

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13557 OF 2017

Mr.Chandrasekar Kandasamy and anr. .. Petitioners

Vs.

M/s.Xpress Logistics and ors. .. Respondents

Mr.Aditya Khandeparkar a/w Mr.Deepak Singh, Ms.Shruti Dasondi and Ms.Krupa Joshi i/b Khandeparkar Law Office, for the Petitioners.

None for the Respondents.

CORAM : M.S.KARNIK, J.

DATE :19th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners. None for the respondents – original plaintiffs though they are duly served in terms of order dated 05/09/2019 passed by this Court. Affidavit of service has also been filed.

2. By this Petition, the petitioners have challenged the order dated 03/08/2017 passed by the trial Court rejecting the Chamber Summons No. 304 of 2017 taken out by the petitioners. The petitioners are original defendant No.1. The

Chamber Summons No. 304 of 2017 was filed by defendants No. 2 & 3 contending that their names be struck off as party defendants from the plaint. It is the contention of the defendants No.2 & 3 that they are not necessary and proper parties to the Suit. Defendants No.2 & 3 are not concerned with the transactions entered into between plaintiff and defendant No.1. Defendants No.2 & 3 are Directors of defendant No.1-company. According to petitioners, presence of defendant No.1 was sufficient and therefore request was made for allowing the Chamber Summons.

3. Respondent No.1 – original plaintiff filed the Suit for money decree against defendants praying that the defendants be ordered and directed to pay the plaintiff an amount of Rs.33,94,675/- as per transaction which is the subject matter of the Suit. In the plaint, in paragraph 2 averment is made that the defendant No.1 i.e. M/s. Mahindra Logistics Ltd. is a limited company and also engaged in the business of logistics services. Defendants No.2 & 3 are the Directors of defendant No.1-

company and responsible for day to day business affairs of defendant No.1.

4. I have gone through the copy of the plaint and also the impugned order. Learned Counsel for petitioners has relied upon the decision of the High Court of Delhi in the case of **Tristar Consultants Vs. Vcustomer Services India Pvt. Ltd.** reported in (2007) 139 DLT 688 wherein the Delhi High Court has held that when there is no assertion against the Directors that they personally undertook or agreed to clear any liability of the defendant's outstanding against the plaintiff nor any guarantee or indemnification has been pleaded, the defendants as directors cannot be made liable.

5. In this view of the matter, present Petition deserves to be allowed. Presence of defendant No.1 is sufficient for the purpose of Suit. Present Petition is allowed. Impugned order is set aside. Chamber Summons No. 304 of 2007 is allowed.

(M.S.KARNIK, J.)