IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment : **30.08.2019**
Date of Pronouncing Judgment : **23.10.2019**

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

C.S.No.361 of 2016

M/s.Arabian United Float Glass Company,
rep. By its Power of Attorney,
Mr.Niyasudheen Kottaparamba .. Plaintiff

Vs

1. M/s. Triquetra Global Touch Private Limited (TGT),
   rep. By its Director,
   38/24, Partharasarathy Street,
   Purasawalkam, Chennai – 600 007.

2. Mr.Rathinaswamy Aaron Stephen,
   Proprietor of Essar Enterprises (Essar)
   38/24, Partharasarathy Street,
   Purasawalkam, Chennai – 600 007.

3. Mr.Martyn,
   38/24, Partharasarathy Street,
   Purasawalkam, Chennai – 600 007.

...Defendants

Prayer :-

Plaint under Order VII, Rule 1 and Section 26 of C.P.C., and Order IV Rule 1 of Madras High Court O.S.Rules, praying for a judgment and decree directing the defendants to jointly and severally to pay the plaintiff ;

a) a sum of USD988,212/- together with interest at the rate of 18% p.a. From the date of plaint till the date of realization (subject to permission being given by the authorities under FEMA Act, 1999 and in the event of permission not being granted or defendants not paying in foreign currency, the defendants to pay the plaintiff, the rupee equivalent of US$ prevailing on the date of judgement.

b) a sum of USD100,000/- towards damages and losses, for mental agony and harassment.

c) For payment of costs of the suit.

For Plaintiff : Mr. P.Giridharan

For Defendants 1 and 2 : M/s. Haja Nazirudeen for Mr.P.Haribabu

Third Defendant : Set exparte

J U D G M E N T

The plaintiff has instituted the present suit for recovery of money with interest and for damages.

2. The averments set out in the plaint, in gist and kernel are as follows:-

i) The plaintiff, viz., M/s.Arabian United Float Glass Company, is a renowned float glass manufacturer and exporter in the middle east. The plaintiff is the first independent float line glass manufacturer in the middle east and Africa.

ii) The first defendant is a Private Limited Company and is an owner of clear float glass. The second defendant is a Director of the first defendant and also the Proprietor of one Essar Enterprises. The third defendant is the Agent/Broker for the first defendant.

iii) The third defendant, during December, 2012, approached the plaintiff for shipping 110 containers of clear glass float to one M/s.South Glass Industries, allegedly situated in Chennai, India. The plaintiff was made to believe that the third defendant was an agent of the said M/s.South Glass Industries, which in reality was a bogus company, with a fictituous business name. Based on the e-mail sent by the third defendant, the plaintiff sent a proforma invoice, dated 29.12.2012, in the name of the said M/s.South Glass Industries for the aforesaid work order. On 01.01.2013, the plaintiff received an email confirming the proforma invoice purportedly signed by one Mr.Sakthivel from M/s.South Glass Industries, who was a fictitious character created by the third defendant to defraud the plaintiff.

iv) On 05.01.2013, the Company received a letter of credit (LC) swift copy (L/C) bearing No.526/SBI/3625) dated 04.01.2013 from the third defendant with the following details:-

Applicant ; South Glass Industries, Chennai,
Bank : State Bank of India, Chennai
Beneficiary : Arabian United Float Glass Co.
Amount : USD 620 352.

v) Since there was change in terms of payment, the defendant amended the L/C with regard to the amount and send it to the plaintiff. Thereafter, the third defendant forwarded a copy of the amended L/C in his e-mail, dated 09.01.2013, addressed to the plaintiff. But, to the complete surprise of the plaintiff, the revised L/C also had a different consignee, i.e. the first defendant herein. Subsequently, since the consignee's name was that of the first defendant, the said shipment was effected. The said consignment was divided into three tranches/shipments.

vi) The first consignment was for 50 containers of float glass shipped, vide Bill of Lading, dated 03.03.2013 per Vessel OOCL Britain. The second consignment was for 30 containers of float glass shipped vide Bill of Lading, dated 19.03.2013, per vessel Laura Maersk. The third consignment was for 30 containers of float glass shipped vide Bill of Lading dated 19.03.2013, per vessel Laura Maersk.

vii) Thereafter, the plaintiff presented the Letter of Credit and other documents to their bankers, M/s. Arab National Bank and to their shock found that no such letter of credit was advised by the first defendant to M/s. State Bank of India (SBI). The same was also confirmed by the plaintiff's bankers vide e-mail dated 08.04.2013, stating that, no such letter of credit could be traced by the recipient of the bank. When the plaintiff conveyed the same to the third defendant, the third defendant assured that the amount will be paid to the Bank on an 'outward collection' basis. The plaintiff agreed to accept the payment on an outward collection basis. Accordingly, instructed their bankers M/s.Arab National Bank to forward three sets of documents (as against the aforesaid three consignments) to the State Bank of India, Chennai Branch. The plaintiff further communicated the same to the third defendant vide e-mail dated 12.04.2013. However, the third defendant requested the plaintiff to send the documents for outward collection to Central Bank of India.

