IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 21st DAY OF AUGUST 2018

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.A. No.400 of 2017
and
A. Nos.2354, 2975 to 2977 & 3485 of 2017
in
C.S. No.292 of 2017

M/s.Textainer Equipment Management Limited,
Having its office at P.O.Box No.1806,
Century House,
16 Par-la-Ville Road,
Hamilton HM HX Bermuda,
Represented by its Power of Attorney Holder,
Mr.S.Jayachandran,
Residing at No.I-3 Manek Apartments,
Santi Colony, Adayar,
Chennai- 600 020 ... Applicant/Plaintiff
(in O.A. No.400 of 2017
& A. No.2354 & 3485 of 2017)

-Versus-

1. M/s.Caravel Logistics Pvt.Ltd.
(Earlier known as M/s.Caravel
Shipping Services Pvt.Ltd.)
Rep.by its Managing Director,
Mr.Saju Chacko, No.484, 3rd Floor,
Pantheon Plaza, Pantheon Road,
Egmore, Chennai- 600 008

2. Mr.Saju Chacko,
Managing Director of M/s.Caravel Logistics Pvt.Ltd.,
(Earlier known as M/s.Caravel
Shipping Services Pvt.Ltd.)
No.484, 3rd Floor,
Pantheon Plaza, Pantheon Road,
Egmore, Chennai- 600 008 ... Respondents/Defendants
(in O.A. No.400 of 2017
& A. No.2354 & 3485 of 2017)

O.A. No.400 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the Respondents/Defendants or their men/ agents/authorized agents/any person claiming as their nominees/representative etc., from in any way handling / moving/alienating/encumbering or in any way dealing with the containers mentioned in schedule hereunder from the depots of the Respondents/Defendants or wherever found except to return them to the Applicant/Plaintiff pending disposal of the suit.

A. No.2354 of 2017:-

Application praying that this Hon'ble Court be pleased to appoint an Advocate Commissioner or Commissioners to seize the containers (mentioned in schedule enclosed herewith) wherever found including at the depots of the respondents/defendants, handover the same to the applicant/plaintiff.

A. No.3485 of 2017:-

Application praying that this Hon'ble Court be pleased to direct the respondents/defendants to produce the location list of the containers including the name and address of the depots before this Hon'ble Court.

A. Nos.2975, 2976 & 2977 of 2017:-

1. M/s.Caravel Logistics Pvt.Ltd.
   (Earlier known as M/s.Caravel
   Shipping Services Pvt.Ltd.)
   No.484, 3rd Floor,
   Pantheon Plaza, Pantheon Road,
   Egmore, Chennai- 600 008

2. Mr.Saju Chacko,
   Director of M/s.Caravel Logistics Pvt.Ltd.,
   (Earlier known as M/s.Caravel
   Shipping Services Pvt.Ltd.)
   No.484, 3rd Floor, Pantheon Plaza,

Pantheon Road, Egmore,
Chennai- 600 008 ... Applicants/Respondents/Defendants

-Versus-

M/s.Textainer Equipment Management Limited,
P.O.Box No.1806,
Century House, 16 Par-la-Ville Road,
Hamilton HM HX Bermuda,
Represented by its Power of Attorney Holder,
Mr.S.Jayachandran,
Residing at No.I-3 Manek Apartments,
Santi Colony, Adayar,
Chennai- 600 020. ... Respondent/Applicant/Plaintiff

A. No.2975 of 2017:-

Application praying that this Hon'ble Court be pleased to direct the applicant to return back to the Respondents the 268 containers seized by them through the Advocate Commissioner vide order dated 18.04.2017 passed in Application No 2354/17 in C.S. No.292 of 2017.

A. No.2976 of 2017:-

Application praying that this Hon'ble Court be pleased to set aside the order dated 18.04.2017 passed in Application No.2354/17 in C.S. No.292 of 2017.

A. No.2977 of 2017:-

Application praying that this Hon'ble Court be pleased to vacate the order of interim injunction dated 18.04.2017 passed in O.A. No.400 of 17 in C.S.No.292 of 2107.

These Applications coming on this day before this court for hearing the court made the following order:-

The suit in C.S. No.292 of 2017 has been filed by the Textainer Equipment Management Limited, a Company incorporated under the Laws of Bermuda and represented by its Power of Attorney/Authorised Signatory against Caravel

Logistics Private Limited (earlier known as M/s.Caravel Shipping Services Private limited) represented by its Managing Director Mr.Saju Chacko and against Saju Chacko in his capacity as Managing Director seeking a Judgment and Decree for a sum of Rs.16,23,41,582/-together with interest at the rate of 24%p.a., from the date of the plaint till date of realisation and also for costs of the suit.

