

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2019

PRONOUNCED ON : 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.6 of 2014

M/s. Shree Exports
Represented by its partner
Mr.Rohit Kayan
Sakthi Theatre Main Road,
Angeripalayam,
Tirupur.

Appellant

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Vs.

1.Container Corporation of India
Limited,
Ennore High Road,
Sathankadu Village,
Thiruvottiyur, Chennai – 600 019.

2.Deputy Commissioner of Customs,
Singanallur,
Neelikondanpalayam (Post)
Coimbatore.

Respondents

Prayer:- First Appeal has been filed under Section 96 r/w. Order 41 Rule 1 of The Civil Procedure Code against the judgment and decree dated 22.04.2013 passed in O.S.No.558 of 2007 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Appellant : Mr.Hari Radhakrishnan

For Respondent No.1 : Mr.V.G.Suresh Kumar

For Respondent No.2 : Mr.AP.Srinivas
Senior Standing Counsel
(Central Govt.)

JUDGMENT

Aggrieved over the judgment and decree dated 22.04.2013 passed in O.S.No.558 of 2007 on the file of the IV Additional District and Sessions Court, Coimbatore, the plaintiff has preferred the first appeal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for recovery of money.

4.The plaintiff is the manufacturer and exporter of Hosiery products and exporting the same to the Western and European countries based on the orders placed by the foreign buyers and based on the purchase order from Jordin Sportwear of United States of America, the plaintiff vide invoice dated 23.05.2004 sent the goods being 7104 pieces of 100% cotton knitted Men's T-Shirts packed in 296 Cartons at an Invoice value of USD23443.20 and the same was assigned shipping Bill No.1884 dated 06.08.2004 by the second defendant and the goods were to be shipped from the Port of Tuticorin, however, as there was no connecting Vessel at that point of time, the goods were sent to Chennai Port and the goods were handled by Clearing and Forwarding Agents M/s. Lead King Sea

Forwarders Private Limited, Chennai. However, the goods could not be shipped because the Foreign Buyer had sent the letter of credit in the name of their agents, who in turn started dictating unacceptable terms and conditions to the plaintiff and thereby, the shipment was delayed and in the meanwhile, the letter of credit date had also expired and left with no other alternative, the goods were unloaded at the Container Freight Station operated by the first defendant on 14.08.2004. Thereafter, the issue had been taken up by the plaintiff with the foreign buyer, however, there was no response. All the efforts and pains taken by the plaintiff failed and the goods were stranded at the CFS of the first defendant. The plaintiff explored the various alternative ways to dispose the goods but they ended in vain. The plaintiff had also taken reasonable steps to protect his interest and endeavour to bring the goods back to Tirupur from CFS of the first defendant and thereby, requested the second defendant to issue No Objection Certificate with reference to the same vide letter dated 14.03.2005. The second defendant issued No Objection Certificate vide letter dated 08.04.2005. However, on account of business of the plaintiff being affected badly, the plaintiff was concentrating on the same. The plaintiff sent the communication dated 28.08.2006 to the Clearing & Forwarding Agents to ascertain the demurrage and other charges to get back the goods from the CFS of the first defendant. Thereafter, the plaintiff on the ascertainment of the

approximate charges to be paid sent a letter dated 12.09.2006 to the first defendant requesting for the return of the stored goods and also enclosed No Objection Certificate issued by the second defendant. However, to the shock and surprise of the plaintiff, the first defendant vide letter dated 13.09.2006 informed that the subject export goods were sold in auction on 07.04.2006 to the highest bidder in the electronic auction sale. The action of the first defendant in selling the goods through auction is illegal and without authority and the illegal act of the first defendant was informed to the second defendant vide letter dated 03.10.2006. However, no reply was received from the second defendant with reference to the same. Thereafter, the plaintiff sent a legal notice on 18.01.2007 to the first defendant and called upon them to pay the value of the goods within 10 days and also compensation of Rs.5,00,000/- for the mental agony and the first defendant, despite the receipt of the same, did not respond to the same and also made no payment and thereafter, the plaintiff issued another legal notice dated 17.04.2007 reiterating the claim made in the earlier notice and to the same, the first defendant had not chosen to reply nor made any payment. The first defendant is liable to pay interest at 15% on the invoice amount from the date of auction sale till realisation. Hence, the suit.