viii) The plaintiff refused to transfer the documents in relation to the outward collection basis to Central Bank of India as all the documents, including commercial invoice, weight lists, packing lists were issued in the name of State Bank of India and inspite of the documents being sent to State Bank of India, the third defendant did not collect the documents from the said Bank. On 22.04.2013, Arab National Bank received a swift messages from SBI that they could not trace the account number and address of the first defendant and hence, requested ANB to provide the customer account number, name of bank, to proceed further.

ix) The first and third defendant misrepresented the plaintiff that he sent the letter of credit of SBI when he never had an account with the said Bank. The above acts of the first and third defendant in presenting false letter of credit and not honouring the payments on an outward collection basis are acts merely to defraud the plaintiff. Further, the plaintiff was shocked and surprised to learn that the first defendant had taken delivery of the first consignment of 50 containers of cargo, covered by invoice, dated 12.01.2013, without the payment of invoice value, without surrendering the originals of the commercial invoices, packing list, bill of lading, and certificate of origin towards the aforesaid consignment to the shipping line. However, without submission of the shipping line, the first defendant has wrongfully released the cargo to the consignee and has thereby, committed a breach of contract of carriage under the bill of lading dated 03.03.2013. When the plaintiff refused to agree to the unreasonable demands, the third defendant stated that the customer i.e. the first defendant was no longer interested in receiving the remaining consignments. Subsequently, since the cargo was lying uncleared, the plaintiff was contacted by the second defendant that he be appointed as the clearing agent for the consignments to be sent by the plaintiff.

x). The plaintiff realized that the third defendant and the second defendant were hand in glove and that they have planned the scheme wherein, the second defendant will be requested through the third defendant to become clearing agent for the other consignments on behalf of the plaintiff in Chennai. The defendants 1 to 3 by working a scheme have managed to hoodwink the plaintiff and cleared the 80 containers of float glass, shipped by the plaintiff and the third consignment of 30 containers of float glass is still in the custody of Customs Department as the same is not cleared by the defendants thereby causing wrongful loss for the cumulative value of all three consignments of 110 containers of float glass.

xi) The first defendant is well aware as a consignee they are permitted to take delivery of the consignment only after surrendering the originals of the telex bill of lading, commercial invoice, packing list, weight list and certificate of origin. Since the first defendant has taken delivery of 80 containers of the total 110 containers of cargo cumulatively worth US$ 6,54,445/- without paying the invoice value of the cargo, the plaintiff is constrained to claim the same from the defendants as the partial delivery has been illegally done in breach of the contract of carriage, dated 03.03.2013 and the balance 30 cargos are still lying with the Customs with liability of substantial damages and

Customs charges.

xii) The plaintiff also filed a criminal complaint against the defendants and others under various provisions of IPC vide Criminal Complaint dated 24.11.2014, on the file of the Inspector of Police, EOW, CID, Anna Nagar and the same is pending. The defendants have put the plaintiff to immense agony, hardship, harassment, and extreme difficulty as the plaintiff had to run from pillar to post for the dues and also had to fly their employers to Chennai to find out the whereabouts of the shipments and had to investigate the fate of the same.

3. Defendants 1 and 2 have filed written statements, wherein, it is stated as follows:-

i) M/s.Essar Enterprises is a sole proprietorship concern, bearing TIN No.33581060807 with a certificate of importer-exporter code, IEC, dated 05.10.2006 issued by the Ministry of Commerce, Government of India as well as CST Registration dated 10.01.2007, wherein, the second defendant is the Proprietor. Likewise, another Company, viz., M/s.Triquetra Global Touch Private Limited is a Company incorporated under the Provisions of the Companies Act, 1956, the first defendant herein, wherein, Mr.Rathinaswamy Aaron Stephen is a Director and his wife Mrs.Kavitha is another Director.

ii) M/s.Essar Enterprises and M/s.Triquetra Global Touch Private Limited are Companies started in trading business, import of mirrors and glasses. So far as M/s.Essar Enterprises is concerned, there is an executive/employee of the foreign company by name Mr.Abdul Rahman in Chennai, who has not been made as party to the suit, who was burdened with the duty and obligation of procuring orders relating to importation of architectural glass and float glasses from Saudi Arabia on behalf of the plaintiff Company. Apart from the said Mr.Abdul Rahman, executive of the plaintiff Company, logistic executive, representing Tamil Nadu on behalf of the plaintiff Foreign Company and who is responsible for clearance of three consignments providing 120 days open credit, besides allowing 60% deduction for rejected glasses based on instruction given by his higher authority Mr.Abdulla Orifi. The first and second defendants acted in such a way to maintain cordial relationship with the plaintiff Company to deal with business at the instance of the above executive even when no orders were placed through them by way of clearing 50 containers of float glasses during March, 2013.

