



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 26TH DAY OF OCTOBER, 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.208 of 2018

In the matter of Section 34 of the
Arbitration and Conciliation Act 1996

And

In the matter of Agreement dated
19.05.2014 between Freight Bridge
Logistics Private Limited Mumbai &
M/s.Al-Arsath Enterprises, Chennai
and In the matter of Arbitration Award
dated 02.08.2017.

Freight Bridge Logistics Pvt. Ltd.,
having its Registered Office at
No.218/219, 2nd Floor
Reena Complex, Opp. Nathani Street
Vidyavihar (W)
Mumbai-400 086
represented by its Managing Director

.... Petitioner

Vs.

A1- Arsath Enterprises
having its Office at
New No.16, Old No.129, New Street
Mannady, Chennai-600 001
represented by its Partner
Mr.K.M.Humayun Kabeer

... Respondent

Original Petition praying that this Hon'ble Court be pleased to set

aside the Arbitral Award dated 02.08.2017 passed by the Learned Arbitrator

directing the petitioner herein to pay a sum of Rs.8,73,182/- (Rupees Eight



Lakhs Seventy Three Thousand One Hundred and Eighty Two only) together with interest and costs and dismiss the claim of the Respondent herein as stated in its Statement of Claim dated 22.06.2016.

This original petition coming on this day before this Court for hearing in the presence of Ms.Sharanya Vaidyanathan, Advocate for the petitioner herein and Mr.D.Derrick Sam, Advocate for the respondent herein and upon reading the petition filed herein and the award dated 02.08.2017 filed herein and this Court do not find any perversity or any violation in the award passed by the Sole Arbitrator or otherwise any of the grounds contemplated under Section 34 of the Arbitration and Conciliation Act has been made out to interfere with the award passed by the Sole Arbitrator, it is ordered as follows:-

That the O.P.No.208 of 2018, be and is hereby dismissed.

2) That there shall be no costs of this petition.

WITNESS THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID THIS THE
26th DAY OF OCTOBER, 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)



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O.P.No.208 of 2018

ORDER

DATED: 26.10.2021

THE HON'BLE MR.JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 03.01.2022

APPROVED ON: 04.01.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**O.P.No.208 of 2018**

Freight Bridge Logistics Pvt. Ltd.,
having its Registered Office at
No.218/219, 2nd Floor
Reena Complex, Opp. Nathani Street
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represented by its Managing Director

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Vs.

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having its Office at
New No.16, Old No.129, New Street
Mannady, Chennai-600 001
represented by its Partner
Mr.K.M.Humayun Kabeer

... Respondent

PRAYER: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 02.08.2017 passed by the Learned Arbitrator directing the petitioner herein to pay a sum of Rs.8,73,182/- (Rupees Eight Lakhs Seventy Three Thousand one hundred and eight two only) together with interest and costs and dismiss the claim of the respondent herein as stated in its Statement of Claim dated 22.06.2016.



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For Petitioner : Ms.Sharanya Vaidyanathan
For Respondent : D.Derrick Sam

ORDER

Challenge has been made against the award passed by the Sole Arbitrator directing the respondent, namely the petitioner herein to pay a sum of Rs.8,73,182/- as damages for the loss of 175 bales of textile and fancy items from their possession to the claimant with interest at 3% per annum from 19.05.2014 i.e. the date of Bill of Lading till the date of filing the claim on 22.06.2016 and thereafter at the rate of 6% till the date of payment.

2. Brief facts leading to filing of this petition is as follows :

The claimant is doing the business of exporting textiles and fancy items. They exported 283 packages containing textile and fancy items valued at Rs.28,075.5 USD, through the respondents on 19.05.2014 to Kualalampur, Malasia. The respondents issued Model Transport Document/Bill of Lading dated 19.05.2014. The goods were consolidated by the respondents and stuffed in a container. The goods were entrusted after customs clearance. The goods reached to the destination port on



only 108 packages as against 283 packages. Immediately, the claimant informed the respondents about their shipment. The first respondent also lodged FIR on 03.06.2014 before the Sub Inspector of Police, B5 Harbour Police Station for missing of goods. The claimant issued a legal notice on 21.06.2014 calling to compensate damages for missing goods. Hence, according to the claimant, as per the model transport document if there are loss or damage during the period from taking charge of the goods and delivery, the Multi Transport operator is liable to pay compensation. Hence, they claimed a sum of Rs.8,73,182/- being the value of missing goods with interest at 24% per annum.

3. The respondent filed a counter stating that the right and title of the goods vested with the consignee. Therefore the claimant cannot maintain the claim under Section 26 of Sale of Goods Act. Similarly, it is also their contention that the claimant approached the respondent for shipment of certain cargo stated to be 283 bales of textiles and fancy items from Chennai Port to Port Kelang in Malaysia. It was stuffed into the container No.KKP0773956-Z. The respondent is not aware of the nature, weight, quality and value of the cargo. Only on the basis of declaration of the claimant, Bill of Lading dated 10.05.2014 was issued. The respondent

has not accepted or guaranteed that the container has 283 bales. Hence, it is



their contention that it is only short shipping, not a short delivery. The claimant had stuffed less cargo, than what was declared by him, therefore he cannot fasten the liability upon the respondent. It is also stated that the claimant being an unregistered partnership firm cannot maintain the claim and the claimant has also not produced any document to show that the consignee has not made any payment. Therefore, he disputed the claim.

