

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.S.No.121 of 2005

M/s.MGK Trading House,
Rep. by its Managing Partner,
Mrs.Geetha,
Carrying business at
New No.45, Old No.30,
Panchaliamman Koil Street,
Arumbakkam, Chennai – 600 106.

... Plaintiff

/versus/

1. M/s.Orissa Stevedores Limited,
No.4(Old No.19) Second Floor,
Narayanappan Street,
Mannady, Chennai – 600 001.

2. M/s. Sea Star Shipping and Trading Inc.,
No.4, Narayanappan Street,
First Floor,
Back Side Customs House,
Chennai – 600 001.

... Defendants

Prayer: Complaint is filed under Order IV Rule 1, Original Side Rules read Order VII Rule 1 of C.P.C.,

a. Directing the Defendants jointly and severally to pay to the plaintiff a sum of Rs.1,10,23,750/- (Rupees one crore ten lakhs twenty three thousand seven hundred fifty only) by way of damages payable by

the defendants towards the loss suffered by the plaintiff for the breach of contract committed by the defendants in handling the export of the plaintiff cargo.

b. Awarding the costs of the suit.

c. Granting any such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.R.Manickavel

For D1 : Mr.S.Vasudevan

For D2 : Mr.Vijayaraghavan

J U D G M E N T

The suit is filed for recovery of money lost due to breach of premise by the 1st defendant, who vide letter dated 18.09.2003 offered to undertake stevedoring of the plaintiff's cargo pursuant to the business they secured from the Company at Turkey for export of potassium feldspar minerals to the quantity of 8,250 Metric tone. The 1st defendant also in the said letter agreed to fix the vessel for the shipment. On 22.09.2003, the 1st defendant sent a revised quotation to undertake the stevedoring of the plaintiff's cargo at Chennai Port. After finalizing the contract with the plaintiff, the 1st defendant had negotiated with the

other defendants for engaging the services. Accordingly the 2nd defendant by their letter dated 18.09.2003 and 14.10.2003 confirmed that they will arrange the vessel. So, the plaintiff appointed the 2nd defendant as their chartering agent to fix the vessel. The authorization letter dated 06.11.2003 was given to the 2nd defendant to act as the plaintiff's chartering agent for the shipment of the plaintiff's cargo. The 2nd defendant gave a letter dated 07.11.2003 to the Traffic Manager, Chennai Port Trust, stating that, the vessel namely "M.V.Sea Dream" has been fixed and therefore, requested the Port Trust authorities to allot wharf for the shipment of the plaintiff's cargo.

2. Based on the letter of the 2nd defendant, the Port Trust Authority allotted the wharf for carrying plaintiff's cargo. Believing the defendant's representation, the plaintiff also moved the potassium feldspar for the quantity of 6169 M.T from the mines to the Chennai Port Trust and carted the said cargo in the wharf allotted to them on various dates from 15.11.2003 to 08.12.2003. For the transport, the plaintiff has incurred expenditure of Rs.24 lakhs to engage the service of transporter M/s.Sreenivasa Lorry Services. The representative of the defendants assured the plaintiff that the vessel "M/s.M.V.Sea Dream" would land at Chennai Port in the month of November-2003 however, the

vessel did not land at Chennai Port, to carry the plaintiff's cargo either on 25.11.2003 or any subsequent dates even after the cargo entered the wharf. The plaintiff's learnt that the defendants played fraud on the Port Trust Authorities in getting an allotment of wharf by falsely stating that the vessel was fixed and also cheated the plaintiff by not fixing the vessel to ship their cargo to the buyer at Turkey, within the stipulated time.

3. Alleging that, without fixing the vessel, the defendants have made plaintiff unnecessarily to move the cargo into the wharf, causing huge loss to the plaintiff's by way of demurrage, the present suit is filed for damages, loss of reputation and goodwill.

