

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved on<br>16.10.2019 | Delivered on<br>30.10.2019 |
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1013 of 2019

and CMP No.21848 of 2019

M/s.ICICI BANK

Chennai Branch, Post Box No.1610,

Dare House Annexe, 44, Moore Street,

Chennai 600 001.

...Appellant/Appellant/1st Defendant

vs.

1. M/s.Gayathri Exports

Rep. By its Proprietor,

Mr.K.Chandru Sekar,

No.97, 1<sup>st</sup> Street,

New Bethanaiya Nagar,

Valasaravakkam,

Chennai 600 087.

...1st respondent/1st respondent/  
Plaintiff

2. M/s. DHL Express (India) Pvt Ltd.,

12-B, South Phase,

Guindy Industrial Estate,

Guindy, Chennai 600 032....2nd Respondents/2nd Respondent/  
2nd Defendant

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 10.02.2017 in AS No.383 of 2014 on the file of VI Additional Judge, City Civil Court, Chennai modifying the Judgment and Decree dated 17.08.2012 in OS No.9044 of 2008 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Krishnaswamy  
for Mr.S.Vasudevan

## J U D G E M E N T

The first defendant in OS No.9044 of 2008 having suffered a decree for damages to the tune of Rs.3,87,585/- at the hands of the Lower Appellate Court has come up with this Second Appeal.

2. The suit in OS No.9044 of 2008 was laid by the first respondent/plaintiff seeking compensation of Rs.7,00,000/- towards damages suffered by it, due to the failure on the part of the defendants to transmit the shipping documents in time, as a result of which, the consignment of onions was rejected by the overseas purchaser.

3. According to the plaintiff, which is the exporter of perishable commodities, it had exported 10 MT of Onion to M/s.MYXO Co., situate at Malaysia under a Bill of Lading dated 04.03.2008. The goods were shipped from Chennai to Malaysia. The plaintiff had availed services of the appellant/first defendant to handover the export documents to M/s. RHB Bank Berhad, East Malaysia, the banker of the importer at Malaysia. The value of the goods exported was US \$ 9000 and the payment terms were DP at sight.

4. On 05.03.2008, the plaintiff handed over the shipping documents along with the statutory declaration to the first defendant for being transmitted to the Bank of the importer who would release the documents on payment of the value of the goods. The goods being perishable in nature, the requirement was that the shipping documents should be transmitted at the earliest. Subsequently, the plaintiff received the intimation from the shipper stating that the goods were not cleared by the consignee. Upon the said intimation, the plaintiff contacted the consignor which revealed that the documents were not received by its banker. By its letter dated 22.03.2008, the plaintiff enquired the first defendant about the status of the export document and pointed out that the Cargo being highly perishable, steps be taken immediately to forward the export documents. The first defendant sent a reply stating that the documents were misplaced by the second defendant, whose services were engaged by the first defendant for transmitting the shipping documents. It was also stated that the shipping documents were not traceable at the hands of the second defendant.

5. On 20.03.2008, the first defendant prepared duplicate documents and forwarded the same to the second defendant, to be handed over to the importer's banker. On 01.04.2008, the first defendant's branch at Mumbai received a message stating that the importer had rejected the goods due to late presentation. Consequent upon the rejection, the importer also refused to honour the bills resulting in a loss in the value of the goods as well as reputation of the plaintiff as an Exporter. The plaintiff therefore claimed a sum of Rs.5,00,000/- towards the value of the goods and Rs.2,00,000/- as damages for loss of reputation.

6. Though the second defendant/the courier service was made a party, no prayer was sought for as against the second defendant.

7. The suit was resisted by the first defendant contending that the first defendant cannot be made liable, inasmuch as, the second defendant had admitted the loss and the plaintiff without accepting the compromise settlement proposed by the second defendant, had approached the Court. While admitting the fact that the shipping documents were misplaced by the second defendant and there was a delay in sending the duplicate documents, which resulted in the importer rejecting the goods, the first defendant would contend that if it all anyone should be made liable, it is the second defendant and not the first defendant. It was also further contended by the first defendant that the importer was not justified in rejecting the goods. The further contention was that the claim of Rs.7,00,000/- is on the higher side and actual loss suffered by the plaintiff was not a sum of Rs.7,00,000/- but a lesser amount.

