

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :06.11.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.536 of 2016

M/s.Maersk Line India Private Limited
Represented by its Authorised Signatory
Mr. Arul Rex Prashanth
12th Floor, Tower A,
Urmi Estate, Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 4000 013
Maharashtra.

...Plaintiff

(Amended as per order dated 14.02.2019 in A.No.1220 of 2019
and time extended as per order dated 29.03.2019)

Versus

1.M/s.Freightcan Global Logistics Private Limited,
Door No.15 (New No.43), 1st Floor,
Dr.Alagappa Road, Purasaiwalkam,
Chennai – 600 084.

2.Arun Krishnana Nair
Managing Director,
Freightcan Global Logistics Pvt., Ltd.,
Devi Builders, G-2, 56/5, Natesan Nagar,
Ramapuram, B/H AUDCO Ltd.,
Chennai – 600 089.

3.Padmini Prasad

Director

Freightcan Global Logistics Pvt., Ltd.,
2425-25, Kingsbridge Garden, CIR L5R4B1, Mississauga,
Ontario 000000, Canada.

Also at:

100, Menlo Park, STE 302C, Edison 088372428,
United States of America.

...Defendants

This Civil Suit is filed under Order VI, Rule 1 of the Original Side Rules read with Order XXXVII Rule 1 C.P.C, Prayed for (a) directing the defendants to pay the plaintiff a sum of Rs.4,30,42,829.80/- (Rupees four crores thirty lakhs forty two thousand eight hundred twenty nine and eight paise only) along with interest at the rate of 18% per annum on the said sum from the date of plaint till realization;

(b) directing the defendants to bear the costs of the suit.

For Plaintiff : Ms.Deepika Murali

For Defendants : set ex parte

J U D G M E N T

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The suit has been filed for the following reliefs:

(a) directing the defendants to pay the plaintiff a sum of Rs.4,30,42,829.80/- (Rupees four crores thirty lakhs forty two

thousand eight hundred twenty nine and eight paise only) along with interest at the rate of 18% per annum on the said sum from the date of plaint till realization;

(b) directing the defendants to bear the costs of the suit.

2. The case of the plaintiff is that the plaintiff has entered into a credit agreement with the first defendant on 01.01.2014, which was valid up to 31.12.2014. The plaintiff was acting as the agent of Maersk Line A/s., which is the principal entity of the plaintiff. The credit agreement was subsequently renewed mutually by the parties to be in effect upto 30.06.2015. It is submitted that continuous bookings were placed by the defendants on the plaintiff upto the period of July 2015, and the same were duly fulfilled by the plaintiff. For every booking placed by the defendants on the plaintiff, individual Contracts of Carriage were entered into between the parties. Towards such Contracts of Carriage, the plaintiff issued Bills of Lading in the name of the first defendant as the shipper/consignee and the said Bills of Lading were also received by the first defendant without any protest. As

and when the shipments were booked by the defendants, the plaintiff rendered shipping service towards the same and the respective Bills of Lading were duly discharged at the specified port of discharge. Though the payments were irregular and were not made within 20 days of raising invoices as stipulated in clause 1.1 of the Credit Agreement, the plaintiff did not stop any shipment that was booked by the defendants. However, the defendants completely stopped making payments towards their outstanding invoices despite expiry of their due credit period as per the credit agreement. The plaintiff has sent several emails, reminders and notices to the defendants. The defendants acknowledged the amounts due from them to the plaintiff towards pending invoices, but failed to pay the dues. The defendants liable to pay a sum of Rs.4,30,42,829.80/- to the plaintiff. Hence the suit has been filed.

3. The learned counsel for the plaintiff has filed a memo stating that the defendants have been evading the summons sent from Court and private notice issued to them through the plaintiff's counsel. In view of the memo filed by the plaintiff's counsel, the

defendants are set ex-parte vide order dated 14.06.2019.

4. On the side of the plaintiff, the Senior Manager of the plaintiff Company was examined as P.W.1 and the following documents were marked as Exs.P1 to P12.

<i>Exhibit</i>	<i>Date</i>	<i>Description of documents</i>
Ex-P1	03.03.2011	The copy of the certificate of Incorporation of the plaintiff Company.
Ex-P2	11.09.2018	The original Letter of Authority given in favour of Mr.Arul Rex Prashanth by the plaintiff Company.
Ex-P3	01.01.2014	The true copy of Credit Agreement entered into between the plaintiff and defendants.
Ex-P4	-	The copy of Contracts of Carriage entered into between the plaintiff and the defendants (Volumes I to VII)
Ex-P5	-	The true copy of statement of invoices and corresponding Bills of Lading
Ex-P6	-	The copy of the list of all pending invoices (Volume I to III)
Ex-P7	-	The copy of the Email sent by defendants to plaintiff assuring payment on outstanding sums within two days.
Ex-P8	12.11.2015	The copy of the plaintiff's email blacklisting the defendants against future business deals.
Ex-P9	17.12.2015	The copy of the Legal notice issued by

<i>Exhibit</i>	<i>Date</i>	<i>Description of documents</i>
		plaintiff to defendants.
Ex-P10	15.02.2016	The copy of Email exchanged between plaintiff and defendants wherein defendants assure part-payment of money.
Ex-P11	27.04.2016	The original legal notice issued by counsel on behalf of plaintiff to defendant along with original returned covers.
Ex-P12	-	The copy of my affidavit U/S.65 B of the Evidence Act.

5. P.W.1 has spoken about the nature of contract between the plaintiff and the first defendant. Ex.P3 is the copy of Credit Agreement entered into between the plaintiff and defendants dated 01.01.2014. Ex.P4 is the copy of Contracts of Carriage entered into between the plaintiff and the defendants (Volumes I to VII). Ex.P6 is the copy of the list of all pending invoices (Volume I to III). Ex.P7 is the copy of the Email sent by defendants to plaintiff assuring the payment on outstanding sums within two days, which clearly indicates that the defendants are not disputing the outstanding dues payable to the plaintiff and they sought time to pay the outstanding amounts. Ex.P9 is the copy of the legal notice

issued by the plaintiff to the defendants. Ex.P10 is the copy of e-mail exchanged between the plaintiff and the defendants wherein defendants assured to pay the part-payment of money.

6. A perusal of all the documents clearly indicates that the defendants themselves admitted their liability by way of e-mails and further admitted to pay the part payment to the plaintiff. From the above documents, the plaintiff had proved its case.

7. In view of the same, the suit is decreed with costs. Accordingly, the plaintiff is entitled for recovery of a sum of Rs.4,30,42,829.80/- (Rupees four crores thirty lakhs forty two thousand eight hundred twenty nine and eight paise only), with interest at the rate of 9% from the date of suit till the date of realisation.

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06.11.2019

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N.SATHISH KUMAR, J.,

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