

A.No.6058 of 2015
in
C.S.No.820 of 2014

KRISHNAN RAMASAMY, J.,

This application has been filed to reject the plaint in C.S.No.820 of 2014 and dismiss the suit against this applicant/second defendant with exemplary costs.

2. The learned counsel for the second defendant submits that there is no cause of action against the applicant/second defendant since there is no privity of exporter and importer relationship between plaintiff/first defendant and applicant/second defendant. Further, the learned counsel submits that there is no privity as to high sea sales between this applicant/second defendant and the plaintiff. Further, the learned counsel submits that his name was only used and only for the purpose of helping the plaintiff, he cleared the goods in the name of the applicant/second defendant. However, he further submits that originally the goods were exported in the name of first defendant.

3. On the other hand, the learned counsel appearing for the plaintiff submits that as per the first defendant's instruction and based on the high sea sales, the second defendant was permitted to clear the goods in their name.

4. The learned counsel appearing for the first defendant submitted that only the second defendant and plaintiff colluded and the goods were imported in the name of second defendant/applicant.

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5. The contention of the applicant is that he has cleared the goods in his name with the intention to help the plaintiff alone and thereafter, he said he has delivered the goods to the first defendant. Therefore, his contention is that he is not at all liable to pay any amount. Therefore, the suit against second defendant is liable to be dismissed. Therefore, there is no cause of action.

6. However, this Court is of the view that in view of the admitted possession that the goods were cleared in the name of the second defendant, it is just necessary that all the parties go for trial and after full fledged trial, the question relating to whether the applicant/second defendant has helped the plaintiff/first defendant, and after the receipt of the goods whether, he handed over them to the first defendant or not can be decided. Further, as per the submission of the applicant, whether he has received the commission or only he acted for the purpose of commission agent can be asserted only after the examination of all the parties. Therefore, at this stage, the application filed by the applicant/second defendant to reject the plaint cannot be entertained.

7. Accordingly, the application is dismissed.

08.08.2019

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