

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.148 of 2012

Caravel Logistics Pvt. Ltd.,
Represented by Mrs.N.Dhanya,
Manager-Legal
Registered Office at 3rd Floor,
"Pantheon Plaza" 484, Pantheon Road,
Egmore, Chennai - 600 008.

... Plaintiff

Versus

1.Trice Marine Services Pvt Ltd.,
(Represented by its Directors)
No.54/111, Linghi Chetty Street,
Chennai - 600 001.

2.D.R.Logistic (P) Ltd.,
(Represented by its Directors)
Container Freight Station,
Admit Office at No.85, (Old No.42),
Armenian Street, Chennai - 600 001.

3.The Commissioner of Customs
(Sea Port - Export)
No.60, Rajaji Salai,
Custom House, Chennai - 600 001.

... Defendants

Plaint filed under Order VII Rule 1 of Civil Procedure Code read with Order IV Rule 1 and 2 of Original Side Rules praying to pass a judgment and decree:

a) directing the 1st defendant to pay a sum of Rs.32,10,018/- and Rs.2,60,284/- totally Rs.34,70,302/- along with interest at the rate of 18% per annum to the plaintiff company towards the containers and detention charges;

b) directing the 2nd defendant to pay a sum of Rs.10,00,000/- (Rupees Ten lakh only) towards compensation for causing damage to the containers morefully described in the schedule hereunder;

c) granting a mandatory injunction directing the 1st and 2nd defendant to destuff the goods from all the containers morefully described under the schedule and release the same to the plaintiff company and

d) for cost of the suit.

For Plaintiff : Mr.T.V.Suresh Kumar

For Defendants : No appearance

J U D G M E N T

The suit is for recovery of money towards the container charges, damages and for mandatory injunction directing the defendants to destuff the goods from all the containers described under the schedule and release them to the plaintiff Company.

2. Since the defendants did not enter appearance despite service they were set exparte on 19.04.2017. The matter was posted before the learned Additional Master for evidence. One Mrs.Suganya, Assistant Manager-Legal of the plaintiff Company has been examined as PW1. She has filed proof affidavit and Exs.P1 to P23 have been marked on the side of the plaintiff.

3. The sum and substance of the case of the plaintiff is that it had provided nearly 35 containers to the 1st defendant to enable them to export the cargo. The 1st defendant had stuffed the containers with its goods and delivered them to the 2nd defendant which is the Container Freight Station. Since the export could not materialize due to certain problems between the 1st defendant and the shipper, the containers remained with the 2nd defendant. The 2nd defendant refused to release the containers since the 1st defendant had not paid the container detention charges.

4. The plaintiff therefore demanded return of the containers from the defendants 1 and 2. In reply it is seen that the 1st defendant had sought for waiver of container charges amount of Rs.32,10,018/-. The plaintiff was not willing to grant such waiver. However, the 2nd defendant in reply to the

legal notice issued by the plaintiff would claim that because there is a case against the exporter the containers cannot be returned.

5. Claiming that the detention of the containers and the failure to pay the container charges is illegal, the plaintiff has come forward with the suit for recovery of a sum of Rs.32,10,018/- towards container charges for the 30 containers set out in the schedule and a sum of Rs.2,60,284/- being the container charges for five containers which were returned to the plaintiff by the defendants apart from seeking Rs.10,00,000/- as damages from the 2nd defendant for the damages caused to the containers and for a mandatory injunction directing the 1st and 2nd defendants to destuff the goods from all the containers morefully described in the schedule and release the same to the plaintiff company.

6. From the evidence adduced and the documents produced it is seen that the fact that the 1st defendant was provided with the containers by the plaintiff is not in dispute. It is also not in dispute that the containers are lying with the 2nd defendant stuffed with the goods belonging to the 1st defendant's export materials. It is for the 1st defendant to have taken back containers and re-delivered the same to the plaintiff.

7. The 1st defendant's action not taking back the containers from the 2nd defendant and seeking waiver of container charges cannot be said to be legal. A perusal of the documents filed particularly Exs.P1, P3, P4 and P6, it is clear that the containers belonging to the plaintiff are lying with the 1st and the 2nd defendant. Being the owner of the containers the plaintiff is entitled to return of the same. Having availed the service of the plaintiff for provision of containers the 1st defendant cannot deny its liability to pay the container charges.

8. The prayer for damages against the 2nd defendant is shown as prayer (b) which reads as follows:

“grant a decree directing the 2nd defendant to pay a sum of Rs.10,00,000/- (Rupees Ten Lakh only) towards compensation for causing damage to the containers morefully described in the schedule hereunder. ”

9. Admittedly the containers are in possession of the 2nd defendant. It is not known whether these containers are damaged or not. In the proof affidavit there is nothing to show that the containers are damaged or the extent of damage. Hence, I do not think the plaintiff had made out a case for grant of decree for damages against the 2nd defendant.

10. In fine, the suit is decreed for a sum of Rs.34,70,302/- with interest at the rate of 12% per annum from the date of plaint till the date of realisation with proportionate costs as against the 1st defendant and there will be a mandatory injunction directing the 1st and 2nd defendant to destuff the goods from all the containers described in the schedule to the plaint and hand over the containers to the plaintiff. If the plaintiff finds that the containers are damaged it is open for the plaintiff to assess the damages and sue for damages.