4. The 1st defendant has filed the written statement refuting the averment made in the plaint. Particularly the averment of the plaintiff that the 1st defendant was appointed to fix a vessel for the cargo under the appointment letter dated 06.11.2003 is denied. The receipt of consideration also denied by the 1st defendant. The 1st defendant was appointed as stevedore/Customs House Agent by the plaintiff only for the purposes of:-

(a). Stevedoring,

(b). Clearing & Forwarding operations,

(c). *Wharfage,*

(d). *Additional Charge all on actual basis.*

5. The defendants never gave quotation for fixing a vessel, never acted as a chartering agent for the plaintiff, never gave quotation dated 18.09.2003 nor subsequently revised it on 22.09.2003. Further, it is averred in the statement that the 1st defendant is a stevedores/Customs House Agent and not interested in making profit out of the cargo owned by the plaintiff. This defendant never called upon the plaintiff to move the cargo from the mines and bring them to the wharf. The plaintiff who has brought cargo to the wharf and lying in the port premises from 15.11.2003 was unable to pay the demurrage. Hence, approached the Senior Officials of the 1st defendant, on 13.02.2004, for a loan of Rs.25,00,000/- to pay the demurrages, transporter payment and bank loan, this was refused by the 1st defendant. The 1st defendant never coerced the plaintiff to sale the cargo to the buyers of their choice and as per their terms.

6. Denying the averments made in the plaint, the 1st defendant has also made a counter claim of Rs.6,69,060/- towards the reimbursement of expenses incurred for unloading and packing operation of the plaintiff cargo within the Port premises. The defendants based on

the invoice raised by them on 21.01.2004 for a sum of Rs.6,69,060/- against the plaintiff has made a counter claim for the said sum along with the interest at the rate of 24% p.a.

7. The 2nd defendant in the written statement has contended that, there was no concluded contract between the plaintiff and the 2nd defendant. There is no consideration passed to the 2nd defendant from the plaintiff to fix a vessel to carry their cargo to Turkey. No chartered party was entered into between the plaintiff and the owners of the vessels to carry the cargo of the plaintiff. The plaintiff was frantically trying to fix a vessel to carry their cargo from Chennai to Turkey. They approached several agents/brokers to fix the vessel. The 2nd defendant was one of them, approached by the plaintiff's agent, to fix the vessel for their cargo. Since, the freight charges offered by the plaintiff was too low, no vessel owner came forward to provide their vessel for the carriage of the plaintiff's cargo. In the said circumstances, the plaintiff authorised the 2nd defendant to fix a vessel for the shipment of the cargo. The said letter is only an authorisation letter and not a concluded contract which will fasten any legal obligation on the 2nd defendant. After receiving the authorisation letter dated 06.11.2003 from the plaintiff, the 2nd defendant approached various ship owners for fixing the vessel to carry

the plaintiff's cargo. The owner of the Ship "M.V.Sea Dream", was interested in carrying the plaintiff's cargo with whom the 2nd defendant started negotiating. The plaintiff though promised to offer 8000 M.T, load was able to mobilise only 6169 M.T of cargo, that to after one month of the promised date. Due to shortfall in the quantity of the cargo, the owner of the vessel M.V.Sea Dream was not interested to bring the vessel to Chennai. Since, there was no firm commitment on the part of the plaintiff regarding the quantity of cargo, the 2nd defendant was not able to fix the vessel. The 2nd defendant based on the assurance given by the ship owner and the plaintiff sought the permission of the Chennai Port to provide for chartering the cargo, which was expected to arrive on 25.11.2003 for carrying the cargo of the plaintiff. Due to increase in the freight rate and inadequacy of the load, the vessel owner refused to bring the vessel to Chennai. The contract to provide the vessel gets concluded only when the fixer note or charter party signed by the shipper. Since in this case, there was no fixer note issued by the ship owners, the plaintiff cannot enforce the assurance of the ship owner to bring the vessel "M.V.Sea Dream" to Chennai. In the said circumstances, the plaintiff terminated the service of the 2nd defendant vide letter dated 12.01.2004, therefore, the plaintiff has no enforceable contract with the 2nd defendant to seek any relief against the 2nd

defendant including compensation to the plaintiff for the alleged loss of reputation, goodwill and alleged loss of profit.

8. The plaintiff herein took out an Application No.7073 of 2015 to condone delay in filing their written statement for the counter claim raised by the 1st defendant. This Court, after considering the submissions passed the following order.

"In the result, this applications is ordered and the applicant/plaintiff, without prejudice to their rights and contentions, shall deposit the principal sum of counter claim of Rs.6,69,060/- to the credit of the suit on or before 01.03.2016, failing which this application would stand automatically dismissed without further reference to this Court. In the event of the applicant/plaintiff complying this order, the Registrar General shall deposit the said sum in an interest bearing deposit initially for a period of three years with the Indian Bank, Madras High Court Branch, Chennai – 600 104."