5.The first defendant resisted the plaintiff's suit and after admitting that the goods of the plaintiff were unloaded at CFS of the first defendant on 14.08.2004, put forth the case that the subject goods were lying in the CFS unclaimed for many months occupying precious cargo space and therefore, the same was shifted to a separate area meant for auction sale and subsequently, sold in e-auction and according to the first defendant, the subject cargo was sold during the e-auction held on 07.04.2006 for the highest bid price of Rs.1,77,577/-. It is stated that no specific notice could be sent to the exporter regarding the e-auction sale in the absence of any records maintained by the first defendant and the exporter had approached only after a delay of 17 months, after getting the No Objection Certificate from the second defendant for taking back the goods. Therefore, according to the first defendant, the plaintiff is guilty of grave laches and cannot blame the first defendant for the auction of the goods. As no steps had been taken by the plaintiff for clearing the goods from CFS of the first defendant over a considerable period of time from 14.08.2004 onwards and as the plaintiff had not also made enquiry as regards the cargo stored in CFS of the first defendant and as there is no obligation on the part of the first defendant to keep the goods for years together and therefore, according to the first defendant, at best, the plaintiff would be entitled to the amount realised at the auction by sale of the goods less the demurrage charges payable to the first

defendant. The claim of the plaintiff that due to prevailing business conditions, it was unable to take back the goods at the earliest point of time is false and therefore, according to the first defendant, the plaintiff is not entitled to any amount both towards the value of the goods as well as on account of mental agony alleged to have been sustained by the plaintiff and the plaintiff is not entitled to claim any interest and therefore, further put forth the case that the Court has no jurisdiction to entertain the suit and accordingly, prayed for the dismissal of the plaintiff's suit.

6.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

"(1).Whether the plaintiff is entitled for Rs.14,41,164/- from the first defendant with subsequent interest?"

"(2).To what other relief?"

7.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A15 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B13 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. Aggrieved over the same, the plaintiff has preferred the first appeal.

9. The following points arise for determination in this first appeal:

" (1). Whether the plaintiff is entitled to recover the suit amount from the first defendant as claimed?

(2). To what relief the plaintiff/appellant is entitled to?

(3). To what relief the first defendant is entitled to?"

10. Point No.1

Shorn of unnecessary details, it is found that the subject matter was sought to be exported by the plaintiff to the foreign buyer based on the purchase order and on account of the non availability of the Vessel at Tuticorin Port, it is found that the subject matter had been sent to Port of

Chennai and were unloaded at the CFS of the first defendant on 14.08.2004. There is no dispute with reference to the abovesaid facts between the parties. It is further seen that thereafter, the plaintiff's endeavours to send the goods to the foreign purchaser ended in vain. The first defendant is not concerned with the same. The abovesaid facts are also not relevant for deciding the issue involved in the matter. It is further noted that inasmuch as all the endeavours made by the plaintiff to send the goods to the foreign purchaser failed, the plaintiff had decided to take back the goods from the CFS of the first defendant and accordingly, had also obtained No Objection Certificate with reference to the same from the second defendant on 08.04.2005. Therefore, it is noted that on the plaintiff obtaining the No Objection Certificate from the second defendant to take back the goods to Tirupur from the CFS of the first defendant, as rightly put forth by the first defendant's counsel, the plaintiff should have made all the earnest steps with reference to the same and endeavoured to lift the goods at the earliest point of time. On the other hand, according to the plaintiff, on account of its business having been badly affected during that point of time, the plaintiff was forced to concentrate on the same, with a view to bring normalcy. It is thus put forth that the plaintiff was unable to get back the goods from the CFS of the first defendant immediately. However, with reference to the abovesaid claim of the plaintiff, there is no acceptable and reliable

material as rightly put forth by the first defendant. According to the first defendant, on the unloading of the goods at CFS of the first defendant, the plaintiff should have endeavoured to dispose the goods either to the foreign purchaser or take back the goods and it is seen that inasmuch as the goods were lying uncleared at the CFS of the first defendant for more than 17 months, it is found that the subject matter were e-auctioned by the first defendant on 07.04.2006 for the highest bid price of Rs.1,77,577/-.

11.From the materials placed on record, it is found that for the first time, the plaintiff had sent the communication to the first defendant with reference to the taking back of the goods from the CFS of the first defendant vide letter dated 12.09.2006 along with the No Objection Certificate issued by the second defendant. Therefore, as rightly put forth by the first defendant from 14.08.2004 till 11.09.2006, the plaintiff had not communicated to the first defendant either directly or through its clearing agents with reference to the clearing of the goods deposited with the first defendant. Meanwhile, as noted above, the first defendant had auctioned the goods on 07.04.2006, accordingly, on the receipt of the notice from the plaintiff dated 12.09.2006, the first defendant had informed about the auctioning of the subject matter on 07.04.2006 as above pointed out.