19.01.2018

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Index : Yes/ No

Internet : Yes/ No

Speaking Order/ Non-speaking Order

List of the witnesses examined on the side of the plaintiff:

PW1 - Mrs.P.Suganya

List of Exhibits marked on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>	<i>Dated</i>
1	Ex.P1	True copy of the fresh certificate of incorporation consequent to Name change.	22.10.2008
2	Ex.P2	Email from the 1 st defendant.	28.10.2010

Sl. No.	Exhibits	Description	Dated
3	Ex.P3	Email from the 1 st defendant.	01.11.2010
4	Ex.P4	Email from the 1 st defendant.	27.08.2007
5	Ex.P5	C.S.R. Issued by Harbour Police Station.	27.03.2011
6	Ex.P6	Email from the 1 st defendant.	02.02.2008
7	Ex.P7	Letter issued to the 2 nd defendant by the plaintiff.	07.09.2011
8	Ex.P8	Certificate of Ownership of Containers issued by L&T Container (1999) PTE Ltd.,	08.02.2012
9	Ex.P9	Certificate of Ownership of Containers issued by L&T Container (1999) PTE Ltd.,	09.02.2012
10	Ex.P10	Certificate of Ownership of Containers issued by Textainer.	09.02.2012
11	Ex.P11	Certificate of Ownership of Containers issued by VS & B Containers.	14.02.2012
12	Ex.P12	Certificate of Ownership of Containers issued by Transfer Services Limited.	17.02.2012
13	Ex.P13	Calculation sheet for the amount due from the 1 st defendant.	--
14	Ex.P14	Lease agreement with the container leasing company M/s. Seacastle and the plaintiff.	25.03.2008
15	Ex.P15	Lease agreement with the container leasing company M/s. Ceseaco and the plaintiff.	25.07.2008
16	Ex.P16	Lease agreement with the container leasing company M/s. Textainer and the plaintiff.	01.08.2010
17	Ex.P17	Lease agreement with the container leasing company M/s. VS & B and the plaintiff.	01.04.2010
18	Ex.P18	Lease agreement with the container leasing company M/s. Transafe and the plaintiff.	17.07.2009
19	Ex.P19	Board resolution authorizing Mrs.Dhanya, previous employee of the company to sign the plaint.	03.02.2012

Sl. No.	Exhibits	Description	Dated
20	Ex.P20	Invoice for Rs.2,60,284/- issued by the plaintiff to the 1 st defendant.	28.01.2011
21	Ex.P21	Legal notice issued by the plaintiff to the 1 st defendant.	29.01.2011
22	Ex.P22	Legal notice issued by the plaintiff to the 2 nd defendant.	29.01.2011
23	Ex.P23	Board resolution-Authorisation letter.	03.05.2017

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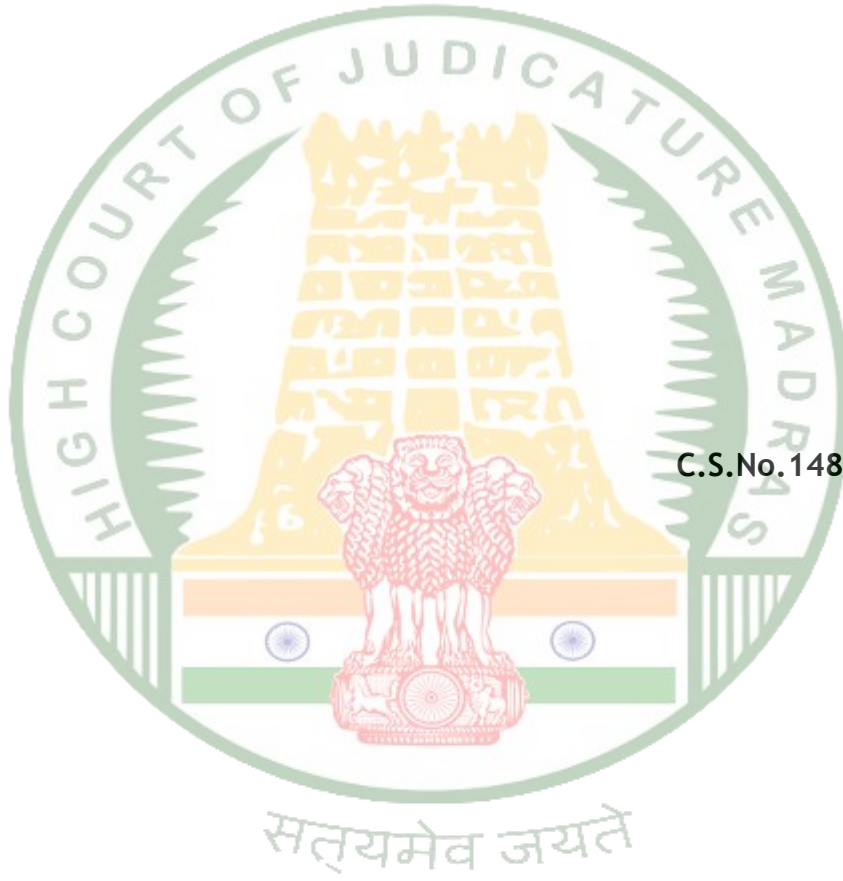
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R.SUBRAMANIAN, J.

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