9. The plaintiff has not deposited the principal sum of counter claim of Rs.6,69,060/- on or before 01.03.2016. Thereby, the plaintiff's right to file written statement got forfeited.

10. In this connection, it is pertinent to refer the remaining part of the order of this Court, dated 19.01.2016, wherein, the application of the defendants to condone delay in filing the written statement is considered along with the counter claim made by the 1st defendant.

"The plaintiff is the applicant and he filed the present Suit for recovery of a sum of Rs.1,10,23,750/- by way of damages, payable by the defendants towards the loss suffered by it on account of breach of contract committed by them in handling the export of plaintiff's cargo and also for costs. The first defendant has filed a written statement along with counter claim on 18.04.2005 and it was filed before the Registry of this Court on 19.04.2005. The issues were framed on 18.09.2009 and Issue No.5 pertains to entitlement of the first defendant to get a sum of Rs.6,06,960/- together with interest @ 24% p.a. from the date of the counter claim till the date of realisation. PW1 was examined in chief on 31.07.2012 and Exs.P1 to P20 were marked. The learned counsel for the first defendant started the cross examination of PW1 on 24.08.2015 and it is yet to be completed. At this juncture, the plaintiff came forward to file this application on 29.09.2015, praying for condonation of 3819 days delay in filing the written statement.

2. In paras 15 to 18 of the affidavit filed in support of this application, it is averred by the applicant/plaintiff among other things that immediately after filing of the written statement, a reply statement was prepared and handed over to the clerk of their counsel, namely Mr.Varaprasada Rao, to be filed into the Court after serving to the other side and the copy of the reply statement duly prepared was in the bundle and the counsel was under impression that the reply statement was filed in the Court and became aware of the non-filing of the same during the course of cross examination of PW1 on 24.08.2015. Immediately the said fact was verified and in the case bundle, the reply statement has been found and then only the applicant became aware that the clerk attached to the counsel, namely Mr.Varaprasada Rao did not file the reply statement in the Court, though it was duly prepared and handed over to him. Mr.Varaprasada Rao died on 14.06.2005 in his native place near Vijayawada, Andhra Pradesh due to snake bite and on account of the above said reasons, the reply statement could not be filed within eight weeks from the date of serving the copy of the counter claim, which resulted in the delay of 3819 days in filing the reply statement.

3. The learned counsel appearing for the applicant/plaintiff has drawn the attention of this Court to the plaint averments and would submit that in paras 24 and 25 of the plaint, the reply sent by the first defendant demanding a sum of Rs.6,69,060/- has been

stated, for which, a suitable reply on behalf of the plaintiff was sent on 23.01.2004 stating that the first defendant failed to do his service as agreed and even as per the original agreement, the first defendant has agreed to receive the payments only at the time of acceptance of the Bill of Lading, but they have not done any service as per the contract and therefore, the demand could not be complied with. The learned counsel appearing for the applicant/plaintiff has also produced the original reply(written) statement of the plaintiff dated April 2005 and would submit that it was handed over to the clerk, namely Mr.Varaprasada Rao and both the plaintiff as well as their counsel were under the genuine impression that it was filed in the Court and only at the time of cross examination of PW1, the fact of non-filing of the written statement came to the knowledge of the plaintiff as well as their counsel and immediately the present application has been filed for condonation of delay in filing the written statement and the delay has occurred due to bonafide reasons and hence, it cannot be considered as wanton or willful. Lastly it is submitted by the learned counsel appearing for the applicant/plaintiff that unless the reply statement is taken on file, no cross examination of PW1 is possible as to the counter claim made by them in their written statement and hence, prays for allowing this application.

4. Per contra, learned counsel appearing for the first respondent/first defendant has drawn the

attention of this Court to the counter affidavit and would submit that despite the averments made in the plaint as to the claim of Rs.6,69,060/- made by the first defendant, nothing has been stated in the proof affidavit of PW1 in lieu of chief examination and the applicant/plaintiff is very well aware about the vagueness or falsity in their claim made against the first defendant and that is why nothing has been stated in the proof affidavit. It is the further submission of the learned counsel appearing for the first respondent/first defendant that the delay is huge and enormous and though it is averred that the reply statement was prepared during April 2005, it did not contain the signature of the plaintiff and hence, it is highly doubtful whether it was prepared during April 2005, as claimed by the learned counsel appearing for the applicant/plaintiff. The learned counsel appearing for the first respondent/first defendant has placed reliance upon the decisions in **(i) Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others [(2013) 12 SCC 649]** and **(ii) H.Dohil Constructions Company Private Limited v. Nahar Exports Limited and Another [(2015) 1 SCC 680]** and would submit that the Hon'ble Supreme Court of India in the above facts and circumstances, has dismissed the application to condone the inordinate delay in filing the appeal and the reasons adduced by the applicant/plaintiff, in any event, cannot said to be proper and sufficient to order this application and would further add that on account

of the pendency of this application, PW1 could not be cross-examined further on behalf of the first respondent/first defendant and prays for dismissal of this application with exemplary costs.

