

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 25.07.2019	Orders pronounced on .08.2019
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CORAM:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

**Appl.No.8604 of 2018
in
C.S.No. 228 of 2004
and**

1. M/s.Bharat Electronics Limited,
"Trade Centre",
116/2, Race Course Road,
Banglore and other places at Bharat Nagar P.O.,
Ghaziabad, Uttar Pradesh 201 010.
(represented by Power Agent Subrogee)
2. The Oriental Insurance Company Limited,
"Oriental House",
P.B.No.3037, A-25/27,
Asaf Ali Road,
New Delhi - 110 002 and
Regional Office Chennai
rep.by their Manager/Principal Officer Shri.A.Selvaraj.

Plaintiffs

Vs.

M/s.Fairmacs Shipping & Transport,
Services Private Limited,
Owning M/s.Fairmacs Transport Corporation

No.87, Moore Street,
Chennai - 600 001 and Carrying on business other places
Through their office at No.244, Angappa Naicken Street,
Chennai - 600 001. .. Defendant

Prayer : Complaint filed under Order IV, Rule 1 of the Original Side Rules read with Order VII Rule 1 and Section 26 of the Code of Civil Procedure, praying :-

- a) to direct the defendant to pay a sum of Rs.1,10,68,530/- with interest at the rate of 21% per annum from the date hereof until payment in full; being a commercial cause to second plaintiff.
- b) to pay the costs of the suit.
- c) to pass such further or other orders as this Honourable Court may deem fit and thus render justice.

For Plaintiffs : Mr.Guruswamynathan

For Defendant : Mr.P.Giridharan

J U D G M E N T

The present suit is filed by the plaintiffs for the following relief:-

- a) to direct the defendant to pay a sum of Rs.1,10,68,530/- with interest at the rate of 21% per annum from the date hereof until payment in full; being a commercial cause to the second plaintiff.

2. Under these circumstances, the sole defendant filed an Application No.8604 of 2018, to pass a summary judgment under order XIII A of the Code of Civil Procedure (CPC) to dismiss the Suit against the defendant and pass such other orders as this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case.

3. The brief facts of the case are as follows :-

i) The first plaintiff, which is a Government of India undertaking, is carrying on business among other places at Ghaziabad, Uttar Pradesh and is represented by their Manager/Principal Officer, Mr.A.Selvaraj and the second plaintiff is a Private Limited Company, incorporated under the Companies Act, carrying on business of general insurance. The second plaintiff is also represented by the aforesaid Manager/Principal Officer.

ii) The first plaintiff imported a consignment of airport surveillance radars from France, vide an Invoice dated 21.03.2000. The said consignment was brought from Le Harvey Port, France to Mumbai Port, India, in a container. Thereafter, the consignment was taken from Mumbai

to the first plaintiff's warehouse in Ghaziabad and kept there till 07.02.2001. The first plaintiff, vide invoice dated 08.02.2001, valued the radar @ Rs.1,50,29,700/- and intended to dispatch the same to Port Blair. The plaintiffs themselves packed the radar systems in eight wooden packages, as set out in undated packing note, filed as Plaint Document No.5.

iii) The defendant received the packed consignment from the first plaintiff, for carriage and delivery from Ghaziabad to Port Blair, via. Chennai. For the Journey, from Ghaziabad to Chennai, the same was carried by road transportation, vide trailer No.HR389613, under Consignment Note No.457 dated 08.02.2001. The said trailer along with consignment arrived at Chennai on 22.02.2001, for onward carriage to Port Blair. However, the first plaintiff directed the defendant to carry the consignment to godown of the first plaintiff in Guindy, Chennai and the first plaintiff detained the consignment along with the trailer.

