

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.114/2017**

% **17th April, 2017**

GIRISH PRAKASH Appellant

Through: Mr. Maroof Ahmad, Advocate.

versus

UNIVERSAL CARGO MOVERS Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.14066/2017 (for condonation of delay in filing)

1. For the reasons stated in the application, delay of 81 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M. No.14067/2017 (exemption)

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.14068/2017 (for condonation of delay in re-filing)

3. For the reasons stated in the application, delay of 15 days in re-filing the appeal is condoned.

C.M. stands disposed of.

+RSA No.114/2017

4. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent judgments of the courts below; of the Trial Court dated 27.3.2014 and the First Appellate Court dated 1.9.2016; dismissing the suit for recovery of Rs.2,64,330/- filed by the appellant/plaintiff. Originally there were three defendants in the suit. Defendant nos. 2 and 3 in the suit were the shipping line and the transportation company, namely WSA Lines Pvt. Ltd and WSAL CP WORLD LIC. Defendant nos. 2 and 3 were deleted from the array of the defendants and the suit was dismissed as against them because the suit against them was barred under the Indian Carriage of Goods by Sea Act, 1925. Suit therefore only continued against the respondent/defendant no.1, M/s Universal Cargo Movers.

5. The admitted facts are that the present respondent/defendant no.1 was only an agent who acted for and on behalf of the disclosed principals being defendant nos. 2 and 3. The bill of lading in the present case was issued by the present respondent/defendant no.1, in the name of the principals i.e the defendant nos. 2 and 3. These are admitted facts and so stated by the First Appellate Court in its impugned judgment as under:-

“A perusal of the records of the Ld. Trial Court indicate that the suit initially filed by the plaintiff on 11.08.2008 was against M/s Universal Cargo Movers, WSA Lines Pvt. Ltd and WSAL CP World LIC arrayed as defendant nos.1, 2 & 3 respectively. The submissions that have been made through the plaint by the plaintiff i.e the present appellant is to the effect that the plaintiff is the proprietor of M/s. Ecuador, Shop No.245/30, School Block, Madawali, Fazalpur Road, Delhi-11009 and had been carrying on his commercial activities by participating in international exhibitions including supply of his products of foreign buyers at different places and that he had an order to supply his goods to foreign buyers for he had to send his consignment to Dubai (UAE) and that the plaintiff had handed over his goods to defendant no.1 and had apprised defendant no.2 of the nature of the shipment and its urgency and had requested defendant no.1 to book the shipment with such a cargo which would be able to deliver the goods in time i.e. 04th October, 2006. It was submitted through the plaint that the defendant no.2 was an authorized agent of defendant no.1, the shipping line and had its office in Delhi and was entitled to issue shipping bills on behalf of defendant no.1 and was responsible for booking and delivery of the shipment through its various shipping lines and the defendant no.3 was the main shipping line/cargo having its head office in Dubai and also having its branch office in Delhi apart from Dubai. It was further submitted by the plaintiff that the plaintiff had to send his consignment consisting of various kind of Indian handicraft items and ready-made garments to Dubai which were to be delivered to customers in Dubai from 4th to 14th October, 2006 and that the defendant no.1 had approached the plaintiff and had offered his services and also assured that he would book the consignment with the defendant no.2 which was a shipping line and the delivery of the shipment would be made in time.” (underlining added)

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6. As per Section 230 of the Indian Contract Act, 1872, an agent takes no liability once the principal is a disclosed principal.

Section 230 of the Indian Contract Act reads as under:-

“Section 230. Agent cannot personally enforce, nor be 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.”

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7. Since in the present case, defendant no.1, the sole respondent, has acted for and on behalf of the disclosed principals namely defendant nos. 2 and 3, there is hence no liability of the defendant no.1/sole respondent. I may note that the impugned judgment of the First Appellate Court does not refer to Section 230 of the Indian Contract Act, however, I am entitled to refer to the same in view of Order XLI Rule 24 CPC and the ratio of the judgment of the Supreme Court in the case of *Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782*.

8. For the sake of completion of narration, it is stated that the bill of lading issued in this case dated 23.9.2006 has been proved and exhibited by the appellant/plaintiff as Ex.PW1/3, and which does not show the respondent/defendant no.1 is the principal, because, the respondent/defendant no.1 is only shown as an agent of the disclosed principals which are the defendant nos. 2 and 3, and against whom suit stands dismissed as barred by limitation.

9. In view of the above, no substantial question of law arises in this Regular Second Appeal. Dismissed.

APRIL 17, 2017
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VALMIKI J. MEHTA, J