4. The learned Arbitrator has framed the following issues:

1) Whether the claimant entrusted 283 packages of Textiles and Fancy items to the respondents for shipment, and they short shipped 175 packages as alleged by the claimant?

2) Is it correct to allege that the respondents entrusted the transport of cargo to 3rd party transporters?

3) Whether the loss of 175 packages occurred in the custody of the respondent and the claimant is entitled to claim damages from the respondents based on the Bill of Lading?

4) Is it correct to claim by the respondent that the 175 packages not occurred in their custody and they are liable to pay damages?

5) Whether the claimant received the value of 283 cargo packages from the consignee?

6) Is it correct to say that, the claimant lost right, title and interest



over the cargo since he endorsed the Bill of Lading in favour of the consignee?

7) Is it correct to say that the holder of Bill of Lading alone is entitled to claim the cargo or the loss or sue for damages?

8) Whether the claim is maintainable in the absence of clear statement whether the claimant is Partnership Firm or Proprietary Firm?

9) Is it correct to say that the Bill of Lading was issued by the respondents for 283 Bales based on the declaration of the claimant, without verification?

10) Whether the claimant himself short shipped the cargo as alleged by the respondents?

11) Whether the claimant is entitled to claim Rs.8,73,182/- from the respondents with the interest at 24% per annum from 25.05.2015 and the respondent is liable to pay the amount?

12) What is the relief to the claimant?

5. On the side of the claimant, PW1 was examined and Ex.A1 to A17 were marked. On the side of the respondent, RW1 was examined and Ex.B1, Bill of Lading was marked. Based on the evidence and



respondent/petitioner herein, to pay a sum Rs.8,73,182/- as claim for the loss of 175 bales of textiles and fancy items from their possession to the claimant with interest as indicated above. Challenging the same, the present application is filed.

6. The main contention of the learned counsel appearing for the petitioner is that the goods were stuffed in the less container load and taken on the basis of the declaration given by the consignor. It is only a short shipping, not a short delivery. It is the contention of the learned counsel that the award is vitiated for violating the provision of Sale of Goods Act. Though various grounds have been raised, main focus of the argument is with regard to violation Section 26 of the Sale of Goods Act. In the absence of evidence to show that the consignor has not received any amount towards the goods from the consignee claim is not maintainable. It is his main contention that as per Section 26 of Sale of Goods Act, if the property is transferred to the buyer, the goods are at the buyers risk. Therefore, the claimant being a seller has no right to claim damages since the property has been transferred to the buyer which has not been taken note of by the learned Arbitrator. It is further contention that the Bill of Lading itself indicate that the declaration is only given by the consignor about the weight and value of the goods. Further contention that the petitioner, namely the



claimant who is an unregistered partnership cannot maintain the proceedings.

7. Whereas the learned counsel for the respondent submitted that the liability of the respondent cannot be denied. The transport is governed by Multi Modal Transportation of Goods Act 1993. Clause-8 of the above Act places the consignee as that of the consignor in respect of all the rights and liabilities and further, it is his contention that it is the duty of the operator to verify the accuracy of the goods by proper checking and make entries in the document about inaccuracy as per clause 10 of the Act. Therefore, the contention of the respondent that there were only short shipping cannot be countenanced. The learned Arbitrator factually recorded a finding that the respondent has received the goods containing 283 bales. Therefore, it cannot be said that the goods were stuffed as per mere declaration of the claimant. It is his contention that the Bill of Lading is evidence of contract between the shipper and the owner of the ship by which the owner of the ship agrees to transport the goods delivered by the consignor to a specified destination and deliver it to the consignee. Hence, it is his contention that delivery of goods pursuant to a bill of lading creates a bailment between the shipper and the owner of the ship. Therefore, having taken the delivery of the entire consignment, the petitioner cannot avoid the



liability. The learned Arbitrator factually recorded a finding and passed an award and the same does not require any interference.

8. With regard to the first contention that the unregistered partnership firm cannot maintain the claim application, such contention is no longer maintainable in view of the judgment by the Apex Court in **Umesh Goel v. Himachal Pradesh Co-operative Group Housing Society Ltd.**, reported in **(2016) 11 Supreme Court Cases 313**. The Apex Court in para 37 has held that the arbitral proceedings will not come under the expression "other proceedings" of Section 69(3) of the Partnership Act, the ban imposed under the said Section 69 can have no application to arbitral proceeding as well as the arbitration award. In such view of the matter, the contention that the unregistered partnership cannot maintain the claim has no legs to stand.