8. The second defendant filed a written statement contending that since there is no prayer against the second defendant, the suit against the second defendant is liable to be dismissed.

9. The Trial Court, upon a consideration of the evidence on record, relying upon the admission of entrustment by the first defendant and the admission of misplacement of the shipping documents by the second defendant, concluded that both defendants 1 and 2 would be jointly and severally liable to answer the claim of the plaintiff. The Trial Court also concluded that the plaintiff is entitled to a decree for a sum of Rs.5,00,000/-, being the value of the goods only since it had

not proved that it suffered loss of reputation by tangible evidence. Upon the said conclusion, the Trial Court decreed the suit holding both the defendants jointly and severally liable for a sum of Rs.7,00,000/-. Aggrieved, the first defendant preferred an appeal in AS No.383 of 2014 and the second defendant filed an Appeal in AS No.433 of 2014. The Lower Appellate Court, upon a re-consideration of evidence, agreed with the Trial Court on the question of liability for the loss. The Lower Appellate Court, however, concluded that there could be no decree against the second defendant, since the plaintiff has not prayed for a decree against the second defendant. On the quantum of liability, the Lower Appellate Court found that the plaintiff had shown the value of the goods at Rs.3,87,585/-, while insuring them and therefore the plaintiff would be entitled only to said sum of Rs.3,87,585/- being the value of the goods. On the above findings, the Lower Appellate Court partially reversed the judgment and decree of the Trial Court and granted a decree for a sum of Rs.3,87,585/- with interest at 9% as against the first defendant only. Aggrieved, the first defendant is on appeal before this Court.

10. I have heard Mr.K.Krishnaswamy, learned counsel appearing for the appellant.

11. Mr.K.Krishnaswamy, learned counsel appearing for the appellant would vehemently contend that the first defendant as a collecting banker, cannot be held liable for the loss occasioned by the second defendant. It is the contention of the learned counsel that in the absence of any finding that the first defendant is vicariously liable for the negligence of the second defendant, the Lower Appellate Court was not right in granting a decree against the first defendant. It is also pointed out that under the Uniform Rules For Collection (URC 522) which came into effect on 01.01.1996, the banker cannot be made liable for the delay or loss in transit of the documents entrusted for collection.

12. I have considered the submissions of the learned counsel for the appellant. The factum of entrustment of the documents by the plaintiff with the first defendant for transit is admitted. The fact that a sum of Rs.562/- was collected as collection charges, is also admitted. The fact that the first defendant had entrusted the documents with the second defendant for having shipped, is also borne out of records. The evidence available clearly proves that the second defendant has lost the

documents and the documents were not received by the banker of the importer in time. By the time the duplicates were made ready and sent to the importer's Banker at Malaysia, the importer had rejected the goods, since they are perishable in nature. The conclusions of the Courts below based on the evidence available on record, make it clear that the goods were rejected by the importer because of the delay in forwarding the documents caused by the negligence on the part of the second defendant, with whom the first defendant had entrusted the job of transmitting the documents.

13. The contention of the learned counsel that the liability cannot be fastened on the first defendant, in the absence of a finding that the first defendant is vicariously liable for the actions of the second defendant, overlooks the fact that there is no contract between the plaintiff and the second defendant. It was the first defendant-Bank which had collected the documents from the plaintiff for being forwarded to the importer's banker at Malaysia. It was the first defendant which engaged the services of the second defendant to forward the documents. Therefore, the second defendant was in fact the agent of the first defendant, insofar as the contract for forwarding the documents to the importer's banker at Malaysia, is concerned. It is settled law that the principal would be liable for negligence of the agent.

14. No doubt the Courts below have not in so many words said that the first defendant would be liable to the plaintiff for the negligence of the second defendant, but a perusal of the judgments of the Courts below, clearly demonstrates that both the Courts were alive to the fact that the documents that were entrusted to the first defendant, were forwarded by the first defendant to the importer's banker at Malaysia through the second defendant and it was the second defendant who lost the documents, which resulted in the plaintiff suffering damages. The plaintiff cannot sue the second defendant directly, since there is no contract between the plaintiff and the second defendant.