iii) Further, the second defendant has been informed by Abdul Rahman that the above 50 containers of float glasses would be cleared through Hapgag Lloyd, a shipping Company when the first defendant expressed reluctance to accept the document initially in relevance to the above consignment but accepted on assurance that the first defendant would be appointed as the distributor. Some how or the other, in anticipation of development and progress of his business in Tamil Nadu, the first defendant extended full co-operation and helped towards pushing up sales of imported float glasses by finding out suitable customers, who are in dire need of the same. Accordingly, on account of the telex message released by the plaintiff, the delivery order was received from M/s. Hapgag Llyod Warehouse in the name of the first defendant which was registered under the Companies Act, and housed in the same address, wherein, M/s. Essar Enterprises is functioning inasmuch as the same was not registered then under the Companies Act and it was registered only on 01.04.2012.

iv) On account of the business transaction performed even in the absence of any order on the basis of the assurance given by the Executive, Abdul Rahman, the first and second defendants had to suffer mainly due to lack of adequate storage space in their Company, thereby, shelling out a sum of Rs.1,24,00,000/- towards handling charges.

v) Owing to slump in the market followed by download trend, in the business horizon for procurement of imported glasses, the goods were sold in piece-meal to the customers at cost price or even below the cost price and payment to the tune of Rs.40,00,000/-was remitted only as per the instructions of the Executive, Mr.Abdul Rahman. The said Abdul Rahman and Feroz Khan received the above sum of Rs.40,00,000/- on behalf of the plaintiff's Company. Further, the Foreign Company's invoices evidence to the effect that the terms of the payment stipulating as 120 days open credit with 60% discount for rejection of glasses. The value of 50 containers as mentioned in the invoice dated 12.01.2013 quantified the value in such a manner, as 2,94,482.73 US $ which is equivalent to INR 1,61,81,829/- as evidenced in the Bill of Entry. Subsequently, on 25.10.2013, the first defendant ' through his Bank HDFC paid to the plaintiff Rs.20,00,000/- as per the direction of Company Executive, Mr.Abdul Rahman. Further, in exclusion of the discount of 60% allowed for rejection of glasses, amounting to Rs.96,00,000/- has already been paid as stated above, and the balance to the tune of Rs.5,51,829/- was retained by the Company.

vi) Further, on being thrust by the said Abdul Rahman representing the Foreign Company, the first defendant cleared the consignment by sustaining heavy loss towards payment of demurrage to the tune of Rs.1,24,00,000/-. As on date, a sum of Rs.5,81,829/- is outstanding, for which, the first defendant had requested Abdul Rahman to address to that effect in relevance to the factual matrix of the loss. But to the shock and surprise, the Foreign Company planted a person of their choice, i.e. Martin, Dubai, as the alleged executive of the plaintiff in Crl.O.P.No.18431 of 2015 and has made a false complaint, stating that he made payment of Rs.20 lakhs and sought direction from this Court to register the complaint.

vii) Eventhough there was no order placed for importation, the Executive, who have knowledge about the defendants constitution to avoid any loss of importation on account of lapses of the Executives, the defendants have been compelled to accept the consignment. The defendants agreed to clear in piece meal to maintain cordiality in business taking into consideration of his past transaction of import. Further, whatever action or transaction said to have been perpetuated by the third defendant, the first and second defendants had not an iota of knowledge save the fact that 50 containers were cleared through Abdul Rahman only, that too, in the absence of any order placed on them for clearance. In fact, the executives of the Foreign Company had full knowledge, who are to be blamed for perpetuation of any kind of clandestine transaction. Therefore, the defendants 1 and 2 averred the suit is liable to be dismissed.