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iv). The delivery of goods by the defendant was made, as per the request of the first plaintiff on 22.04.2001. The first plaintiff, who is the

owner of the suit consignment lodged a claim with the defendant carrier vide Notice of Loss, dated 20.02.2001 holding that the defendant is responsible for damage to the Suit consignment and called upon them to take necessary precautions to protect the materials from transit hazards. The defendant, after the receipt of the said notice called upon the plaintiff to conduct the joint survey vide letter dated 16.03.2001. The first plaintiff vide letter dated 19.02.2002, informed the defendant about the joint survey. The defendant by their letter dated 27.02.2002, rejected the same due to delay and latches on the part of the first plaintiff. In the meantime, the first plaintiff paid the freight charges of Rs.1,80,855/- in full along with the lorry detention charges of Rs.60,000/- (Rs.4000 x 15 days) without any demur or protest.

v). Since the suit consignment was insured by the first plaintiff with the second plaintiff/Insurance Company for transit risks, first plaintiff made a claim before the second plaintiff/Insurance Company and the Insurance Company also settled the claim. Upon being indemnified by the second plaintiff, the first plaintiff executed a letter of subrogation and Special

Power of Attorney in favour of the second plaintiff on 03.07.2002, thereby, subrogating all their rights of recovery to the second plaintiff. By virtue of such Letter of Subrogation, the second plaintiff/Insurance Company, being a subrogee, filed the present suit against the alleged loss caused due to damage of the goods by the defendant from Ghaziabad to Chennai.

4. The learned counsel appearing for the applicant/defendant submitted that, applicant/defendant has filed the Application No.8604 of 2018 to pass a summary judgment under order XIII A CPC, dismissing the suit filed against them.

4.1 The learned counsel contended that the suit is barred by limitation under Section 10 of the Carriers Act. It is his main contention that as per the provisions of Section 10 of the Carriers Act, notice of loss or injury has to be given within a period of six months of the time, when the loss or injury first came to the knowledge of the plaintiff. In the present case, no such notice was given within a period of six months from the date of delivery of the alleged damaged goods by the defendant to the plaintiff

and the so-called notice, dated 20.02.2001 stated to have been given by the first plaintiff cannot be treated as notice under Section 10 of Carriers Act for the reason that the said notice was given much prior to the delivery of the goods, based on a presumption, that too, even before the arrival of the goods and inspection of the same, and to be specific, without even opening the package. To put it in other words, when the goods were in transit from Ghaziabad to Chennai, and before it reaches its destination, i.e. Chennai, the first plaintiff caused such notice and made a statement of claim through its Delhi Office to the applicant/defendant, and hence, the same cannot be treated as notice under Section 10 of Carriers Act.

4.2 The learned counsel placed reliance on the judgment of the Hon'ble Apex Court passed in ***P.Rama Rao vs. P.Nirmala and Ors (1997) 1 SCC 757***, in support of his case, wherein, it is held that, a notice under Section 10 is required to be issued within six months from the date of the knowledge of the injury to or loss of the goods entrusted for carriage before filing the suit. Therefore, he submitted that, in the present case, notice under Section 10 of the Carriers Act, 1865 (for short, the 'Act') was not issued and

hence, the Suit is not maintainable and liable to be dismissed by this Court.

4.3 The learned counsel for the applicant/defendant further contended that the suit is also barred by limitation under the provisions of Multimodal Transportation of Goods Act, 1993. The learned counsel contended that the transportation of goods took place from Ghaziabad to Chennai Port via. Road and from Chennai Port to Port Blair via. Sea. Even in the plaint, the plaintiff averred that the defendant carrier transported the goods from Ghaziabad to Chennai and thereafter, to Port Blair by sea as a Multimodal Transportation. Therefore, the learned counsel contended that the mode of transportation in the present case is by Road and Sea and hence, the provision of Section 24 of the Multimodal Transportation of Goods Act, 1993 will stand attracted, and as per the said provision, notice of loss or damage ought to have been given in writing to the applicant/defendant after the delivery of Cargo within nine months and it is an admitted fact by the plaintiff that no such notice under the provisions of Multimodal Transportation of Goods Act was issued, and therefore, the suit is barred by limitation in terms of Section 24 of the said Act.