9. Now, with regard to the second contention that the claimant has no right to maintain the claim and only the buyer or consignor alone has to maintain the claim, Section 26 of Sales of Goods Act reads as follows:

26. Risk prima facie passes with property - Unless

otherwise agreed, the goods remain at the seller's risk until the

property therein is transferred to the buyer, but when the



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property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

10. On a perusal of the above section, it makes it clear that prima facie risk passes only with the property and above section also permits the parties to enter into the agreement that though the property does not pass, the risk passes and and they may fix the point of time when they may so passes. Learned Arbitrator has taken note of various documents and one such document is, letter sent by the consignor declining to pay the amount for the value in view of their delivery. The Bill of Lading indicates the value and the weight of the packages. Though it is the contention of the petitioner herein that the goods were stuffed as per the declaration given by the claimant, the learned Arbitrator recorded factual finding after analysing the oral and documentary evidence of the parties particularly evidence of



RW1 and held that 283 packages of cargo was taken possession by the respondent at the time of loading. The survey report Ex.A4 and A5 issued by the agent of the shipping and gate passes of delivery and found in Issue No.2, 3 and 4 that the evidence of RW1 itself prove the fact that before transport to Munishwaran Transport, there were 283 bales available but only 175 bales were lost during transport and it is also held that the goods were transported through unknown third party transporter. The learned Arbitrator factually recorded a finding that the respondent is aware of the details of the packages and now it cannot be said that the goods were stuffed only on the basis of declaration given by the claimant. The learned Arbitrator also held that the 1st respondent are the 1st transferee, and also held that to effect valid transfer of commodity, it is not necessary that the transfer in question should be followed up by actual delivery of the goods to the transferee. Even if the goods are delivered to the original consignee, the 1st transfer also will be a valid transfer of commodity and also held that Section 26 of the Sale of Goods Act is not applicable to the facts of the case. It is to be noted that the Multi Modal Transportation of Goods Act enacted to deal with the transportation of goods from any place of India to any place of delivery of the goods outside India. Section 8 of the Act indicates that every consignee named in the negotiable or non-negotiable multimodal transport document shall have all the rights and liabilities of the consignor.



As per sub clause 2 of Section 8, operator right to claim freight from the consignor or the consignee or endorsee is retained. Section 10 of the Act makes it very clear that it is the duty of the multimodal transport operator to verify the goods and make entries in the document specifying the inaccuracies. Therefore, when the act itself makes it mandatory that it is the duty of the transporter to verify the goods and make entries at the inaccuracies of the document. The operator cannot contend that the goods were stuffed only on the basis of the declaration given by the claimant. Though Indian Bills of Lading Act 1856, section-1 gives the right to the consignee to enforce all the rights and liabilities as if the contract contained in the Bill of Lading had been made with himself. That itself cannot be a ground to avoid the liability by the operator, when there is a specific contract by themselves to make the loss good and as already adverted, the consignee has infact refused to pay the value of the goods due to their delivery. Therefore, it cannot be said that the claim made by the claimant is not maintainable. In a judgment of the Apex Court in **M/s.Rasiklal Kantilal & Co. v. Board of Trustee of Port of Bombay & others**, reported in **2017 SCC OnLine SC 176**, it has been held as follows:

It can be seen from the above that the 1856 Act enacts a

fiction that the consignee to whom the property in the goods

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shall pass shall be “subject to the same liabilities in respect of



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such goods as if the contract contained in the bill of lading had been made with himself". Bill of lading is evidence of a contract between the shipper (consignor) and the owner of the ship by which the owner of the ship agrees to transport the goods delivered by the consignor to a specified destination and deliver it to the consignee. Delivery of goods pursuant to a bill of lading creates a bailment between the shipper and the owner of the ship. Obviously the legislature knew that a consignee under a bill of lading is a 3rd party to the contract but intrinsically connected with the transaction and thought it necessary to specify the rights and obligations of the consignee. Hence, the fiction under the 1856 Act, that the moment the property in goods passes to the consignee, the liabilities of the consignee in respect of such goods would be the same as those of the consignor, as if the contract contained in the bill of lading had been made with the consignee.

11. From the above, it is very clear that the Bill of Lading is an evidence of a contract between the shipper and owner of the ship by which the owner of the ship agrees to transport the goods delivered by the consignor to a specified destination and deliver it to the consignee. In fact,



such a contract itself create bailment between the consignor and the operator. Therefore, at any angle, once the Bill of Lading has been executed between the parties herein, the petitioner cannot avoid the liability. As the same has created a contract of bailment also when the consignment has been lost during transit. It is the liability on the transport to make the loss good. Admittedly, the learned Arbitrator factually found that 283 bales were entrusted for shipping and delivery was given only the lessor quantity. Therefore, the operator cannot avoid the liability. Accordingly, this Court do not find any perversity or any violation in the award passed by the Sole Arbitrator or otherwise any of the grounds contemplated under Section 34 of the Arbitration Act has been made out to interfere with the award passed by the Sole Arbitrator.

12. Accordingly, this Original Petition stands dismissed. No costs.

Sd./- N.S.K.J
26.10.2021

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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