

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |            |
|---------------|------------|
| Reserved on   | 30.07.2021 |
| Pronounced on | 10.08.2021 |

CORAM

**THE HON'BLE Ms. JUSTICE R.N.MANJULA**

C.R.P.(NPD).No.3737 of 2016  
and C.M.P.No.18953 of 2016

Reed Relays & Electronics India Limited  
Represented by its Chairman  
No.617-618, Basavannapura Village,  
Kottamadagu Panchayat,  
Thali Post, Krishnagiri District – 635118.

... Petitioner/2<sup>nd</sup> Defendant***Vs.***

1.M/s World Gate Express Lines International Pvt Limited  
Regd. Office at “Dev Regency” Represented by its  
Authorized Signatory Mr.J.Sai Vinod  
II Floor, New No.111, Old No.61,  
Dr.Radhakrishnan Salai,  
Mylapore, Chennai – 600004.

... 1<sup>st</sup> Respondent/Plaintiff

2.S.D.Krishnamurthy  
Proprietor, R.K.Brothers,  
Customs House Agent,  
New No.4, Old No.21, BV Nagar, 3<sup>rd</sup> Street,  
Nanganallur, Chennai – 600061.

... 2<sup>nd</sup> Respondent/1<sup>st</sup> Defendant

**Prayer:** The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.13516 of 2015 in O.S.No.3929 of 2015 dated 21.11.2015 on the file of XII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.C.Harikumar

For Respondent : Mr.S.Santhosh  
for M/s.P.Giridharan [R1]  
No Appearance [R2]

**ORDER**

*(Heard through video conferencing)*

This Civil Revision Petition is filed to set aside the Order dated 21.11.2015 passed by the XII Assistant Judge, City Civil Court, Chennai in I.A.No.13516 of 2015 in O.S.No.3929 of 2015.

2. Heard the arguments of the learned counsel for the petitioner and the learned counsel for the 1<sup>st</sup> respondent.

3. The petitioner is the 2<sup>nd</sup> defendant, 1<sup>st</sup> respondent is the plaintiff and 2<sup>nd</sup> respondent is the 1<sup>st</sup> defendant in the suit.

4. The Civil Revision Petitioner is the unsuccessful 2<sup>nd</sup> defendant, who has filed a petition seeking leave to defend the summary suit filed against him by the plaintiff for recovery of money. Since the said petition was dismissed and the petitioner has not been granted with the leave to defend, 2<sup>nd</sup> defendant has challenged the same by filing this Civil Revision Petition.

5. The 1<sup>st</sup> respondent/plaintiff has filed a suit for recovery of money due to

him in respect of the invoices raised by him for carrying the consignments ordered by the 2<sup>nd</sup> defendant. The plaintiff is doing freight services for sending the consignments to the importers through the 1<sup>st</sup> defendant – booking agent. It is pleaded by the 1<sup>st</sup> respondent/plaintiff that the 1<sup>st</sup> defendant being the Customs House Agent, has acted as the agent of the 2<sup>nd</sup> defendant and hence, his failure to pay the dues to the plaintiff, will also bind the 2<sup>nd</sup> defendant. By so stating, the plaintiff has impleaded both the 1<sup>st</sup> and 2<sup>nd</sup> defendants and filed a suit for recovery of a sum of Rs.2,61,982/- with interest.

6. The 2<sup>nd</sup> defendant has filed a petition to grant leave to defend by stating that there is no privity of contract between himself and the 1<sup>st</sup> respondent/plaintiff and the 1<sup>st</sup> defendant alone has got the direct dealings with the 1<sup>st</sup> respondent/plaintiff and hence, the 1<sup>st</sup> defendant alone is liable. The 2<sup>nd</sup> defendant has made the required payment to the 1<sup>st</sup> defendant and in turn if the 1<sup>st</sup> defendant fails to make payment to the 1<sup>st</sup> respondent/plaintiff – freight forwarder, the liability can be only on the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant cannot be added as a party to the suit. The learned trial Judge has dismissed the petition seeking leave to defend by stating that the 1<sup>st</sup> defendant has acted as an agent on behalf of the 2<sup>nd</sup> defendant and hence, the 2<sup>nd</sup> defendant is also jointly and severally liable. The learned trial Judge has relied on some of the invoices

raised by the plaintiff in which the name of the 2<sup>nd</sup> defendant has also been shown as the consignee.

7. It is submitted by the learned counsel for the Civil Revision Petitioner that the 1<sup>st</sup> defendant is not the exclusive agent for the 2<sup>nd</sup> defendant and he is a Customs House Agent, who provides services to various importers and exporters by processing their documents; it was the 1<sup>st</sup> defendant who approached the plaintiff to do various shipments, since he is the direct customer for the plaintiff. Though the shipments were delivered to the respective consignees at the discharge ports, the liability can be fixed on the 1<sup>st</sup> defendant.