4. This Court, vide order, dated 19.11.2018, framed the following issues:-

> i) Whether the defendants committed breach of contract of sale qua the three shipments under bills of lading No. HLCUJED130212748, DATED 03.03.2013 No.MAEU86516124, dated 19.03.2013, and MAEU865163491, dated 19.03.2013 without payment of the price for the goods?
>
> ii) Whether the defendants are jointly and severally liable to pay the plaintiff' a sum of USD988,212/- being US$ 6,54,445/- towards principal invoice under

three shipments, plus US$ 3,33,767/- towards interest?

iii) Whether the defendants fraudulently issued letter of credit swift copy (l/c) bearing No.526/SBI/3625, dated 04.01.2013 to the plaintiff?

iv) Whether the defendants are jointly and severally liable to pay the plaintiff a sum of US$ 1,00,000/- towards damages?

v) If the plaintiff succeeds in their claim for value of consignment and damages, what would be the rate of interest which the plaintiff will be entitled to?

vi) Whether the suit is bad for non-joinder of a necessary party i.e. plaintiff Company's representative in Chennai?

vii) Whether 60% discount for

rejection of glasses was offered to defendants 1 and 2 by the plaintiff's agent and if yes, what is the impact of the same on the instant lis?

viii) What other relief, the plaintiff is entitled to?

5. Apart from the aforesaid issues, this Court for the purpose of effective disposal of the case, suo moto frames the following issues as Additional Issues with the consent of both parties, as the answer/findings to the additional issues would tantamount to answering the other issues already framed by this Court on 19.11.2018 :

i) Whether the L/C opened by the first defendant dated 04.01.2013, is a real or bogus one and who are all responsible to open the said L/C in favour of the plaintiff, i.e. the plaintiff as beneficiary?

ii) Whether the goods were dispatched in the name of the first defendant by the plaintiff and the same was cleared by the first defendant?

6. Subsequently, on behalf of the plaintiff, P.W.1, deposed evidence and Exs.P.1 to P.35 have been marked. On the side of the defendants, D.W.1 was examined and Exs.D1 to D.61 have been marked.

7. Heard the learned counsel appearing for the plaintiff and the learned counsel for defendants 1 and 2. Insofar as third defendant is concerned, though summon was served on him, he has not chosen to appear either in person or through counsel and failed to file written statement. Therefore, the third defendant was set ex parte by this Court vide order dated on 05.09.2019.

Additional Issue No.i)

8. The learned counsel appearing for the plaintiff submitted that the plaintiff is a renowned float glass manufacturer and exporter in the Middle East. The first defendant is a Private Limited Company incorporated under the Companies Act, and is a trader of clear float glass. The second defendant is a Director of the first defendant and also the Proprietor of one Essar Enterprises. The third defendant is the purchasing agent/broker for the first defendant.

8.1. The learned counsel further submitted that the third defendant, vide e-mail id crescentglasss@gmail.com during December, 2012, approached the plaintiff for shipping 110 containers of clear glass float to one M/s.South Glass Industries, stated to have situated in Chennai, India. Based on the representation made and the e-mail sent by the third defendant, the plaintiff sent a proforma invoice, being P1 3509, dated 29.12.2012, in the name of the said M/s.South Glass Industries for the aforesaid work order of clear float glass worth USD 620 352/-. Subsequently, on 01.01.2013, the plaintiff received an email, confirming the proforma invoice purportedly signed by one Mr.Sakthivel from

M/s.South Glass Industries. Further, on 05.01.2013, the plaintiff Company received a letter of credit (LC) swift copy (L/C) bearing No.526/SBI/3625) dated 04.01.2013 from the third defendant with the following details.

> Applicant ; South Glass Industries, Chennai,
> Bank : State Bank of India, Chennai
> Beneficiary : Arabian United Float Glass Co.
> Amount : USD 620 352.

8.2 The learned counsel further submitted that, the third defendant initially opened the letter of credit in the name of M/s.South Glass Industries. However, subsequently, due to the reason that there was requirement for change in the payment, and the defendants modified the L/C and sent it to the plaintiff by way of e-mail through the third defendant, which is marked as Ex.P.4, wherein, he has attached the copy of the L/C, in which, it is typed as follows :-

> " Please make following amendment to A/M credit.
> Filed 50 - Please read the Applicant name as M/s. Triquetra Global Touch
> File 43P - Please read "Partial Shipment Allowed' in place of mentioned earlier."

8.3. In the said e-mail, there was an attachment of the amended/revised L/C dated 04.01.2013. In the amended L/C, the name of the consignee was also amended and the name of the first defendant is mentioned. Therefore, the plaintiff sent 50 containers of clear float glass out of three consignment of clear float glass of 110 containers to the first defendant, vide invoice No. E0002215, dated 12.01.2013 for US $ 2,94,482.78 marked as Ex.P.8. The 50 containers were shipped vide Bill of Lading No.HLCUJED130212748, dated 03.03.2013, per vessel OOCL Britain. Similarly, the second consignment covered by invoice No.E0002346 dated 25.02.2013, for US$ 1,77,249.88 marked as Ex.P.10, was sent by the plaintiff to the first defendant, vide Bill of Lading No.MAEU86516124, dated 19.03.2013, per vessel Laura Maersk. The third consignment was for 30 containers of float glass was covered vide invoice No.E0002321, dated 25.02.2013, for US$ 1,82,714.23, marked as Ex.P.15, and were shipped vide Bill of Lading No. MAEU865163491 dated 19.03.2013, per vessel Laura Maersk, marked as Ex.P.18.

