

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2017
Pronounced on: 18.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.1975 of 2004
and
CMP.No.14723 of 2004

Direct Container Line Inc.,
rep. by its agents,
M/s.W.W.Shipping and Forwarding Pvt. Ltd.,
130, Angapa Naicken Street,
Chennai - 600 001. ... Petitioner

vs

1.M/s.Sierra Trading Pvt. Ltd.,
rep. by the power of attorney
and subrogee
The Oriental Insurance Co., Ltd.,
Division No.8,
Pankaj Complex, Vepery,
Chennai - 600 007.

2.The Oriental Insurance Co., Ltd.,
Division No.8,
Pankaj Complex, Vepery,
Chennai - 600 007.

3.M/s.Freight Systems India Pvt. Ltd.,
No.42, Moore Street,
Chennai - 600 001. .. Respondents

Civil Revision Petition filed under Section 115 of C.P.C.,
against the order dated 23.6.2004 passed in E.P.No.1630 of 2003
in O.S.No.5510 of 1997 on the file of the X Assistant Judge,
City Civil Court, Chennai.

For Petitioner : Mr.K.Bijai Sundar

For Respondents : Mr.Nageswaran

ORDER

This Civil Revision Petition is directed against the order dated 23.06.2004 passed in E.P.No.1630 of 2003 in O.S.No.5510 of 1997 on the file of the learned X Assistant Judge, City Civil Court, Chennai, allowing the Execution Petition and ordering attachment of the schedule mentioned movable properties.

2. The respondents 1 and 2, who are decree-holders, have filed E.P.No.1630 of 2003 under Order 21, Rule 43 of C.P.C. to attach and sell the movable properties mentioned in the schedule of properties to realise the decree amount.

3. Resisting the Execution Petition, the first judgment-debtor filed counter stating that the suit has been filed against the principal and not on the agent and therefore, as agent, the respondent is not liable to pay the decree amount. It is stated that in paragraph 11 of the Execution Petition, the respondents 1 and 2 have shown the petitioner as agent, which is not acceptable. It is also stated that if any amount of the petitioner lying in the agent that should alone be attached.

4. In the Execution Petition, the second judgment-debtor remained ex parte.

5. Upon consideration of the rival submissions, the Executing Court ordered attachment of movable properties stated in the Execution Petition. Aggrieved by the same, the first defendant/judgment debtor's agent has filed this Civil Revision Petition.

6. I heard Mr.K.Bijai Sundar, learned counsel appearing for the petitioner and Mr.Nageswaran, learned counsel for the respondents and also perused the materials available on record.

7. The learned counsel appearing for the petitioner submitted that the Executing Court had totally misunderstood and misapplied the facts and law and had erroneously proceeded to allow the Execution Petition. The Executing Court erred in allowing the Execution Petition by giving reasons, which were not germane in deciding the issue, which has been placed before it. He submitted that the Executing Court failed to note that the suit was filed by the decree-holders against the first defendant and not against M/s.W.W. Shipping and Forwarding Private Limited, the agent in their personal capacity and M/s.W.W. Shipping and Forwarding Private Limited is not liable to pay the decree amount.

8. The learned counsel would further submit that the M/s.W.W. Shipping and Forwarding Private Limited is a company incorporated under the law prevailing in India and M/s.Direct Container Lines Inc. is a company incorporated under the law prevailing in a foreign country and as such they are two separate legal entities. The Execution Petition filed against M/s.W.W. Shipping and Forwarding Private Limited is not maintainable as no personal decree has been passed in the suit.

9. The learned counsel would submit that the reference to the provisions of the Customs Act of 1962 has nothing to do with regard to the personal liability of the agent with regard to a cargo claim since the said Act is a special enactment with regard to the legal formalities in connection with Customs. He argued that assuming M/s.W.W. Shipping and Forwarding Private Limited had acted as agent for M/s.Direct Container lines Inc., the remedy of the decree-holders is to enforce the decree against the funds, if available and not by seeking to attach movables owned by M/s.W.W. Shipping and Forwarding Private Limited. The reasonings given by the Executing Court in allowing the Execution Petition are not sound and sustainable.

10. Per contra, the learned counsel appearing for the decree-holders submitted that the Execution Court, after analysing the legal position and also liability of the judgment-debtor, ordered attachment of the movable properties. He submitted that in order to escape from paying the decree amount, the judgment-debtor has filed this Civil Revision Petition with untenable grounds. The order of the Execution Court is perfectly correct and no need to interfere with the same.