4.4 The learned counsel for the applicant/defendant further contended that nearly 24 days elapsed between the date of arrival of cargo the date of inspection of Cargo unilaterally by the first plaintiff. However, the first plaintiff paid the freight charges to the defendant without any demur. Therefore, the plaintiff having paid the freight charges without any protest, now filing the suit on the ground that damage to the goods was caused on the part of the defendant is not sustainable and also not proper and liable to be rejected.

4.5 Further, learned counsel contended that, the goods were surveyed by the Surveyor appointed by the plaintiffs on their own without informing the defendant. In fact, when the plaintiff sent a notice stating the about the alleged damage caused to the goods and called upon the defendant to take necessary precautions to protect the materials from transit hazards, the defendant sent a notice, dated 16.03.2001, calling upon the plaintiff to conduct the joint survey. But the first plaintiff, after a year, vide letter dated 19.02.2002, informed the defendant about the joint survey. Hence, the defendant, by their letter dated 27.02.2002, rejected the same due to delay

and latches on the part of the first plaintiff. Further, he contended that it has also not been a practice to conduct the survey after a period of one year.

4.6 The learned counsel further submitted that the goods were delivered to the plaintiffs on 22.02.2002 and it is not known as to what had happened to the goods from the date of delivery (22.02.2002) till 19.02.2012. Therefore, the learned counsel contended that when the defendant was not a party to any of the surveys conducted by the plaintiffs, nor was invited by the plaintiff for any of the surveys before 20.02.2002, the loss ascertained out of such survey cannot be relied upon and the claim made by the plaintiff based on such survey report is not maintainable. Therefore, the applicant/defendant contended that the present suit is liable to be summarily rejected without going into the merits of the case.

4.7 The learned counsel further submitted that though the plaintiff marked certain documents in support of their case, the same cannot be relied upon in the present case, for the reasons that those documents are xerox copies and the same cannot be marked as evidence. In this regard, the

learned counsel referred to the judgment of this Court passed in the case of ***Damodaran Vs. Poongavanam Ammal and Others***, reported in ***AIR 2006 Mad 375***, wherein, it was held that a person seeking to receive and mark xerox copy of particular document has to satisfy requirement of Section 65 of the Evidence Act. For better appreciation, the operative portion of the said judgment is extracted hereunder:

"16. The Trial Court has observed that a person seeking to receive and mark the Xerox copy of a particular document has to satisfy the requirements laid down under Section 65 of the Evidence Act. The Trial Court further observed that the revision petitioner has not taken any steps to secure the original documents and he has not complied with the statutory requirements under the Indian Evidence Act.

17. When the revision petitioner has not complied with the statutory requirements, he cannot be permitted to let in secondary evidence by marking Xerox copy of the share certificate. Even though the learned counsel for the petitioner has contended that the requirements under the Evidence Act have been complied with, he is not able to establish the same nor do I find such compliance in the documents filed in the typed set of

papers. Though there is a reference made by the learned counsel for the petitioner that notice was purported to have been issued under Section 66 of the Evidence Act calling upon the respondents herein to produce the original share certificate, the learned counsel is not able to show whether the same was served on the respondents. This notice found place in page 42 of the typed set does not even bear the date as to when it was drafted or sent. Further in the affidavit filed in support of the applications (I.A. Nos. 713 and 714 of 2004) it was not at all mentioned that a notice was sent calling upon the 3rd respondent herein to produce the original share certificate. What is stated in the affidavit is that the revision petitioner has called upon K. Selvaraj, the 3rd respondent herein to produce the original of the share certificate and if he failed to produce then he was entitled to adduce on his side the document in support of his case. A close reading of that portion in para 10 of the affidavit will make it clear that only in the affidavit the 3rd respondent has been called upon to produce the original certificate. Therefore I do not find any illegality nor infirmity in the order of the Trial Court though some of the words are not correctly worded. The decisions relied on by the learned counsel for the revision petitioner are not

helpful as the facts are clearly different and distinguishable."