8.4 The learned counsel submitted that, after effecting shipments, the last of which, were effected on 23.03.2013, the bill of lading was negotiated by the plaintiff with the first defendant on outward collection basis, which means the handling of export documents, which are presented to the Bank by the seller to collect payment from the buyer through the buyer's bank. In the present case, the plaintiff's Bank was Arab National Bank, Jeddah and the buyers bank was State Bank of India, Chennai. The learned counsel submitted that the plaintiff tried to contact the defendant after the shipments were effected but there was no response from them, hence, the plaintiff' sent an e-mail dated 04.04.2013, marked as Ex.P.20, to all the defendants stating that the shipments were effected and that they have been trying to contact them. Further, all the documents were submitted to its Bank, i.e., bill of lading were released through telex and the first defendant took delivery of the cargo. However, it is the case of the plaintiff' that they came to know to their utter shock and surprise that the Bankers, Arab National Bank, Jeddah sent an e-mail dated 08.04.2013, stating that they have not received the letter of credit opened by the first defendant, M/s. Triquetra Global Touch Private Limited (TGT). Further, in the said e-mail, the Arab National Bank stated that they are holding the documents.

8.5 The learned counsel submitted that when the plaintiff did not receive the payment, the third defendant informed the plaintiff', vide e-mail dated 09.04.2013, marked as Ex.P.22, stating that SBI does not have tie up with Arab National Bank, and hence, they will effect payment through Central Bank of India and asked for the documents to be sent again on outward collection basis, to which, the plaintiff sent an reply e-mail, dated 09.04.2013, stating that it would not be possible to send the documents to Central Bank of India and that the payment has to be routed only through SBI.

8.6 Therefore, the learned counsel submitted that the L/C created by the third defendant in the name of the first defendant is a bogus one, which is confirmed by both the Arab National Bank and SBI. Hence, the learned counsel submitted that with a mala fide intention to cheat the plaintiff, all the defendants colluded together and created bogus L/C.

9. On the other hand, the learned counsel for the defendants 1 and 2 submitted that it was the third defendant, who made all shipments using the name of the first defendant, and therefore, they are not responsible for fault and the third defendant is solely responsible for creating bogus L/C. Further, the learned counsel submitted that the plaintiff sent the goods to the first defendant, without any contract, placing any order from the first defendant. Since the plaintiff sent the goods on its own volition, the defendants 1 and 2 are not responsible to pay any amount and they are also not liable for any L/C stated to have created by the third defendant, in favour of the first defendant.

10. On perusal of Exhibits, this Court found that, though the third defendant initially opened the letter of credit in the name of M/s.South Glass Industries, by virtue of Ex.P.3, the third defendant was asked to amend L/C with regard to the amount and sent it to the plaintiff. Accordingly, the third defendant forwarded a copy of the amended L/C and sent it to the plaintiff by way of e-mail, which is marked as Ex.P.4. On the perusal of Exs.P.3 and P.4, it is clear that the third defendant has changed the name of the consignee, from M/s.South Glass Industries to that of the first defendant M/s. Triquetra Global Touch Private Limited (TGT) and sent the amended L/C to the plaintiff. This Court further finds that though the third defendant made all remarks on behalf of the first defendant, the fact remains that the first defendant received the goods and out of three consignments, two consignments were cleared by them from the Customs. In such being the case, the first defendant having been cleared the goods of two consignment of 80 containers, the second defendant being the Director of the first defendant and the third defendant as a agent to the first defendant, had opened the L/C in the name of the first defendant as the plaintiff being a beneficiary would go to show that the defendants 1, 2 and 3 were actively involved in opening the L/C in the name of the first defendant and ultimately, the L/C was found to be a bogus one. Therefore, the role of defendant Nos.1, 2 and 3 in opening the bogus L/C in the name of the first defendant proved beyond doubt. Hence, this Court has no hesitation to hold that the L/C opened in the name of the first defendant is a bogus one and the defendant Nos.1, 2 and 3 are responsible for opening such bogus L/C. Accordingly, additional issue No.1 is answered against the defendants.

Additional Issue No.ii)

Whether the goods were dispatched in the name of the first defendant by the plaintiff and the same were cleared by the first defendant?