5. This Court paid its best attention to the rival submissions and also perused the materials placed before it as well as the decisions relied on by the learned counsel appearing for the first respondent/first defendant.

6. The Suit claim is based upon alleging non-performance of the obligation on the part of the defendants 1 and 2 to export potassium feldspar minerals to the quantity of 8,250 Metric Tons. Prior to the institution of Suit, there were exchange of notices and as per counter claim of the first respondent/first defendant dated 21.01.2004, the first respondent/first defendant sent a bill dated 21.01.2004 claiming a sum of Rs.6,69,060/- and also sent a letter in Doc.No.7 dated 21.01.2004 to the first defendant and as per Doc.No.8 dated 27.01.2014, letters, shipping bills, statement of cargo were also enclosed. The plaintiff, in response to the letter of the first defendant dated 21.01.2004, has sent a reply dated 23.01.2004 in Doc.No.9 of the counter claim refuting the said claim. In paras 24 and 25 of the plaint, the fact of raising the demand of Rs.6,69,060/- on the part of the first defendant has been referred to and it has been averred that since they have not done any service as per the

contract, their demand could not be complied with.

7. The Managing Director of the plaintiff has filed a proof affidavit dated 31.07.2012 and in para 23, the raising of the Bill for Rs.6,69,060/- by the first defendant as well as the reply dated 23.01.2004 has been referred to and it has been further stated that demand could not be complied with. The decisions relied on by the learned counsel appearing for the first defendant/first respondent laid down certain principles applicable to an application for condonation of delay and it has been held that lack of bonafide and gross negligence would result in consequent prejudice to the respondents.

*8. In **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others [(2013) 12 SCC 649]** the Hon'ble Supreme Court of India, after referring to its earlier judgments, formulated the following principles:*

"The principles applicable to an application for condonation of delay are as follows:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to

the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

(xv) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

(xvi) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

(xvii) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.*

And as per Clause No.12, the entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception and as per Clause No.15, an application for condonation of delay should not be dealt with in a

routine manner on the base of individual philosophy which is basically subjective. Clause No.16 says that though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

9. No doubt, the delay appears to be on the higher side, but the materials referred to by this Court even as per the documents filed by the first defendant/first respondent in the counter claim would disclose that the plaintiff did raise their objections as to the claim of Rs.6,69,060/- and the said fact has been referred to in the plaint as well as in the proof affidavit. The learned counsel appearing for the applicant/plaintiff, during the course of arguments, has also produced the reply (written) statement filed by the plaintiff during the year April 2005. As per the averments made in the affidavit filed in support of this application, the mistake/lapse appears to have been occurred in the office of the counsel and according to the applicant/plaintiff, it was kept in the bundle by Mr.Varaprasada Rao, advocate clerk attached to the office of the plaintiff's counsel and they were under a genuine impression that it could have been filed in the Court, but unfortunately only at the time of cross examination of PW1, the fact of non-filing of the reply (written) statement came to their knowledge and immediately the present application has been filed.

10. Insofar as the counter claim made by the first respondent/first defendant, unless the reply statement of the applicant/plaintiff is taken on file, witnesses entering the box on behalf of the first defendant cannot be cross-examined as to the tenability or sustainability of the counter claim. Therefore, this Court is of the considered view that opportunity should be given to the applicant/plaintiff to contest the counter claim by filing the reply statement, but at the same time, is of the view that for ordering this application, conditions should be imposed considering the fact that the delay is 3819 days in filing reply statement to the counter claim."

11. Having filed to comply the conditional order and thereby forfeiting the right to file written statement to the counter claim, the defendant left with no other option but to proceed with the trial based on the available pleadings.