8. On hearing the respective submissions of the parties and on seeing the averments of the plaint, it could be found that the 1<sup>st</sup> defendant is the Customs House Agent, who provides services to various importers and exporters by processing the documents for them in the custom house for custom clearance and then send the goods through the freight forwarders by receiving the cost and service charges. He himself has admitted that the 2<sup>nd</sup> defendant is his customer and he is not liable to the demands made by the 1<sup>st</sup> respondent/plaintiff. It is claimed by the 1<sup>st</sup> respondent/plaintiff that the 1<sup>st</sup> defendant has acted as an agent for the 2<sup>nd</sup> defendant. In reality, the 1<sup>st</sup> defendant is not the sole agent of the 2<sup>nd</sup> defendant but he is involved in doing agency services to various importers

in consideration of the payments made to him. Since the 1<sup>st</sup> defendant is doing the customs clearance by verifying the documents, the importers could get his services for booking the freight forwarders for sending and receiving the consignments. Had the 2<sup>nd</sup> defendant appointed the 1<sup>st</sup> defendant as his business agent and given him the power to represent him to his customers or business associates, then the 2<sup>nd</sup> defendant can be made vicariously liable for the lapses on the part of the 1<sup>st</sup> defendant.

9. The 1<sup>st</sup> defendant is a customer for the 1<sup>st</sup> respondent and in turn, the 2<sup>nd</sup> defendant is a customer for the 1<sup>st</sup> defendant. Since the 1<sup>st</sup> defendant – Customs House Agent has already collected the charges from the respective importers, the payment has to be made by him to the freight forwarders, though the goods were delivered to the consignee. If a service agent like the 1<sup>st</sup> defendant places freight service orders from any freight forwarders in such a way that the consignment should be delivered to a particular shipping address, the details of the shipping addressee will also be printed in the invoices raised by the freight forwarders along with the details of the service agent. In these types of transactions, mentioning of the details of the consignee on the invoices raised by the freight forwarders alone may not be sufficient to state that the consignees are also liable for the failure to make payment by the booking agents.

**10.** All these facts can be established only if an opportunity is given to the 2<sup>nd</sup> defendant to defend the suit on the basis of the pleadings made by him. It is seen from the above discussion that the 2<sup>nd</sup> defendant could make out that there are some contentious and triable issues involved in this suit.

**11.** In support of his contention that whenever triable issues arise, leave to defend should be granted by the Court, the learned counsel for the Civil Revision Petitioner submitted the following citations and they are found to be applicable to the situation of this case.

| <b>S.No.</b> | <b>Dated</b> | <b>Judgement Cause Title</b>                                                                             | <b>Citations</b>  |
|--------------|--------------|----------------------------------------------------------------------------------------------------------|-------------------|
| 1.           | 05.02.1958   | <i>Santosh Kumar Vs. Bhai Mool Singh</i>                                                                 | AIR 1958 SCC 321  |
| 2.           | 01.11.1976   | <i>M/s. Mechelec Engineers &amp; Manufacturers Vs. M/s. Basic Equipment Corporation</i>                  | 1976(4) SCC 687   |
| 3.           | 14.08.2001   | <i>N.Prabakaran Vs. Manager, Citibank N.A.</i>                                                           | 2002(1) LW 560    |
| 4.           | 05.01.2009   | <i>R.Saravana Prabhu &amp; Another Vs. Videocon Leasing and Industrial Finance Limited &amp; Another</i> | 2013 (14) SCC 606 |

**12.** The learned trial Judge has omitted to make a distinction between an agent who exclusively represents the 2<sup>nd</sup> defendant in all his business transactions and agency service run by the 1<sup>st</sup> defendant for the benefit of the various importers and exporters, who are his customers. Since the learned trial

Judge has not granted leave to defend despite there are triable issues arising in this case, I feel that the Order of the trial Judge has to be reversed.

In the result, this Civil Revision Petition is allowed and the Order dated 21.11.2015 passed by the XII Assistant Judge, City Civil Court, Chennai, in I.A.No.13516 of 2015 in O.S.No.3929 of 2015, is hereby set aside. No costs. Connected civil miscellaneous petition is closed.

10.08.2021

Speaking  
Index: Yes

***Sni***

To

1.The XII Assistant Judge,  
City Civil Court,  
Chennai.

2.The Section Officer,  
V.R.Section,  
High Court, Madras.

**R.N.MANJULA,J.**

***Sni***



Pre-delivery Order in  
C.R.P.(NPD).No.3737 of 2016

10.08.2021

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