11. The learned counsel appearing for the plaintiff submitted that, as per the amended L/C, the plaintiff sent 50 containers of clear float glass out of three consignment of clear float glass of 110 containers to the first defendant, vide invoice No. E0002215, dated 12.01.2013 for US $ 2,94,482.78 and the said 50 containers were shipped vide Bill of Lading No.HLCUJED130212748, dated 03.03.2013, per vessel OOCL Britain, marked as Ex.P.8. Similarly, the second consignment for 30 containers covered by invoice No.E0002346 dated 25.02.2013, for US$ 1,77,249.88 marked as Ex.P.10, was sent by the plaintiff to the first defendant, vide Bill of Lading No.MAEU86516124, dated 19.03.2013, per vessel Laura Maersk, marked as Ex.P.13. The third consignment for 30 containers of float glass was covered vide invoice No.E0002321, dated 25.02.2013, for US$ 1,82,714.23, marked as Ex.P.15, and were shipped by the plaintiff vide Bill of Lading No. MAEU865163491 dated 19.03.2013, per vessel Laura Maersk, marked as Ex.P.18.

11.1 Further, the learned counsel submitted that after the receipt of all the goods, the first defendant cleared 1st and 2nd Consignments, comprising of 80 containers and the same is evident from the fact that the first defendant paid the freight and carriage charges to the carrier for clearing the containers under the Bill of Lading MAEU865164124 and in respect of payment made by the first defendant on 17.06.2013, 24.06.2013 and 26.06.2013, receipts were issued by the carrier, marked Ex.P.34 series. Insofar as the third consignment for 30 containers is concerned, the same is still lying with the Customs with liability of substantial damages and Customs charges. The learned counsel submitted that the first defendant cleared the 1st and 2nd consignments, without making a single payment to the plaintiff and the defendant colluded with each other and managed to hoodwink the plaintiff in clearing the consignments and it is not known as to what prevented them from clearing the third consignments. Therefore, the learned counsel submitted that the first defendant is responsible for clearance of all the goods. When they have agreed to clear 1st and 2nd consignments based on the acceptance of the invoice, there is no locus standi for the first defendant to refuse to clear the 3rd consignment. Therefore, the learned counsel contended that the plaintiff' has dispatched all the consignments to and in favour of the first defendant and the first defendant is liable to pay for all the three consignment of 110 containers.

12. The learned counsel appearing for the defendants 1 and 2 submitted that the consignments were sent by the plaintiff to the first defendant only at the request of the third defendant, and therefore, the defendants 1 and 2 are not responsible for clearing the goods. The first defendant lent his name in good intention to help the plaintiff and the third defendant to clear the goods. Even as per the evidence produced, the first defendant is entitled for commission as agreed between the Agent of the plaintiff and the third defendant along with the plaintiff.

12.1 Therefore, it is the major contention of the learned counsel for the defendants that the first defendant acted as a name lender only for the purpose of commission. Though the goods were cleared, they were cleared on behalf of the Agent, and therefore, the defendants 1 and 2 are in no way responsible for clearance of the first two consignments. Hence, it cannot be stated that the goods were sent by the plaintiff' only in the name of the first defendant and the same was delivered by the first defendant.

13. This Court on perusal of Exs.P.2, P.5,P.6, P.7, P.8. P.9. P.10, P.11. P.12. P.13. P.14. P.15. P.16. P.17. and P.18, found that the plaintiff raised invoice to and in favour of the first defendant/consignee and in the Bill of Lading, the name of the consignee is clearly mentioned as the first defendant. Thus, in all the documents, except, Ex.P.1, the name of the consignee is mentioned only as the first defendant. Further, It is an admitted fact that, the goods were dispatched by the plaintiff to and in favour of the first defendant to Chennai Port. Similarly, it is an admitted fact that the first defendant have cleared the goods of 1st and 2nd consignments. Even in case, there is no agreement for clearance of the goods, when the first defendant cleared the goods, he is bound to make payments to the plaintiff for the goods dispatched to them. If at all the goods have been sent by the plaintiff without any knowledge or without purchase order, the first defendant should have refused to clear the goods at the first instance, instead of clearing first two consignments and refusing to clear the third consignment.

13.1 Thus, the defendants having cleared the first two consignments, it is not open for the defendants to plead before this Court that they do not know anything about the transaction and they acted merely as name lender for the purpose of commission. The contention of the learned counsel for the first and second defendants is that they are only the name lenders and acted for the purpose of commission is unsustainable and this Court holds that the plaintiff is the consignor and the first defendant is a consignee, which has received the goods and also cleared the first two consignments. As far as third consignment is concerned, the consignment was despatched in favour of 1 defendant but it is not proved by plaintiff that it was cleared by the first defendant. Accordingly, Additional Issue No.ii) is answered stating that only the first two consignments were despatched and cleared by the first defendant.