12. Based on the pleadings, this Court, on 18.09.2009 has framed the following issues:-

(i). Whether the plaintiff is entitled to recover a sum of Rs.1,10,23,750/- (Rupees One Crore ten lakhs twenty three thousand and seven hundred and fifth only) by way of damages from the defendants towards

the loss suffered by the plaintiff for the breach of contract?

(ii). Whether the defendants have committed breach of the terms of the contract by failing to perform his part of the obligations arising out of the contract with regard to handling the export of the plaintiff's cargo?

(iii). Whether the plaintiff suffered the loss or damages due to the breach of contract committed by the defendants in handling the plaintiff's cargo as claimed in the plaint?

(iv). Whether the 1st defendant was paid with consideration for the alleged contract of agency in between the plaintiff and the first defendant?

(v). Whether the 1st defendant is entitled for Rs.6,06,960/-(Rupees Six lakhs six thousand nine hundred and sixty) only together with interest at 24% per annum from the date of counter claim till the date of realisation?

(vi). Whether the 1st defendant is entitled for exemplary cost in the suit?

(vii). To what reliefs the parties are entitled to?

13. Mrs.Geetha, Managing Partner of the plaintiff's firm was examined as P.W.1. 20 documents were marked on behalf of the plaintiff (Ex.P.1 to Ex.P.20). On behalf of the 1st defendant L.Panigrahy, the General Manager was examined as D.W.1. 12 Exhibits were marked on behalf of the defendants and one D.Ethiraj, Manager of the 2nd defendant was examined as D.W.2.

14. Despite completion of examination of witnesses and the matter been adjourned for arguments. The parties were not inclined to submit their arguments. Hence, this Court, on 09.12.2019, passed the following order:-

"On 09.12.2019, the case was taken up for hearing the learned counsels sought time to submit their written submissions. Hence, the Court has passed the following order:-

"Written submission has to be filed on or before 03.01.2020. For oral arguments, list the matter on 09.01.2020. No further adjournment will be granted."

2. Today, the learned counsel on both sides represent that they have not filed written submissions and not ready for oral submissions. They seek accommodation for some other day.

3. Adjourned the matter to 14.02.2020 on payment of Rs.2,500/- as costs by the plaintiff as well as the defendants payable to the Secretary, Tamilnadu State Legal Services Authority, High Court, Chennai."

15. Thus, when the matter was listed on 09.01.2020 the Learned Counsels sought adjournment, hence, this Court adjourned the case to 14.02.2020, on costs, directed the plaintiff as well as the defendants to pay a sum of Rs.2,500/- each to the Secretary, Tamil Nadu State Legal Service Authority, High Court, Chennai. When the case was listed for final hearing on 14.02.2020, there was no representation for the plaintiff and no indication that the plaintiff has complied the condition imposed by this Court, namely payment of cost of Rs.2,500/- for the adjournment granted. On the side of the defendants, affidavit was filed along with the receipt indicating that, they have paid the cost of Rs.2,500/- each to the Tamil Nadu State Legal Service Authority.

16. The Learned Counsel appearing for the defendants have also submitted their written submission in support of their case. Ex.P.4 is the letter of the 1st defendant dated 06.10.2003, which is heavily relied by the plaintiff. Reading of the letter indicates that, the 1st defendant has offered to carry out certain works on behalf of the plaintiff. However,

neither in Ex.P.4 nor in the subsequent documents, we could gather that the offer of the 1st defendant was duly accepted by the plaintiff either in writing or by conduct. The quotation of the 1st defendant dated 18.09.2003 is marked as Ex.D.1. In this letter, the 1st defendant has given the quotation for the following services:-

- (a). *Stevedoring.*
- (b). *Carry & Forwarding Operations.*
- (c). *Wharfage.*
- (d). *Additional Charges for Cargo Inspection, Survey, Port Demurrage, Plot Rent, Intercarting.*

17. The author of this document was examined as D.W.1. The response of the plaintiff to the 1st defendant's quotation marked as Ex.D.2. In the said response letter, the plaintiff has categorically stated that, they are appointing the 1st defendant as their Stevedores/C & F Operations at Chennai Port, for all their operations subject to terms and conditions mentioned in Ex.D.2. In the said circumstances, beyond the terms and conditions or the services offered by the 1st defendant in Ex.D.2, the plaintiff cannot expect any other services from the 1st defendant.