2. The plaintiff is a Company engaged in the business of leasing marine containers among other business. The 1st defendant is a company incorporated under the Indian Companies Act. They are in the businesses of NVOCC (Non Vessel Operating Common Carrier), freight forwarding, customs clearance and transportation shipping services. The 2nd defendant is the Director of the 1st defendant company. The 2nd defendant, in the course of business, on behalf of the 1st defendant, approached the plaintiff for taking on lease containers owned by the plaintiff. A Master Lease Agreement was entered into between the parties on 01.09.2005. This was extended on 01.08.2010. The containers are old containers.

3. According to the agreement, numerous containers were supplied by the plaintiff to the 1st defendant. As

on the date of filing the suit, it was claimed that 201 containers have not been returned by the defendants. The lease agreement entered on 01.08.2010 was for supply of 20 feet 1000 containers from China for a period of five years on a daily rental of 0.85 USD.

4. There was yet another lease cum purchase The lease agreement for new containers with effect from 01.10.2011 on a daily rental charge of 1.85 USD per day. One container was damaged and the other 999 containers were with the defendants as on the date of the suit. A running account was maintained by the parties.

5. It had been stated in the plaint that the 1st defendant committed default in payment of lease rentals from 2012 onwards. In the plaint, the details of the amount due, with respect to each container was given. It was finally stated that, according to the plaintiff, the defendants had to pay 2,497,562.80 USD. It had been stated that till the containers have been delivered by the defendants, they will have to pay the amount. The payments have been completely stopped from July 2015. It had been stated that the containers have however been used by the defendants and have been sent to various locations in and

outside India. The plaintiff has also submitted the locations of 201 containers which were supplied under the Master Lease Agreement dated 01.09.2005. The plaintiff had stated that they did not know the locations of the containers covered under the lease agreement dated 01.10.2011.

6. The plaintiff claimed that they sent several E-mail communications calling upon the defendants to make payment. The defendants admitted their liability in the E-mail dated 31.03.2018 and sought time for making payment. The plaintiff claimed that the defendants have expressly violated the terms of the Lease Agreement. It had been stated that under Clause 14(b)(iv) of the Master Lease Agreement, the plaintiff had the right repossess the containers. The plaintiff had terminated the Lease Agreement by letters dated 22.03.2017 and 04.04.2017 and called upon the defendants to return the containers and to pay the outstanding amount. The defendants by E-mail dated 31.03.2017 admitted their liability. However, they did not pay the outstanding amount. The suit had then been filed by the plaintiff.

7. The plaintiff filed an O.A.No.400 of 2017,

seeking an order of interim injunction restraining the defendants from handling/moving/ alienating/ encumbering or dealing with the containers.

8. A.No.2354 of 2017 had also been filed by the plaintiff, seeking appointment of Advocate Commissioner to seize the containers wherever found including from the depots of the defendants and handover the same to the Plaintiff.

9.In the affidavit filed in support of both the applications, the averments made in the plaint were again reiterated. This Court had granted interim injunction in O.A. No.400 of 2017 on 18.04.2017. The interim order is still in force.

10. In A.No.2354 of 2017, again by order dated 18.04.2017, five Advocates were appointed as Advocate Commissioners and warrants were issued to them. They executed the warrant and seized 310 containers, out of the 999 new containers. These containers are now in the possession of the plaintiff.

11. The plaintiff had also filed A.No.3485 of 2017 for a direction against the defendants to produce the

location list of the remaining containers. In the affidavit, it was mentioned that 310 containers alone seized and the other containers could not be seized by the Advocate Commissioners. Consequently, the location list of the containers was sought by the plaintiff.

12. The defendants entered appearance. They filed three applications. They filed A. No.2975 of 2017 for a direction for return the containers seized by the Advocate Commissioners. They filed A.No.2976 of 2017 to set aside the order appointing Advocate Commissioners in A.No.2354 of 2017. The defendants had also filed A.No.2977 of 2017 to vacate the order of interim injunction passed in O.A.No.400 of 2017.