Issue No.i)

14. As noticed above, this Court has decided the additional issue No.(i) in favour of the plaintiff by holding that the L/C opened by the third defendant to and in favour of the first defendant is a bogus one and the third defendant joining hands with the first defendant created the L/C. Therefore, the plaintiff is not in a position to recover any amount on the basis of L/C and subsequently, he has made several demands. Inspite of repeated demands raised, the defendants failed to make any payment as on today. This Court also found that the first two consignments were delivered to the first defendant and the same were cleared by the first defendant. Having been cleared the first two consignments by the first defendant, on the perusal of the documents filed by the plaintiff, and the submissions made by both sides, this Court found that the plaintiff has despatched the third consignment of 30 containers to and in favour of the plaintiff to Chennai Port. Since the first defendant cleared the first two consignments, as per the understanding, the plaintiff despatched the third consignment. Now, the first defendant claims that they have cleared only first two consignments of 80 containers, even without any written contract as a name lender and they have no obligation to clear the third consignment. This Court is not in a position to accept the submission of the first defendant, since the first defendant cleared the first two consignments, the plaintiff, under the *bona fide* belief as per the oral understanding, has despatched the third consignment. Therefore, the duty cast on the first defendant to clear the goods send by plaintiff's third consignment of 30 containers in the similar manner how they have cleared the first two consignments of 80 containers. Further, from the submission of the first and second defendant, it is very much clear that the plaintiff has not received any payment and it is the contention of the first and second defendants that they are in no way responsible for making payment, as they are only name lenders and acted for the Commission Agent. As discussed above with regard to the additional issue No.(ii), the first defendant received the goods and even in the Bill of Lading, the name of the consignor is mentioned as the plaintiff and the name of the consignee as the first defendant and based on those documents, the first defendant also cleared the goods and therefore, the defendants 1 and 2 cannot plead ignorance that they are not liable to make any payment.

14.1 From the arguments advanced by the learned counsel for the defendants 1 and 2, this Court found that no payment has been made by the first and second defendants or even by the third defendant to the plaintiff for the goods received by them from the Chennai Port. The first defendant, having cleared the goods and after having received the same from the plaintiff from the Chennai Port, now the first defendant cannot recuse himself from paying amount to the plaintiff by contending that he has acted only as a name lender and acted for the purpose of commission. Further, as per the Bill of Lading, the name of the consignee is mentioned only as the first defendant and therefore, first defendant is bound to make payment for the goods received by them and by failing to do so the first defendants have committed breach of contract of sale qua the three shipments under bills of lading No. HLCUJED130212748, DATED 03.03.2013 No.MAEU86516124, dated 19.03.2013, and MAEU865163491, dated 19.03.2013. Therefore, issue No.i is answered in favour of the plaintiff.

Answer to the issue Nos.(ii) (iii) (iv) (v) and (viii) :-

15. This Court already found while answering the additional issue Nos.1 and 2 and the issue No.1 that the defendants are responsible for issuing the bogus L/C in the name of first defendant. Further, this Court also came to the conclusion that all the three consignments were despatched in the name of the first defendant and no payment have been made by the first defendant for all the three consignments despatched by the plaintiff in favour of the first defendant. Since the defendant Nos.1, 2 and 3 were involved in opening the bogus L/C in favour of the plaintiff and thereafter, the plaintiff despatched three consignments in the name of the first defendant and two consignments of 80 containers were cleared by the first defendant without any payment to plaintiff and the third consignment of 30 containers, the first defendant failed to clear the same, which would clearly amounts to breach of contract of sale qua the third consignment under various Bill of Lading, this Court holds that the defendants 1 and 2 are jointly and severally liable to pay the plaintiff a sum of Rs.USD988,212/- being US$ 6,54,445/- towards principal invoice under three shipments, plus US$ 3,33,767/- towards interest along with Rs.1 Lakh US$ towards the damages.

15.1 In view of the finding to the additional issue No.(i), this Court is of the view that the defendants fraudulently issued the Letter of Credit (LC) swift copy bearing No.526/SBI/3625, dated 04.01.2013 to the plaintiff. Further, the defendants also jointly liable to pay a sum of Rs.1 lakh US$ towards damages in view of the finding of this Court for the additional issue No.(ii) and the issue No.(i).

15.2 The dispute in the present case is a commercial dispute. Therefore, the plaintiff is entitled for interest at the commercial rate @ 12% p.a. from the date of clearance of the goods from Chennai Port till the date of making the payment in respect of first two consignments and in respect of third consignment of 30 containers, the first defendant is liable to pay interest on the expiry of 60 days from the date when the goods reached Chennai Port and till the date of making the payment. Accordingly issue Nos.(ii), (iii), (iv) (v) and (viii) are answered.