15. Insofar as the plaintiff is concerned, the second defendant is a third party. It is for the first defendant to make a claim against the second defendant for the loss. For the reasons best known, the first defendant did not choose to make either an independent claim or a counter claim in the present suit against the second defendant. Therefore, the Lower

Appellate Court had rightly held that in the absence of prayer or in the absence of counter claim by the first defendant against the second defendant, the Trial Court was not justified in making the second defendant jointly and severally liable.

16. The Uniform Rules For Collection relied upon by the learned counsel for the appellant do not have the force of statute and they cannot be relied upon to deprive the plaintiffs of the damages. The Courts below, have on facts, concluded that the plaintiff has suffered damages because of the non-transmission of the documents in time by the first defendant. Whether the delay was at the instance of the first defendant or at the instance of the second defendant is foreign to the scope of the suit.

17. As far as the plaintiff is concerned, the entrustment was the first defendant and it is the first defendant, which under took to forward the documents to the importer's banker at Malaysia. Whether the delay was occasioned by the first defendant or by the second defendant, whose services were engaged by the first defendant, does not really matter insofar as the liability to the plaintiff is concerned. As far as the plaintiff is concerned, when once the entrustment is proved and once it is shown that there is a delay, the plaintiff would be entitled to the damages. I therefore find that the Lower Appellate Court was justified in concluding that the first defendant is liable to the extent of the value of the goods to the plaintiff and I do not see any substantial question of law enabling me to entertain the Second Appeal. Hence the Second Appeal fails and is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

jv

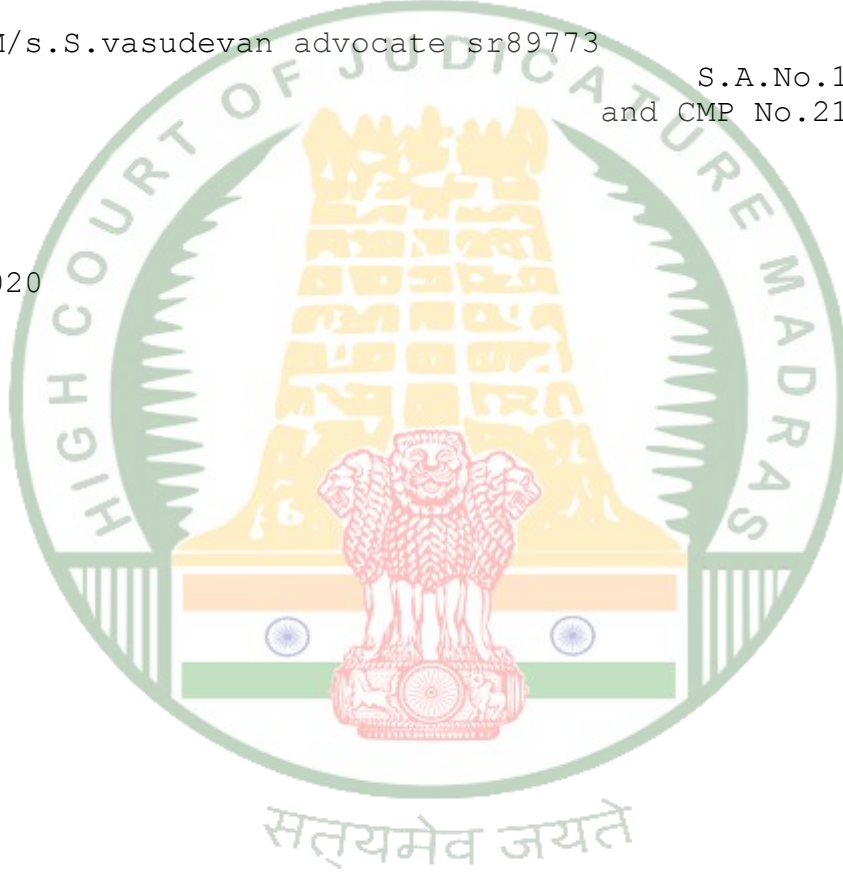
To

1. The VI Additional Judge,  
City Civil Court,  
Chennai.
2. The VIII Assistant Judge,  
City Civil Court,  
Chennai.
3. The Section Officer,  
V.R.Section,  
High Court of Madras.

+1 cc to M/s.S.vasudevan advocate sr89773

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