13. In the affidavit filed in support of the three applications, it had been stated that the plaintiff and the defendants had entered into a Master Lease Agreement on 01.09.2005 for supply of containers on a daily rental charge of 0.85 USD. Another agreement was entered into on 01.08.2010 and containers were again supplied by the plaintiff on daily rental of 0.85 USD. It has been stated that the containers were more than 50 years old and did not

fetch any income to the defendants. It has been further stated that the plaintiff did not take back their containers. To reduce losses, by E-mail dated 02.05.2016 it was sought to extend the lease period by reducing the rent. It had been specifically alleged that the plaintiff had attempted to make money by leasing out old containers. It had been stated that the E-mail communications would clearly reveal that the containers are very old and in bad condition. It had been stated that the plaintiff had charged rent for old containers which can be are used as scrap alone.

14. It had been further stated that the Damaged Production Plan value was also incorporated in the lease Agreement dated 01.08.2010. The DPP was increased from 100 USD to 250 USD, in view of the fact that the containers were very old. There was another claim for depreciation. It had been stated that if these were calculated, there may not be any rent payable by the defendants. According to the agreement which came into effect from 01.10.2011the rent charged was 1.85 USD per day. One Thousand containers were to be supplied. The period was five years. At the end of five years on payment of 1 USD per container, the defendants would become the owners of the containers. It

was stated that the payment of 1.85 USD was towards purchase price. It had been stated that in case of late payment, charge equal to 5% of the amount shall be paid. It had been stated that delayed payment only can be charged and the containers cannot be seized.

15. It had been stated that the Master Lease Agreement and Master Lease Purchase Agreement are distinct agreements. The Lease Agreement was with respect to old containers and the Lease Purchase Agreement was with respect to new containers. It had been stated that the plaintiff had no right to seize the containers. It had been stated that the plaintiff had deliberately suppressed all these facts. It was further stated that one container was totally damaged and 999 containers alone were on lease under the Lease Purchase Agreement. It had been stated that the non-payment of rent as claimed by the plaintiff from 2015 was only with respect to the old containers. It had been stated that this Court had permitted the plaintiff to seize the containers covered under the Master Lease Purchase Agreement. It was stated that the said order should be revisited. It had been stated that by seizing 310 containers, the business of the defendants has been affected. It had been stated that the 310 containers were

in very good condition at the time of seizure. It had been stated that the plaintiff has to return back the containers in good condition. It had been stated that the defendants are also co-owners of the said containers.

16.The defendants filed these applications claiming return of the containers seized by the Advocate Commissioners and to set aside the order of appointment of Advocate Commissioner and to vacate the order of interim injunction in O.A.No.400 of 2017.

17. All the applications were argued at length by Mr.Ravi Kumar Paul, learned Senior Counsel for the Plaintiff and Mr.P.S. Raman, learned Senior Counsel for the defendants. For the sake of convenience, the parties will be referred as Plaintiff and Defendants.

18. As is seen from the averments in the plaint, the plaintiff and the defendants had entered into a Lease and Lease Purchase Agreement with respect to containers to be supplied by the plaintiff. The Master Lease Agreement was originally entered into on 01.09.2005 and another agreement was entered into on 01.08.2010. According to this agreement, old containers, which the defendants claim

are more than 15 years and further claim can only be used as scrap were leased out by the plaintiff. The daily rent was 0.85 USD. The defendants were in possession of 201 old containers as on date of the suit.

19. The second agreement termed Master Lease Purchase Agreement was entered into w.e.f., 01.10.2011. This was for 1000 containers for a period of five years on a daily rent of 1.85 USD. At the end of the period if the defendants pay1.00 USD then they would became owners of the containers. One of the containers was damaged and the defendants were actually in constructive possession of 999 containers, which were called the new containers.

20. At the time of the institution of the suit, in A.No.2354 of 2017, this Court had appointed Advocate Commissioners and they seized 310 out of 999 new containers. Consequently, the defendants are now in possession of have 689 new containers. During the course of hearing, there were undertakings given by the defendants to return back the old containers. The issue in contention as on date is with respect to the new containers. The defendants claim that the 310 containers which had been seized should be returned.