11. Placing reliance upon Section 230 of the Indian Contract Act, the learned counsel for the petitioner submitted that M/s.W.W. Shipping and Forwarding Private Limited is not liable to pay the amount mentioned in the Execution Petition on behalf of the principal and therefore, the Execution Petition filed against them is not maintainable.

12. Section 230 of the Indian Contract Act, reads thus:

"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. 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)Whether the agent does not disclose the name of his principal;
- (3)Whether the principal, though disclosed,

cannot be sued."

13. In the case on hand, admittedly, as held by the Executing Court, M/s.W.W. Shipping and Forwarding Private Limited was acted as an agent on behalf of the petitioner and in the course of transactions, there was a due and hence the respondents 1 and 2 have filed the suit and also obtained decree in favour of the second respondent.

14. It is not in dispute that M/s.W.W. Shipping and Forwarding Private Limited was acted as an agent in Chennai on behalf of the principal. In the impugned order, the Executing Court held that the M/s.W.W. Shipping and Forwarding Private Limited was acted as an agent on behalf of the principal and based on the capacity as agent, the goods were imported.

15. To rebut the same, the petitioner has not filed any documentary proof. As per the provisions of the Customs Act, a declaration was executed between the parties that if any penalty levied for the goods, the agent was liable to pay the same. Therefore, the ship's agent was answerable for the discharge of all claims for damages or short delivery which might be established by the owner of any goods comprised in the import cargo in respect of such goods.

16. The Executing Court has, after considering the role played by the agent as laid down in the Customs Act, rightly ordered attachment of the movable properties lying in the petitioner's Chennai office and therefore, there is no perversity in the order of the Executing Court. No valid grounds have been made out to interfere with the order of the Executing Court and the Civil Revision Petition is liable to be dismissed.

17. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vs

To

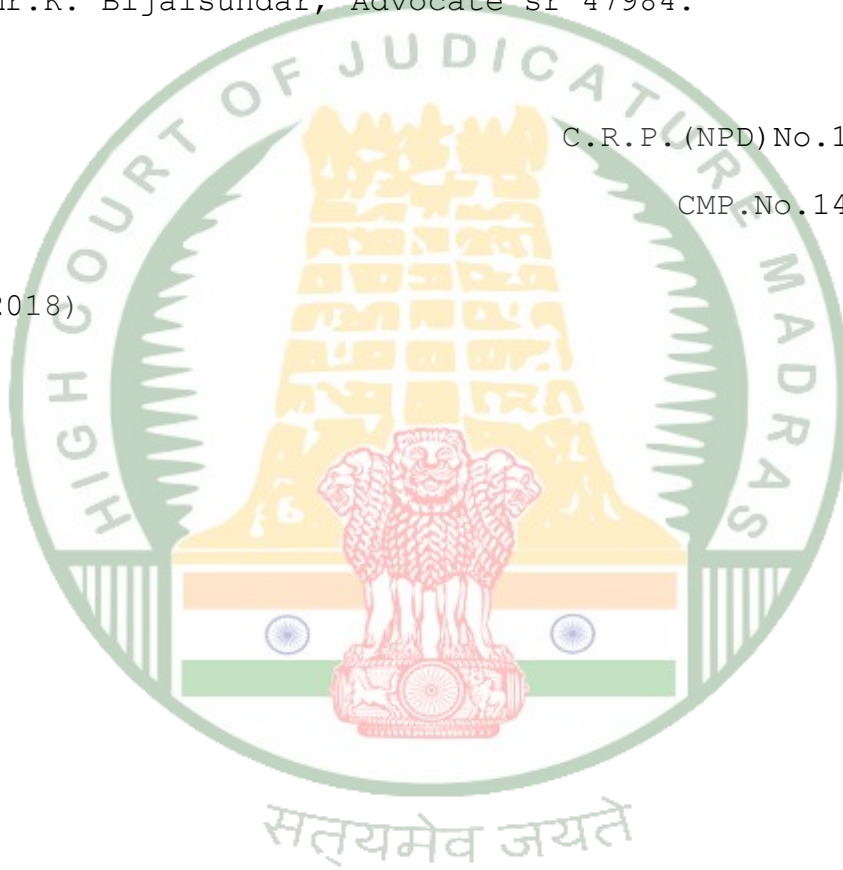
The X Assistant Judge,
City Civil Court,
Chennai.

Copy to
The Record Keeper
VR Section, High Court, Madras 104.

+1 CC to Mr.Nageswaran, Advocate sr 47488
+1 CC to Mr.K. Bijaisundar, Advocate sr 47984.

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NA (CO)
SP(07/08/2018)



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