief for the suit survives only as against the 1st Defendant. By order dated 18.1.2017, since the Plaintiff did not take steps on

the 2nd Defendant, this court had dismissed the suit as against the 2nd Defendant and ordered for recording of exparte evidence. The Plaintiff had filed the proof affidavit for his chief examination and receipt of 8 documents to prove the suit claim. In the exparte evidence, the Plaintiff was examined as PW.1 and Ex.P1 to P8 were marked.

5. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P8, adduced by PW.1, this Court is of the view that the plaintiff has proved the suit claim and hence, the Plaintiff is entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for with costs. Time for payment is three months.

24.02.2017

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - J.Jude Vallabadas

2. List of Exhibits Marked on the side of the Plaintiff:-

S.No	Exhibit	Description	Date
1	Ex.P. 1	Memorandum of agreement enetered into between the Plaintiff and the 1st Defendant	01032010
2	Ex.P. 2	Addendum to the memorandum of understanding	01032010
3	Ex.P. 3	Invoices from 10.10.2008 to 31.10.2009	
4	Ex.P. 4	Statement of accounts	
5	Ex.P. 5	Email from 1 st Defendant to the Plaintiff	27072010
6	Ex.P. 6	Reply to the email	27072010
7	Ex.P. 7	Reply	29072010
8	Ex.P. 8	Advocate notice	06082010

3. List of Witnesses Examined on the side of the defendants:-
Nil

4. List of Exhibits Marked on the side of the defendants:-
Nil

24.02.2017

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.796 of 2010

24.02.2017
<http://www.judis.nic.in>