12.Now, according to the plaintiff, the auctioning of the subject matter goods by the first defendant is without any authority and illegal as per Section 150 of the Customs Act. According to the first defendant, as the address of the plaintiff was not known to it, after giving publication in the newspaper and affixing the notice in its office, it had proceeded with the e-auction sale of the subject matter. However, when it is found that the notice to the plaintiff is mandatory under Section 150 of the Customs Act before the conduct of the auction and in such view of the matter, as rightly determined by the trial Court, the first defendant should have endeavoured to ascertain the address of the plaintiff through the second defendant or other mode and endeavoured to issue the notice before auction. However, it is found that the subject matter had been auctioned and brought to sale without notice to the plaintiff and therefore, the trial Court had rightly determined that the e-auction sale proceedings of the subject matter is invalid in law.

13.The first defendant counsel, during the course of arguments, is unable to place any contention as regards the determination of the trial Court that the e-auction sale of the subject matter is invalid on account of the absence of notice to the plaintiff as per Section 150 of the Customs

Act. However, according to the first defendant's counsel, inasmuch as the goods were lying uncleared and posing problems to the first defendant for several months and the plaintiff having not even communicated to the first defendant either in person or through agent with reference to the clearance of the goods at the earliest, it is put forth that the goods were auctioned. The fact now remains that the goods were auctioned. As abovenoted, as to why the plaintiff had not endeavoured to clear the goods at the earliest point of time, absolutely, there is no material worth acceptance. As rightly put forth by the first defendant's counsel, the first defendant is no away concerned with the failure of the plaintiff to discharge the goods to the foreign purchaser as averred in the plaint. It is the look out of the plaintiff. Even after the same had failed, at least, thereafter the plaintiff should have endeavoured to clear the goods from the CFS of the first defendant. In this connection, it is found that though the plaintiff had obtained the No Objection Certificate with reference to the same from the second defendant on 08.04.2005, even thereafter for more than one year, the plaintiff had not taken appropriate steps to communicate with the first defendant either directly or through its agent qua the clearance of the goods. With reference to the same, the only reason put forth by the plaintiff is that at that point of time, as its business was badly affected, it had been necessitated to concentrate on the same and therefore, unable to proceed further with the clearance of

the goods lying with the first defendant. However, as regards the abovesaid case of the plaintiff, there is no material worth acceptance. Even assuming for the sake of arguments the abovesaid plaintiff's case to be true, as rightly put forth by the first defendant's counsel, the first defendant is no away concerned with the same. The position remains that the goods were lying uncleared for several months together even after the obtainment of the No Objection Certificate from the second defendant on the part of the plaintiff and in such view of the matter, it is found that the goods were auctioned in the meanwhile as above pointed out. No doubt, the auctioning of the goods without notice to the plaintiff is held to be illegal.

14. In the abovesaid background, we have to see whether the plaintiff would be entitled to get back the value of the goods as claimed in the plaint as well as the damages on account of the alleged mental agony. According to the plaintiff, the goods were not properly valued before the e-auction. As could be seen from the records, the valuer had valued the value of the goods at Rs.2,10,000/-. However, in the e-auction sale conducted on 07.04.2006, the highest bid value for the goods was at Rs.1,77,577/-. According to the plaintiff, the valuer, who had valued the goods, had no expertise with reference to the subject matter and therefore, he was not competent to value the goods as on the

date of the invoice i.e. on 06.08.2004. However, when the goods were auctioned and sold on 07.04.2006, as regards what would be the value of the goods as on the date of the e-auction, there is no acceptable and reliable material put forth by the plaintiff. Other than complaining that the valuer of the first defendant had not properly valued the goods and he has no expertise with regard to the valuation of the same, the plaintiff has not placed any material to hold as to what would be the correct value of the goods, particularly, on the date of the auction of the same. When it is found that the goods had been lying idle in the CFS of the first defendant from 07.04.2004 and the plaintiff's endeavours to forward the same to the foreign purchaser ended in failure and even thereafter, the plaintiff had not endeavoured to retrieve the goods back from the first defendant and the plaintiff had been taking its own time with reference to the same without any basis and the reason given by the plaintiff for not clearing the goods earlier is found to be without any material and the first defendant has no connection or role with the same and the endeavour to retrieve on the part of the plaintiff had come to the knowledge of the first defendant only on 12.09.2006, in such view of the matter, in the absence of any material on the part of the plaintiff to fix the actual value of the goods at least either on the date of auction sale i.e. on 07.04.2006 or on 12.09.2006 and when other than complaining that the valuer of the first defendant has grossly undervalued the goods, however, the plaintiff