4.8 The learned counsel for the applicant/defendant further pointed out that the counter affidavit filed by the plaintiff in the present application cannot be taken on record. In terms of order XIII A (4) (3) of Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015, the plaintiff ought to have filed the counter within 30 days' time. In the present case, applicant/defendant filed the present application on 09.11.2018, and the plaintiff filed the counter affidavit on 07.02.2019. Thus, since there was delay in filing the counter affidavit, the right of plaintiff to file counter stands forfeited, in terms of order XIII A (4) (3) of Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015, and the same cannot be taken into consideration.

4.9 Finally, the learned counsel contended that even if the trial is conducted based on the documents produced by the plaintiff and the other documents available on record, suit is not maintainable. In this connection,

the learned counsel has drawn the attention of this Court to the Surveyor's Report, annexed at page No.78 in the Index to Document filed by the applicant/defendant in support of the present applicant, wherein, statement made by the Security Guard of the plaintiff-Company, who escorted the defendant carriage is recorded, which is to the effect that on account of the jerky movement of the carrier caused due to the bad road condition, the consignment were damaged. Therefore, from the statement made by Security Guard, it is clear that there was no negligence on the part of the defendant and the damage had occurred which is beyond the control of the defendant, and it is not deliberate or with the criminal intentions. Further, the learned counsel contended that all these documents are admitted and hence, the present suit is liable to be dismissed on this score alone.

5. On the other hand, the learned counsel appearing for the respondents/plaintiffs submits that the consignment, consisting of eight wooden packages was sufficiently packed in good order and condition, (as morefully set out in packing note) was entrusted with the defendant carrier at Ghaziabad for safe carriage and delivery to Port Blair, via. Chennai. The

defendant carrier, in acknowledgment of such entrustment in good order and condition, undertook to deliver the consignment in same good order and condition at Port Blair, and issued a clean consignment note, dated 08.02.2001 from Delhi (Ghaziabad) to Port Blair, Chennai, as a multimodal transportation. The learned counsel submitted that contrary to the said undertaking, the defendant delivered the consignment in a damaged condition, as it was noticed by the consignor's representatives at Chennai that out of eight packages, two packages were damaged and to ascertain the loss caused due to the damage, a Surveyor was appointed, who filed a report, assessing the value of loss at Rs.1,08,99,321/-. Hence, the first plaintiff sent a notice of loss, dated 20.02.2001, stating that the defendant is responsible for the loss caused and also called upon the defendant to be present for joint inspection to be held on 12.03.2002. The learned counsel submits that the said notice, dated 20.02.2001 was acknowledged by the defendant, however, the defendant failed to participate in the joint survey. The learned counsel, therefore, contended that, the first plaintiff has sent the notice dated 20.02.2001 immediately upon noticing the loss, and that is sufficient notice in terms of Section 10 of the Carriers Act.

5.1 The learned counsel further contended that the first respondent/plaintiff invited the applicant/defendant for a Joint survey, and it is the defendant, who refused to come for a Joint survey. Therefore, the plaintiffs have conducted the joint survey without the defendant and that, there is no delay or latches, as alleged by the defendant, since the plaintiff sent notice, calling upon the defendant for joint survey immediately upon noticing the loss. In fact, the first respondent also admitted the fact that they were called for a joint survey, vide letter dated 19.02.2002. Hence, the learned counsel contended that, the defendant cannot contend that the survey was conducted in their absence, consequently, the claim made is unsustainable.

5.2 The learned counsel further submitted that, since their Security Guard accompanied the defendant carrier, the applicant came to the know about the damage of goods through the Security Guard. Therefore, they have issued notice of loss immediately upon notice of the loss though without receipt of the physical consignment of the damaged goods. As per the Carriers Act, it is the duty of the plaintiff to issue notice immediately

upon the notice of damage come to the knowledge. The moment when they come to the knowledge about the damage they have received a notice on 20.02.2001, hence, it is the proper notice under Section 10. Hence, he contended that the suit is not barred by limitation in terms of Section 10 of the Carriers Act and the Suit is maintainable.