21. During the course of hearing, the 2nd defendant had filed several affidavits. This Court had also called upon the defendants to reveal the locations of the old containers. In the affidavit dated 23.08.2017, the 2nd defendant had stated as follows:

> "3. I submit that out of 201 containers, 8 containers were already offhired, meaning returned to the Plaintiff.
>
> 4. I further submit that 58 more Containers are also ready for offhiring and the same will be delivered to the depots mentioned in the list furnished by the Plaintiff on 17.08.2017.
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> 5. I submit that 69 containers are struck in various locations due to Customs and Terminal issues and the same will be retrieved within three months. These containers are not being put to any commercial use by the Respondents. These 69 containers will be offhired within three months. If for any reason any of the containers out of 69, could not be off hired within said months, the Respondents would pay Depreciation value for those containers i.e., containers which could not be offhired at the same rate as mentioned below.
>
> 6. I submit that 66 containers could not be offhired due to old age. For these 66 containers

DRV is payable at the rate of 900 USD per container as offered by the Applicant/Plaintiff by mail dated 24th February 2017, which amounts to 59,400 USD. The Respondent would pay this amount within six months".

22. It is to be noted that the defendants have not yet paid the amount of rupees of 59,400 USD which they had undertaken to pay within six months. Thereafter, the second defendant had filed an other affidavit dated 25.06.2018. He had wrongly mentioned the year as 2017. In the affidavit, the 2nd defendant had stated as follows:

"6. I Submit that the Defendants hereby undertakes:

a. Not to alienate or create 3rd party rights over the 689 Containers till the disposal of the case.

b. There can be a charge over 689 Containers in the event of award being passed in favour of the Plaintiff.

c. The Defendants will provide the Plaintiff with the location of the Containers on quarterly basis along with the status of the Containers".

It must also been mentioned that this Court had called upon the parties to inform whether they are prepared to refer the matter to Arbitration. Though, the defendants were agreeable, the plaintiff did not agree to such course.

23. In the meanwhile, the defendants have also filed the written statement along counter claim.

24. It is thus seen that the trial in the suit itself can be taken.

25.In these circumstances, it would only be in the interest of both parties that a quietus is given to the main issues surrounding the institution of the suit by inviting them to adduce oral and documentary evidence and subject the witnesses for cross examination. The defendants must however pay 59,400 USD as undertaken by them. This would cover the issue of old containers. There would be a charge over the 689 new containers and naturally injunction restraining alienating them would follow.

26. Consequently, with respect to these applications, the following orders are passed:

(i). O.A. No.400 of 2017. The order of interim injunction is in force from 18.04.2017. The said interim injunction shall continue till disposal of the suit since the parties are referred to trial and since the location of the containers have to be declared by the defendants and the containers have to be available at the time of the adjudication of the case. Consequently, interim injunction already granted in O.A.No.400 of 2017 is made absolute. A.No.2977 of 2017 filed by the defendants seeking to vacate the order of injunction is dismissed.

(ii). A.No.2354 of 2017 : This application had been filed seeking appointment of Advocate Commissioner(s). The Advocate Commissioners were appointed and they had seized 310 containers. A.No.3485 of 2017 has been filed by the plaintiff calling upon the defendants to produce the location list of the containers. A.No.2975 of 2017 had been filed by the defendants to return back the containers seized by the Advocate Commissioners. A.No.2976 of 2017 had been filed by the defendants to set aside the order of appointment of Advocate Commissioners. In view of the fact that the defendants had given an undertaking not to alienate or create third party rights over the 689 containers and that there can be a charge over the said 689 containers and the further undertaking that they would provide the location of the containers on a quarterly basis and in view of the further fact that in the affidavit dated 23.08.2017, the defendants had agreed to pay a sum 59,400 USD, A.Nos.2354 and 3485 of 2017 are closed, since no further orders are required. However, this Court orders that a charge would lie with respect to the 689 new containers, now in the possession of the defendants. They would have to file, once every three months, a report in Court giving the locations of the containers. In view of the above directions, A.Nos.2975 and 2976 of 2017 are dismissed.

(iii). It is also hold that the defendants will have to make the payment of 59,400 USD directly to the plaintiff on or before 11.10.2018.

(iv). It is also hold that if the amount of 59,400 UDS is not paid as directed or the defendants do not disclose the locations of the new containers by filing reports once every three months, the plaintiff would have liberty to file a fresh applications seeking appropriate relief.

27. In the result,

1. O.A.No.400 of 2017 is allowed and A.No.2977 of 2017 is dismissed.
2. A. Nos.2354 and 3485 of 2017 are closed as no further orders are required.
3. A.Nos.2975 and 2976 of 2017 are dismissed.

Both the plaintiff and defendants are to bear their respective costs.

Sd/-C.V.K.J
21.08.2018

//Certified to be a true copy//

Dated this the day of 2017

jj 28.08.2018 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.