having failed to establish on what ground the valuer had undervalued the goods and as above pointed out, the plaintiff having failed to place any contra material worth acceptance as to what would be the real value of the goods as on 07.04.2006 or as on 12.09.2006, in such view of the matter, the trial Court is found to be justified in holding that the plaintiff having levied the suit for damages and when the plaintiff has not spelt out any clear case as to how it has ascertained the damages and the plaintiff having failed to place any materials to evidence that the value of the goods as on 07.04.2006 is on the higher side and that the first defendant had undervalued the same grossly, the Court is not to able ascertain the actual value of the goods based on the available records and in the light of the abovesaid factors, on the materials available, it has to be held that the value of the goods on the date of auction would not be more than 1,77,577/-.

15.As regards the claim of damages under the head of mental agony, when the first defendant is found to be not the party at fault as such and it is only the plaintiff, who had failed to clear the goods from the CFS of the first defendant at the earliest point of time, despite its failure to forward the goods to the foreign purchaser and the plaintiff having not endeavoured to clear the goods even after the obtainment of No Objection Certificate and one year thereafter only the plaintiff had

sent the communication to the first defendant with reference to the same and in the meanwhile, when the goods are found to be e-auctioned and no doubt, the e-auction sale is an invalid sale, without notice to the plaintiff under Section 150 of the Customs Act, however, the fact remains that for months together the plaintiff has remained idle and not taken any positive steps to clear the goods from the first defendant and in such view of the matter, in my considered opinion, as determined by the trial Court, the plaintiff cannot be allowed to claim any damages under the head of mental agony as it is found that the plaintiff is the party, who liable to be blamed for the non clearance of the goods from the CFS of the first defendant at the earliest point of time. Therefore, the plaintiff being the faulting party qua the non clearance of the goods at the earliest point of time, in such view of the matter, the plaintiff cannot be granted any compensation on the premise that it had suffered mental agony with reference to the clearance of the goods from the CFS of the first defendant. Furthermore, as held by the trial Court, on what factors, the plaintiff has suffered mental agony for claiming damages of a sum of Rs.5,00,000/- no details had been spelt out in the plaint and in the absence of evidence on the part of the plaintiff pointing to the same and therefore, the trial Court is justified in coming to the conclusion that on account of the failure of the plaintiff to determine the loss sustained by it, as such, no relief could be granted to the plaintiff.

16.However, considering the pleas put forth by the respective parties and the submissions made, when it has been admitted by the first defendant that it is liable to return the auction value of the cargo to the plaintiff less the demurrage charges payable to it, accordingly, it is found that the auction value of the subject cargo being at Rs.1,77,577/- and demurrage charges incurred by the first defendant being Rs.38,700/-, accordingly, it is found that at best, the plaintiff would be entitled to receive only a sum of Rs.1,38,877/- from the first defendant towards the value of the goods.

17.In the light of the abovesaid determination, the plaintiff is entitled to receive only a sum of Rs.1,38,877/- from the first defendant with interest at 6% per annum from the date of e-auction till realisation and accordingly, the point No.1 is answered in favour of the plaintiff.

18.Point Nos.2 & 3

For the reasons aforesaid, the judgment and decree dated 22.04.2013 passed in O.S.No.558 of 2007 on the file of the IV Additional District and Sessions Court, Coimbatore, are set aside and the plaintiff is

