

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-02-2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.223 of 2018

and

C.M.P.No.2549 of 2018

M/s.Amarjyothi Carrying Corporation,

"The Moon Stone Meadows",

G-2, Ground Floor, D-Block, Door No.127,

1st Main Road, Anna Nagar (East),

Chennai 600 102

... Appellant

Vs

1. M/s.BEML Limited,

Mysore Complex,

Belavadi Post, Mysore- 570 018.

Rep. by its Subrogee/Special Power of Attorney Agent,

The New India Assurance Co. Ltd., Legal Department,

Regional Office, 770A, Annasalai, Chennai 600 002,.

2. The New India Assurance Co. Ltd.,

Legal Department, Regional Office,

770-A, Annasalai, Chennai 600 002.

... Respondents

PRAYER :

Civil Miscellaneous Appeal filed to set aside the fair and decretal order dated 24.08.2017 in I.A.No.56 of 2017 in I.A.No.5962 of 2016 in O.S.No.2336 of 2016 passed by the learned XVII Additional Judge, City Civil Court, Chennai 1, dismissing the Petition filed by the respondent under Order IX Rule 13 of CPC.

For Appellant : Mr.Rajendra Prasad Tayal

For Respondents : Mr.S.Dhakshinamoorthy

J U D G M E N T

The appeal has been filed as against the order dated 24.08.2017 passed by the Trial Court dismissing I.A. No.56 of 2017, which was filed by the appellant herein to set aside the ex parte order dated 20.04.2016 passed in I.A. No. 5962 of 2016 in O.S. No. 2336 of 2016 permitting the 2nd respondent herein, to

appear on behalf of the 1st respondent and to prosecute the case.

2. Heard the learned counsel for the appellant and Mr.S.Dhakshinamoorthy, learned counsel appearing for the respondents.

3. The 2nd respondent on behalf of the 1st respondent filed a Suit for a sum of Rs.16,40,619/-, which amount was paid by the 2nd respondent as insurer to the 1st respondent as insured. That is the case found in the plaint. In the course of carrying the goods of the 1st respondent by the appellant, it seems goods have been damaged, which have been insured with the 2nd respondent. Since the goods were carried by the appellant and the goods were insured by the 1st respondent with the 2nd respondent, the compensation was rightly paid to the 1st respondent by the 2nd respondent. After having rightly paid the said amount, for recovery of amount paid by the 2nd respondent to the 1st respondent, the suit has been filed. The suit has been filed by the 2nd respondent in their representative capacity as Power of Attorney of the 1st respondent. To permit the 2nd defendant to prosecute the suit, on behalf of the 1st respondent, an application under Order III Rule 2 of CPC, namely, I.A. No. 5962 of 2016 was filed and the said application was allowed on 20.04.2016. Challenging the same, the appellant had filed I.A. No. 56 of 2017, which came to be dismissed by order dated 24.08.2017. Challenging the same only, the appellant has come before this Court.

4. The learned counsel for the appellant would submit that there is no proper document viz., Power of Attorney produced before the trial Court and there is no proper prayer in the application and no one properly represented the respondents. In this regard, he would rely upon the judgment of this Court in The Lakshmi Mills Co. Ltd., rep. by its Managing Director Vs. R.Ramajam and 3 others reported in 2010(1) MWN (Civil) 454, to contend that no document has been filed to show that the suit has been filed by the 2nd respondent as a power of attorney of the 1st respondent and nobody represented the parties and therefore, this Court held that it goes to the root of matter.

5. By relying upon the above said judgment, the learned counsel for the appellant insisted that there is non application of mind by the trial Court and there is no proper prayer in the application and therefore, seeks to allow this appeal. On the other hand, the learned counsel appearing for the respondents would submit that everything has been complied with, especially, he relied upon the letter of subrogation dated 09.11.2015.

6. With regard to the claim in the suit is concerned, that has been reduced in black and white in the plaint. Whether the

1st respondent had authorised the 2nd respondent by proper authentication to file the suit has to be seen.

7.A perusal of the records, especially, the letter of subrogation, dated 09.11.2015 would reveal that the subrogation letter was executed by the 1st respondent in favour of the 2nd respondent on 09.11.2015. The person, who represented the 1st respondent in the said document is Mr.Sridhara.S.R, Deputy Manager-P&P, Aerospace Division, BEML Ltd., Belavadi Post, Mysore. Paragraph 6 of the said subrogation is extracted as follows:

"6.We hereby appoint you, your officers and agents and their successors severally our agents and attorneys in fact with irrevocable power to receive or collect any and all such claims and to begin, prosecute, compromise arbitrate or withdraw at your expense of any and all legal proceedings which you may deem necessary to enforce such claim or claims including proceedings before any international tribunal and to execute in our name any documents which may be necessary to carry into effect the purpose of this agreement"

From the above it is clear that the 1st respondent appointed the 2nd respondent as their Power of Attorney to receive or collect any and all such claims on their behalf. Therefore, the 1st respondent represented by its Deputy Manager by virtue of letter of subrogation had given Power of Attorney in favour of the 2nd respondent.

8.The application filed by the 2nd respondent seeking order under Order III Rule 1 and 2 of CPC would reveal that one Ms.Malar Karthikeyan, Manager of the 2nd respondent has filed an affidavit. Even in the plaint verification, she has verified and signed the plaint. Therefore, it is clear that it is not as if no one had represented the 2nd respondent. The 2nd respondent was rightly represented by the Manager of New India Assurance Company. Moreover, as contended by the learned counsel for the appellant, the order has not been passed mechanically. The order has been passed, based on the production of letter of subrogation and indemnity bond filed by the 2nd respondent. Therefore, the trial Court was satisfied with the documents to maintain the suit and therefore, there is application of mind. In view of the above situation, the judgment relied upon by the learned counsel for the appellant is not relevant. In that case, no Power of Attorney was filed under Rule XIV of Civil Rules of Practice and no averment regarding the execution of Power of Attorney was made in the affidavit whereas in this case, in paragraph 2 of the affidavit filed by Ms.Malar Karthikeyan in O.S.No.2336 of 2016, it is stated that the Power

of Attorney was executed in favour of the 2nd respondent herein. For better appreciation, the same is usefully extracted as follows:

"2.The first plaintiff has given a special power of attorney in favour of the second plaintiff, empowering the second plaintiff to institute the above suit and to prosecute and sign and verify all the pleadings and other proceedings on their behalf. The said power document dated 09.11.2015 is still in force and is produced along with the plaint as document No.10 and indemnity bond for Marine claim as document No.9."

The conditions contemplated in the judgment relied upon by the learned counsel for the appellant viz., in 2010(1) MWN (Civil) 454, have been complied with by the respondents. Therefore, there is no occasion for this Court to set aside the order passed by the trial Court. The trial Court after considering the documents produced on behalf of the 2nd respondent, had rightly allowed I.A. No. 5962 of 2016. Hence, the impugned order dismissing I.A. No. 56 of 2017, which was filed to set aside the order passed in I.A. No. 5962 of 2016 warrants no interference.

Hence, this appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sai
To

The XVII Additional Judge,
City Civil Court,
Chennai 104.

+1cc to Mr.S.Dhakshinamoorthy, Advocate, S.R.No.13169
+1cc to Mr.Rajendra Prasad Tayal, Advocate, S.R.No.12719

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The Record Keeper,
VR Section, High Court,
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C.M.A.No.223 of 2018

CNR(CO)
CS/11/04/18