5.3 The learned counsel further contended that the suit is not barred by limitation even under the provisions of Multimodal Transportation of Goods Act. The learned counsel contended that, though it is the contention of the learned counsel for the applicant/defendant that the transportation of goods took place from Ghaziabad to Chennai Port via. Road and from Chennai Port to Port Blair via. Sea, and the mode of transportation in the present case is by Road and Sea, the provision of Section 24 of the Multimodal Transportation of Goods Act will not come into play, as the defendant has not been registered under the Multimodal Transportation Act, and therefore, the question of applicability of Multi Modal Transportation does not arise at all. Hence, the learned counsel submitted that only Carriers Act will apply and suit is maintainable.

5.4 The learned counsel further submitted that not all the plaint documents are photocopies, and the plaint document Nos.1, 3, 6, 9, 11, 16, 21, 23 24, 25, 26, 28, 29, 34, 35, 36 and 37, are originals, and therefore, contention of the learned counsel for the respondents that the plaintiff marked only xerox copies of the documents in support of their case, and the same cannot be marked as evidence, in view of the law laid down by this Court, in the case of *Damodaran Vs. Poongavanam Ammal and Others* (*supra*), is not sustainable.

6. Heard the learned counsel appearing for the applicant/defendant and the learned counsel for the respondents/plaintiffs and gone through the plaint along with the documents filed thereunder, counter affidavit filed by the plaintiff in connection to the application for summary judgment and written arguments filed by both the parties.

7. The issues that arise for consideration in this Civil Suit are as follows :-

i Whether the notice sent by the first respondent/first plaintiff can be deemed to be a notice under Section 10 the Carriers, if not, whether suit is barred by limitation under Section 10 of the Carriers Act, 1869?

ii) Whether the suit is barred by limitation under Section 24 of the Multimodal Transportation of Goods Act, 1993?

iii) Whether there is any real prospects for the plaintiffs to succeed in the suit against the defendant based on the document filed by them?

Before deciding the aforesaid points, it would be apposite to refer to Section 10 of the Carriers Act, 1865, which reads as follows:-

"10. Notice of loss or injury to be given within six months:- No suit shall be instituted against a

common carrier for the loss of, or injury to, [goods (including container, pallet or similar article of transport used to consolidate goods) entrusted] to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.]"

Issue No.i

8. On perusal of the above provision, it is clear that notice of loss should have been given to the defendant before the institution of the suit within six months of the time when the loss or injury first came to the knowledge of the plaintiff. It is relevant to mention here that the Hon'ble Supreme Court of India, in the judgment of *Transport Corporation of India Vs. Veljan Hydrair Limited* reported in (2007) 3 SCC 142 has dealt with the scope of Section 10 of the Couriers Act, in Paragraph No.7, which reads as follows:-

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Section 10 requires a notice in the manner set out therein, for initiation of a proceedings against a common carrier for loss of goods or injury to goods entrusted for carriage. The notice need not say

specifically that it is issued under [section 10](#) of Carriage Act, 1865. It is sufficient if the notice fulfils the requirement of [section 10](#), that is to inform the carrier about the loss or injury to the goods. **Such notice under [Section 10](#) will certainly be required where the common carrier delivers the goods in a damaged condition, or where the common carrier loses the goods entrusted for carriage and informs about such loss to the consignor/consignee/owner.** The object of the section is to put the carrier on notice about the claim in respect of the loss or damage to the consignment so that it can make good the loss occasioned. But where there is no loss or injury to the goods, but the common carrier wrongly or illegally refuses to deliver goods and the person entitled to delivery initiates action for non-delivery, obviously [section 10](#) will not apply. Similarly, where the common carrier informs the person entitled to delivery (consignor/consignee/owner) that the consignment is being traced and process of tracing it is still going on and requests him to wait for the consignment to be traced and delivered, but does not subsequently inform him either about the loss of the consignment, or about its inability to trace and deliver the consignment, the claim by the consignor/consignee, will not be for loss or injury to goods but for non-

delivery of goods. The requirement relating to notice within six months in [section 10](#) will not apply to a claim based on such non-delivery. In fact [section 10](#) does not use the word 'non- delivery' of goods, but uses the words 'loss of, or injury to, goods'. A case of 'non-delivery' will become a case of 'loss' of consignment, only when the common carrier informs the consignor/consignee about the loss of the consignment.”