entitled to receive a sum of Rs.1,38,877/- with 6% interest from the date of e-auction till realisation from the first defendant with proportionate cost and accordingly, the suit laid by the plaintiff is disposed of. The first appeal is accordingly allowed in part. Considering the facts and circumstances of the case, there is no order as to costs. Consequently connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
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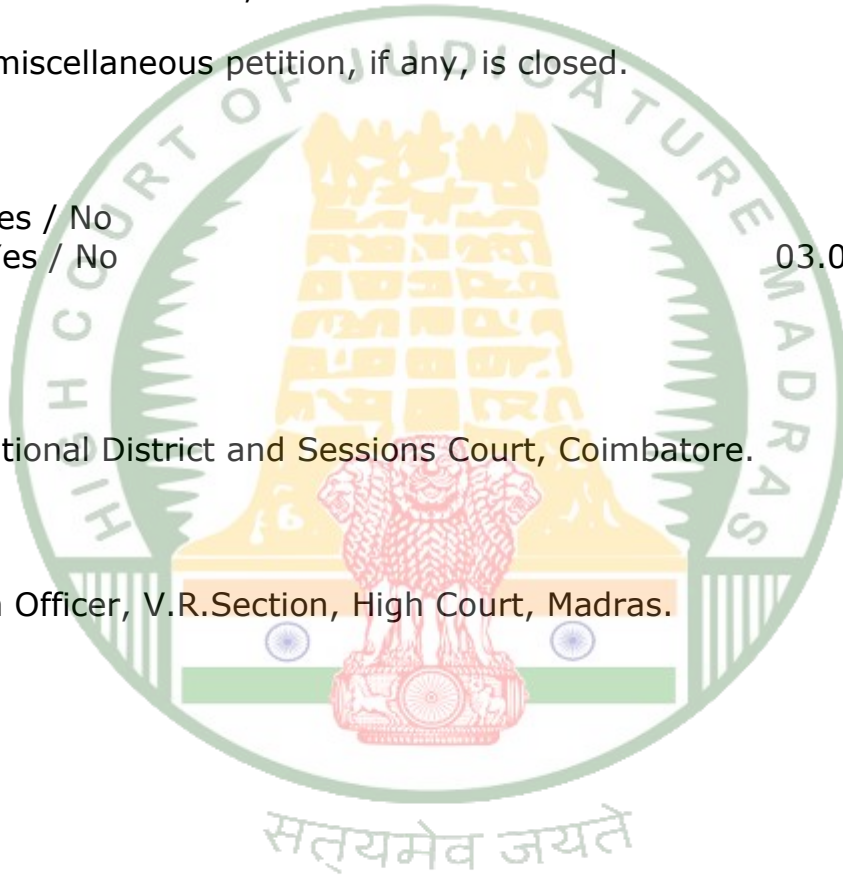
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T.RAVINDRAN, J.

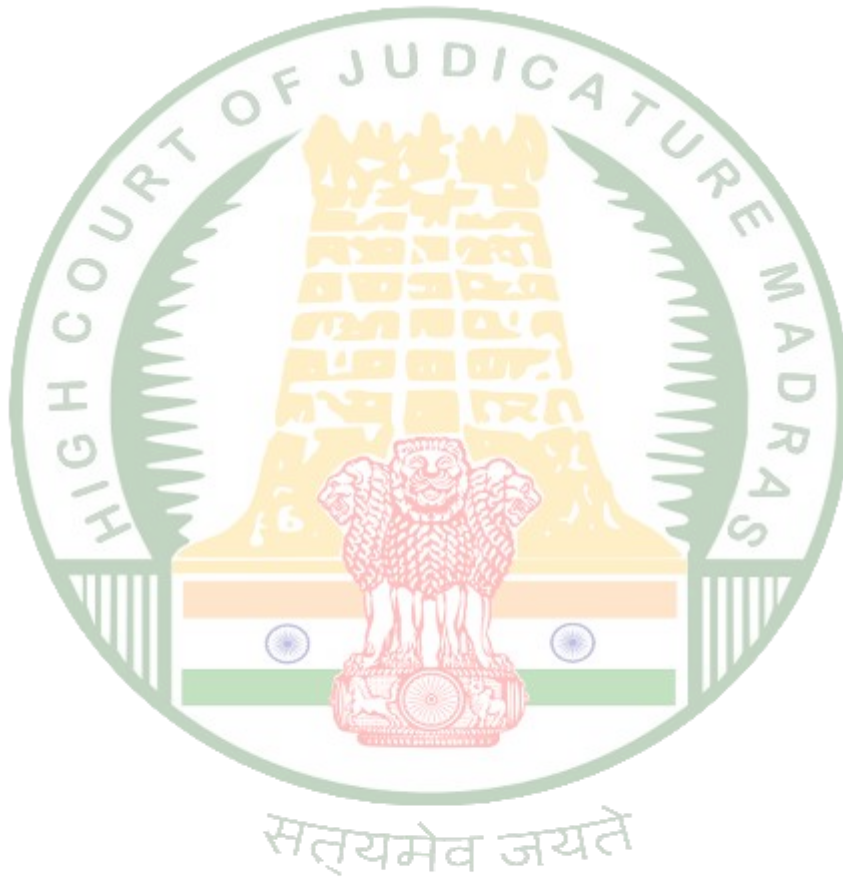
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