18. It is the case of the plaintiff that, there was a specific

understandings between the plaintiff and the defendants that the vessel will be wharf during the month of November-2003, for the plaintiff to load the cargo. To this averment, the written statement of the 2nd defendant and the evidence of D.W.2 goes to show that, it was not the 2nd defendant alone was approached by the plaintiff for arranging the vessel. The 2nd defendant, who one among many other persons, who were authorised by the plaintiff to arrange for the vessel and the 2nd defendant on his part, had tried to arrange for the vessel but due to low freight charges offered by the plaintiff and inadequacy of the cargo load, the vessel could not be arranged. In Ex.P.8, the letter of the 1st defendant to the plaintiff dated 04.12.2003 reveals that, there was revision in the tariff and same was intimated to the plaintiff by the 1st defendant through this letter marked as Ex.P.8 and the 1st defendant has requested the plaintiff to pay an additional freight charges of Rs.17.50 per M.T over and above the stevedoring charges quoted earlier. This additional freight charges demanded by the 1st defendant is due to application of uniform levy of 192% on the wages for all commodities including agricultural products, in connection with stevedoring operations in Chennai Port. Following this, the plaintiff has issued letter (Ex.P.9) dated 20.12.2003 and the fax message (Ex.P.10) on 02.01.2004 requesting the 1st defendant to take necessary steps to make the

shipment by 10.01.2004. In response to this fax message, the 1st defendant has sent a letter on 03.01.2004 marked as Ex.P.11, wherein, it has been reiterated by the 1st defendant that, they were appointed only as C & F Agents & Stevedores and they never taken the responsibility for arranging the vessel for the plaintiff. The 2nd defendant was independently appointed by the plaintiff as their charter agent and any fault or delay on the part of the 2nd defendant cannot be responsibility or liability on the 1st defendant. In the said context, the plaintiff cargo lying in the wharf was forced to be removed.

19. The 1st defendant has raised the invoice dated 21.01.2004 marked as Ex.D.6 for a sum of Rs.6,69,060/- towards charges for unloading, High Stacking, Cleaning, Watch and Word, Port Dues and other Miscellaneous expenses for handling 6195 M.T feldspar at Chennai Port. This is the amount which the 1st defendant has claimed in the counter claim. Ex.D.8 series is the photocopy of the shipping bills and photocopies of the application filed by the 2nd defendant on behalf of the plaintiff for their cargo brought to the Port to be loaded in the vessel of M/s.Sea Dream. These documents clearly establishes the fact that, the plaintiff has brought its cargo to the Port but could not be loaded in the M/s.M.V.Sea Dream for the following reasons.

(i). The vessel did not reach the Port.

(ii). The 2nd defendant through whom the plaintiff has arranged for the vessel could not make it, due to increase in freight charges and inadequacy of cargo load.

20. For the above said two reasons, the 1st defendant who has offered certain specialized services to the plaintiff but not arrangement of the vessel cannot be held responsible.

21. As far as the counter claim is concerned, Ex.D.8 is an undisputed document which show that the 1st defendant has handled the cargo of the plaintiff. As a consequence, the expenses incurred has been charged and invoice marked as Ex.D.6 dated 21.01.2004 has been raised.

Issue Nos.1 & 2

For claim of damages, due to loss of business and other reasons stated in the plaint. The plaintiff, at the first instance, ought to have established that the failure in completion of the contract with the Turkey Company was exclusively due to the breach of contract committed by the defendants. From the material evidence, this Court

could not find any document to show that neither the 1st defendant nor the 2nd defendant were responsible for non-arrival of vessel to M/s.M.V.Sea Dream.

22. In the said circumstances, it has to be held that the plaintiff has failed to prove the alleged loss of business, profit and suffering to claim damages. Accordingly, the issue Nos.1, 2 are held in negative.

Issue No.3

The plaintiff has not proved the sufferings of loss or damages. Hence, issue No.3 is held in negative.

Issue No.4

There is no evidence to show passing of consideration either to the 1st defendant or 2nd defendant. From the plaintiff, except the letter communication between them which is the nature of offer and acceptance for certain services. The plaintiff has not placed any documentary proof for payment of consideration. Hence, issue No.4 is held against the plaintiff. Hence, issue No.4 is answered accordingly.

Issue Nos.5, 6 & 7

The 1st defendant has produced the document namely Ex.D.6 and Ex.D.8 to show the cargo of the plaintiff was handled by the 1st defendant and towards the handling, the 1st defendant is entitled for the charges claimed under Ex.D.6. Hence, entitled for the charge and interest as claimed. However, not entitle for exemplary cost. Hence, issue Nos.5, 6 & 7 are answered accordingly.

