

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. PD.No.4331 of 2018

and

CMP Nos.6939 of 2019 and 23702 of 2018

M/s Sripak Logistics Pvt Ltd
No.48/2, II Floor, Rajaji Salai
Chennai 600 001.

.. Petitioner

Vs.

1.Kawasaki Kisen Kaisha Ltd
Carrying on Business in the Name of "K" Line
Rep.by its agents
M/s.K.Steamship Agencies Pvt.Ltd.
No.2, McNichols Road,
GEE GEE Universal
6th Floor, Chetpet
Chennai 600 031
Rep by its Power of attorney Mr.S.Sankaran

2.M/s.Radiant Solar Pvt Ltd
Plot No.15, FAB City SEZ
Raviryal Village, Maheswaram Mandal
R.R.District, Hyderabad 501510

3.M/s Capricorn Logistics Pvt Ltd
"O" Square Building, Plot No.36/2b,
Mount Poonamalle Road,
St.Thomas Mount, Chennai 600 016

Also having office at No.13/13A,
Keytuo Industrial Estate, 220, Kondivita Road,
Andheri East, Mumbai 400 059.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order passed on 10.12.2018 in I.A.No.119 of 2018 in O.S.No.2793 of 2018 on the file of the XVII Additional City Civil Court at Chennai and allow this Revision with cost.

For Petitioner : Mrs.V.N.Shanthi

For Respondents : Mr.P.Giridharan for R1.

ORDER

The above Civil Revision Petition is filed by the third defendant in the suit, challenging the order passed by the learned XVII Addiitonal City Civil Judge, Chennai in I.A. No.119 of 2018 in O.S. No.2793 of 1993, whereby, the learned Judge has allowed the application filed by the plaintiff to appoint an Advocate Commissioner to seize the Container vide No.BSIU2938874 and KKTU8261256 lying in the custody of the respondents with police aid and break open the locks, if necessary, and take an inventory and give possession of the same to the plaintiff.

2. The first respondent herein/plaintiff has filed the suit for the following reliefs :-

3. According to the plaintiff, they are engaged in the business of freight forwarding, logistics operation and ocean freight carriers. The first defendant who is engaged in the business of manufacturing high performance photovoltaic multi crystalline silicon modules (panels) for residential, commercial and utility scale power generation had approached the plaintiff to transport their manufactured goods. The Plaintiff in turn engaged the services of the second defendant to clear the goods from the port. It appears that the first defendant requested the plaintiff to send the consignment to their factory premises in Hyderabad to de-stuff the goods. Therefore, the plaintiff engaged the services of the third defendant to take the consignment to Hyderabad. It appears that there is a dispute between the first and third defendants due to which the containers were not returned to the plaintiff. The Plaintiff therefore filed the suit. Pending suit, the plaintiff filed an Interlocutory application to appoint an Advocate Commissioner and to secure the containers lying under the custody of the defendants and to give possession of the containers to the plaintiff.

4. The application was resisted by the third defendant/revision petitioner admitting that the containers are in their custody and on payment of the dues payable to them to the tune of Rs.6,51,840/- towards the estimated loss incurred by them, the same would be taken.

5. The learned XVII Additional City Civil Judge, Chennai, by Order dated 10.12.2018, has allowed the said application filed by the plaintiff, by directing the revision petitioner/3rd defendant to deliver possession of two Containers on or before 04.01.2019. The first respondent /plaintiff was also directed to visit the premises of the revision petitioner/3rd defendant and the matter was adjourned to 07.01.2019 for "reporting compliance". However, the revision petitioner/3rd defendant has come up with this revision petition before this Court and obtained stay of all further proceedings in the suit. Subsequently, the first respondent has filed the Miscellaneous Petition to vacate the interim stay granted on 27.12.2018 in CMP No. 6939 of 2013. Today, the Petition for vacating the interim stay being CMP No. 6939 of 2019 in CRP No. 4131 of 2018 is listed for hearing, however, the revision itself is taken up for hearing by consent of counsel on either side.

6. Heard the learned counsel for the revision petitioner/third defendant and the first respondent/plaintiff/ and perused the materials available in the typed set of documents.

7. It is seen that the prayer in the suit as well as the interlocutory application filed before the Court below is one and the same. Secondly, the revision petitioner/third defendant is ready to hand over the Containers to the plaintiff/first respondent, subject to the payment of dues. Further, it is contended that there is no privity of contract between revision petitioner/third defendant and the first respondent/plaintiff.

8. Admittedly the Containers belongs to the plaintiff and the same is not disputed by the revision petitioner/third respondent. It is also admitted that there is no privity of contract between the revision petitioner/third defendant and the first respondent/plaintiff and the contract is only between the plaintiff and the respondents 2 and 3/defendants 1 and 2 on one hand and the third defendant/revision petitioner on the other hand. The revision petitioner/third defendant cannot exercise any right of lien over the property of the plaintiff and the remedy open to them is only to seek compensation from defendants 1 and 2. The specific understanding between the plaintiff and the defendants 1 and 2 was that the container has to be returned to them after the goods were off loaded at Hyderabad.

9. However, this understanding has been severed and breached for reasons best known to the revision petitioner. The Containers have been taken possession by the revision petitioner/3rd respondent and retained in their yard. In fact, in the Additional typed set of papers the revision petitioner has pointed out an e-mail dated 11.12.2017, wherein the third defendant admitted that the cargo is retained by them and requested the plaintiff/first respondent to provide them necessary letter for returning the containers. In response, the plaintiff/ first respondent also sent a reply on 28.12.2017 to return the empty containers to their premises at Octopous Plot. Despite the same, the containers have not been handed over.

10. Considering the fact the revision petitioner/third defendant and the first respondent/plaintiff have no privity of contract and the intention of the revision petitioner is only to drag the proceedings, I find no infirmity in the order passed by the learned XVII Additional Judge, Additional City Civil Court, Chennai, who has rightly directed the first respondent/revision petitioner to hand over the Containers to the first respondent/plaintiff.

11. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.03.2019

Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order
vsi2

To

The XVII Additional City Civil Court at Chennai.



WEB COPY

P.T. Asha, J.

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and

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23702 of 2018

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