9. Thus, from the above, it is clear that notice under Section 10 will certainly be required, where, the common carrier delivers the goods in a damaged condition or the common carrier loses the goods entrusted with the carriage and notice about such loss to the cosigner / consignee / owner.

10. In the present case, it is admitted by both the parties the alleged damaged goods were delivered to the first plaintiff on 22.02.2001 and notice of loss was sent on 20.02.2001. Thus, when consignment was delivered only on 22.02.2001, it is not known as to what made the first respondent/plaintiff to issue notice on 20.02.2001, i.e. two days prior to the

delivery of the goods, that too, based on a presumption that the goods might have got damaged without ascertaining the actual damage to the goods. Therefore, the notice of loss, dated 20.02.2001, sent by the first plaintiff cannot be deemed to be a notice under Section 10 of the Carriers Act, 1865.

11. Further, as held by the Hon'ble Supreme Court, in the case of ***Transport Corporation of India Vs. Veljan Hydrair Limited (supra)***, the object of the section 10 is to put the carrier on notice about the claim in respect of the loss or damage to the consignment so that it can make good the loss occasioned. But, in the present case, it is admitted by both the parties that the alleged damaged goods was delivered only on 22.02.2001. Therefore, after the delivery of the goods, the first plaintiff should have ascertained the damage and sent notice of loss to the defendant within six months from the date of delivery of the goods, i.e. on or before 21.08.2001.

12. On perusal of the documents filed by the plaintiff, this Court is unable to find any such notice sent by the first plaintiff to the defendant. Therefore, this Court has no hesitation to hold that the first plaintiff has

failed to sent notice under Section 10 of the Carriers Act, after delivery of the goods (i.e on 22.02.2001), within six months.

13. Therefore, the present suit is hit by Section 10 of the Carriers Act, 1865. Hence, the suit is liable to be dismissed summarily. Accordingly, the issue No.i) is answered against the plaintiffs.

Issue No.ii

14. As far as the applicability of the provision of Multimodal Transportation of Goods Act, 1993 is concerned, in the present case, the consignment was delivered to the first plaintiff from Ghaziabad to Chennai, by Road and from Chennai to Port Blair by way of Sea.

15. It is pertinent to mention the definition of Multimodal Transportation, as defined under Section 2 (k) of the Multimodal Transportation of Goods Act, 1993. The term, “Multimodal Transportation” means carriage of goods by way of atleast two different modes of transport under a multimodal transport contract, from the place of acceptance of the

goods in India to a place of delivery of the goods outside India.

16. As stated above, the parties agreed for transportation of goods by way of two different modes from Ghaziabad to Chennai by road and Chennai to Port Blair by way of Sea. But on perusal of the definition provided under Section 2 (k) of the Multimodal Transportation of Goods Act, it is just and necessary for acceptance of goods for carriage by two different modes, transportation should be in India and delivery of the said goods shall be outside the India. In the present case, acceptance of goods is in India and the delivery of the goods is also in India, viz., at Port Blair. Therefore, in the present case, transportation is not by way of multimodal transportation, as defined under the Multimodal Transportation of Goods Act, 1993. Accordingly, Issue No.ii) is answered, as in the present case, the provisions of Multimodal Transportation of Goods Act, does not apply.

Issue No.iii)

17. Insofar as the third issue is concerned, viz., whether the

plaintiffs have any real prospects to succeed in the suit based on the documents filed by them, it is no doubt true that the present Suit has been instituted by the first plaintiff in the capacity as owner of the goods and the second plaintiff as Insurer for negligence on the part of the defendant/carrier.