23. In the result, the Suit is **dismissed**. The counter claim of the 1st defendant is **Allowed** with costs.

14.02.2020

Index :Yes/No
Speaking Order/Non-speaking order
bsm

List of Witness examined on the side of the Plaintiff:-

1. Mrs.Geetha (P.W.1)

List of Witness examined on the side of the Defendants :-

1. L.Panigraphy (D.W.1)

2. D.Ethiraj (D.W.2).

List of the Exhibits marked on the side of the Plaintiff:-

Sl.Nos.	Exhibits	Description of documents	Date
1.	Ex.P.1	Xerox Copy of the letter sent by the 1 st defendant to the plaintiff	18.09.2003
2.	Ex.P.2	Xerox Copy of the letter sent by the 2 nd defendant to the plaintiff.	18.09.2003
3.	Ex.P.3	Xerox copy of the quotation sent by the 1 st defendant to the plaintiff	22.09.2003
4.	Ex.P.4	Xerox copy of the contract between the plaintiff and the 1 st defendant	06.10.2003
5.	Ex.P.5	Xerox Copy of the letter of undertaking sent by the plaintiff to the 1 st defendant.	06.11.2003
6.	Ex.P.6	Xerox copy of the letter sent by the 2 nd defendant to the Traffic Manager, Chennai Port Trust.	07.11.2003
7.	Ex.P.7	Xerox copy of the letter sent by the 1 st defendant to the Traffic Manager, Chennai Port Trust.	20.10.2003
8.	Ex.P.8	Xerox copy of the letter sent by the 1 st defendant to the plaintiff demanding additional costs.	04.12.2003
9.	Ex.P.9	Letter sent by the plaintiff to the 1 st defendant informing shipment to be completed on or before 31.12.2003	20.12.2003
10.	Ex.P.10	Fax message sent by the plaintiff to the 1 st defendant	02.01.2004
11.	Ex.P.11	Letter sent by the 1 st defendant to the plaintiff	03.01.2004
12.	Ex.P.12	Letter sent by the 1 st defendant to the plaintiff	16.01.2004
13.	Ex.P.13	Xerox copy of the letter sent by the Assistant Traffic Manager to the 1 st defendant	10.03.2004
14.	Ex.P.14	Xerox copy of the letter sent by the Docks Manager, Chennai Port Trust to the 1 st defendant	16.03.2004
15.	Ex.P.15	Letter sent by the 1 st defendant to the plaintiff	20.03.2004
16.	Ex.P.16	Xerox copy of legal notice	11.03.2004
17.	Ex.P.17	Rejoinder notice	21.05.2004
18.	Ex.P.18	Reply notice	01.06.2004
19.	Ex.P.19.	Reply notice	02.06.2004
20.	Ex.P.20	Xerox copy of reply letter	27.10.2004

List of the Exhibits marked on the side of the Defendants:-

S.No.	Exhibits	Description of Documents	Date
1.	Ex.D.1	Photocopy of the 1 st defendant quotation submitted to plaintiff	24.01.2012
2.	Ex.D.2	Photocopy of 1 st defendant's submitted revised quotation to plaintiff	22.09.2003
3.	Ex.D.3	Original Appointment letter from the plaintiff to 1 st defendant.	06.11.2003
4.	Ex.D.4	Original Appointment letter from the plaintiff to 1 st defendant.	06.11.2003
5.	Ex.D.5	Original Letter from plaintiff to the 1 st defendant.	19.01.2004
6.	Ex.D.6	Original invoice from the 1 st defendant to plaintiff	21.01.2004
7.	Ex.D.7	Xerox copy of letter of demand from 1 st defendant to plaintiff	21.01.2004
8.	Ex.D.8	Letter enclosing shipping bills export applications and statement of cargo from 1 st defendant to plaintiff	27.01.2004
9.	Ex.D.9	Original Letter from the plaintiff to 1 st defendant	23.01.2004
10.	Ex.D.10	Xerox copy of Letter from Chennai Port Trust to plaintiff	29.03.2004
11.	Ex.D.11	Xerox copy of vouchers from sub Contractor's of the 1 st defendant	---
12	Ex.D.12	Authorisation letter	19.11.2018

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Dr.G.Jayachandran,J.

bsm



C.S.No.121 of 2005

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14.02.2020