Answer to issue Nos.(vi) and (vii):-

16. The learned counsel appearing for the respondent would contend that the suit is liable to be dismissed for the non-joinder of necessary parties, because one Mr.Abdul Rahuman, was the representative of the plaintiff and Coordinator for the import of the float line glass from the plaintiff to the first defendant through the third defendant and therefore, they contend that he is the just and necessary party. However, he was not impleaded as a party in the present suit. If he would have impleaded, then exactly the truth would have come out.

Therefore, he contended that without impleading him, the suit is liable to be dismissed.

16.1 On the other hand, the learned counsel appearing for the plaintiff would contend that the said Abdul Rahuman is not a necessary party and he has not executed any contract. It is admitted by both sides that three consignments were despatched and first two consignments were cleared by the first defendant and third one, according to the defendants, was not cleared. But according to the plaintiff as per the request of the first defendant only, the third consignment was despatched, even for this third consignment also, the bogus LC was opened. When these facts are clearly established through the documents filed by the plaintiff, there is no need for the said Abdul Rahuman to be impleaded and he has no role in the transaction between the plaintiff and the defendants.

16.2 This Court also, on the perusal of the documents, found that three consignments were despatched and two consignments were cleared and the third one was not cleared by the first defendant. When such being the case, nowhere in these documents, the defendants have established the involvement of the said Abdul Rahuman. Even if the role of Abdul Rahuman is there, the impleadment of the said Abdul Rahuman is not necessary due to the fact that the bogus LC was opened in the name of the first defendant to and in favour of the plaintiff and based on the said L/C, the plaintiff has despatched the three consignments and out of the three consignments, two consignments were cleared by the first defendant and third one was not cleared by the first defendant on his own volition.

16.3 When such being the case, this Court is of the view that there is no need to implead the Abdul Rahuman as one of the parties to the present proceedings. Accordingly, the issue No.(vi) is answered.

16.4 In view of the above findings for the issue Nos.(i) to (vi) and additional issue Nos.1 and 2, there is no need to further go into and decide about the 60% discount for rejection of glasses whether offered to the defendants 1 and 2 by the plaintiff's agent or not? That apart, the defendants 1 and 2 failed to prove their contention that 60% discount provided for rejection of glasses, by way of oral and documentary evidences. Therefore, this Court holds that there was no offer from plaintiff for 60% discount for rejection of glasses to defendants 1 and 2. Accordingly, the issue No.(vii) is answered against the defendants 1 and 2 and the claim of the defendants is vexatious and the same stands rejected.

17. In fine, this Court pass the following Judgment and decree holding that

(a) The L/C opened in the name of first defendant is a bogus one and the defendants 1 to 3 are held liable for opening the said bogus L/C in favour of the plaintiff:-

(b).The plaintiff have despatched three consignments in 110 containers in the name of the first defendant and out of the said three consignments, two consignments were cleared by the first defendant and the third one, the first defendant on his own volition failed to clear the same. Hence, the third defendant is liable to pay the value for all the three consignments to the plaintiff.

(c).The defendants committed breach of contract of sale qua the three shipments under Bills of Lading No.HLCUJED130212748, dated 03.03.2013; No.MAEU86516124, dated 19.03.2013 and MAEU865163491, dated 19.03.2013 without payment of the price for the goods.

(d).The defendants 1 and 2 are jointly and severally liable to pay the plaintiff a sum of Rs.USD988,212/- being US$ 6,54,445/- towards principal invoice under three shipments, plus US$ 3,33,767/- towards interest along with Rs.1 Lakh US$ towards the damages.

(e).The plaintiff is liable to pay interest @ 12% p.a. from the date of clearance of the goods from Chennai Port till the date of making the payment in respect of two consignments and in respect of third consignment of 30 containers, the first defendant is liable to pay interest on the expiry of 60 days from the date when the goods reached Chennai Port and till the date of making the payment.

(f). There is no need to implead Mr.Abdul Rahman as one of the parties to the present suit, since this Court found that the impleadment of the said Mr.Abdul Rahman is not necessary due to the fact that bogus L/C was opened in the name of the first defendant to and in favour of the plaintiff and based on the said L/C, the plaintiff has despatched the three consignments and out of the three consignments, two consignments were cleared by the first defendant and third consignment was not cleared on his own volition.

(g) There was no offer from the plaintiff for 60% discount for rejection of glasses to and in favour of the defendants 1 and 2 and hence, the claim of the defendants is vexatious and accordingly, same is rejected.

18. In the result, the Civil Suit is decreed as prayed for with costs.

23.10.2019

sd

Index :Yes/No

C.S.No.361 of 2016

Krishnan Ramasamy,J.,
sd

Pre-delivery Judgment
in
C.S.No.361 of 2016

23.10.2019

The Hon'ble Mr.Justice Krishnan Ramasamy

C.S.No.361 of 2016