18. It is an admitted fact that the first plaintiff imported the consignment of airport surveillance radars from France, vide an Invoice dated 21.03.2000. The said consignment was brought from Le Harvey Port, France to Mumbai Port, India, in a container. Thereafter, the consignment was taken from Mumbai to the first plaintiff's warehouse in Ghaziabad and kept there till 07.02.2001. The first plaintiff, vide invoice dated 08.02.2001, valued the radar @ Rs.1,50,29,700/- and thereafter, intended to dispatch the same to Port Blair.

19. The plaintiffs themselves packed the radar systems in eight wooden packages, as set out in undated packing note, filed as Plaint Document No.5. The defendant received the packed consignment from the

first plaintiff, for carriage and delivery from Ghaziabad to Port Blair, via. Chennai. For the travel from Ghaziabad to Chennai, the same was carried by road transportation, vide trailer No.HR389613, under Consignment Note No.457 dated 08.02.2001.

20. The said consignment arrived at Chennai on 22.02.2001, for onward carriage to Port Blair. However, the first plaintiff directed the defendant to carry the consignment to godown of the first plaintiff in Guindy, Chennai, and the first plaintiff detained the consignment along with the trailer. Along with the carriage, the Security Guard of the first plaintiff also accompanied the carrier from Ghaziabad to Chennai. During transit, i.e. two days before the consignment reached the destination, i.e. at Chennai, on 20.02.2001, notice of loss was given by the first plaintiff to the defendant. It is quite surprising when the consignment not at all reached the destination, it is not known on what basis, the first plaintiff has sent such notice of loss to the defendant.

21. Further, in the Surveyor's Report filed by the plaintiffs, the statement made by the Security Guard of the plaintiff-Company, viz., Subedar S.S.Talewar, who escorted the defendant carrier is recorded, which is extracted hereinbelow:-

"Statement of Security Guard of M/s.Bel who escorted the Truck."

We had obtained the statement of the Security Guard Subedar. S.S.Talewar, staff No.2252 who had said that he was sent to Madras in Lorry No.HR-38-9613 for accompanying the consignment. On the way to Madras due to jerks and bad road, he had seen damage to goods/packages when the vehicle was approaching Chennai. It was not found safe to stop the truck on the road, since there was danger to consignment and lives as there had been a murder in the nearby area. A mob had gathered there and stone throwing started and the shops were also closed. He had informed the local Police, but they told him to remove the truck from there. After that he contacted his BEL Madras Unit and reached the packages there as advised after lashing

temporarily by ropes.

*(Copy of Security Guard's Statement at Annexure
-H)"*

22. On perusal of the statement made by the Security Guard of the first plaintiff-Company, in the Surveyor's report filed by J.Basheer and Associates, it is stated that on the way to Madras due to jerks and bad road, he (Security Guard) had seen damage to goods/packages when the vehicle was approaching the destination at Chennai. Further, the Surveyor's report is not disputed by the plaintiffs.

23. In view of the categorical statement made by the Security Guard of the first plaintiff-Company, it is clear that the damage had occurred only due to the bad road condition and not due to the negligence on the part of the defendant Carrier.

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24. Therefore, no liability can be fastened on the defendant/Carrier due to the aforesaid admitted facts. In view of the above findings, there is no

necessity for this Court to scrutinize the documents filed by the defendant and pass orders, which is totally unwarranted, and this Court holds that the plaintiffs have no real prospects of succeeding the suit claim.

25. Therefore, it is proved beyond doubt that there is no negligence on the part of the defendant carriers, and on this score also, the present suit is liable to be summarily rejected. Accordingly, Issue No.iii) is answered in favour of the defendant.

26. In the light of the above findings, this Court passes the summary judgment under Order XIII A (4) (3) of Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 by rejecting the plaint. Accordingly, the Application is allowed and the Suit is dismissed. No costs.

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Application No.8604 of 2018 in C.S.No.228 of 2004

KRISHNAN RAMASAMY, J.

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Pre-delivery order
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