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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A.(CAD) No.45 of 2021

S.U.Sirajdeen

... Appellant/Applicant

Vs

1.M/s.Well Trans Logistics India Pvt. Ltd.,
Flat No.306, 3rd Floor, Real Enclave Building,
No.43/22, Josier Street, Nungambakkam,
Chennai 34

2.M/s.Cosco Shipping Lines (India) Pvt. Ltd.,
No.60 (Old No.144/145)
Maalavika Centre, 4th Floor,
Kodambakkam High Road,
Nungambakkam, Chennai 34.

... Respondents/Respondents

Appeal filed against the Fair and Decretal Order of this Court dated 19.05.2021 in A.No.216 of 2021 on the file of original side of this court.

Prayer in A.No.216 of 2021:

Application praying that this Hon'ble Court be pleased to issue a direction to the 1st and 2nd Respondent to release the imported goods covered under the House Bill of Lading No.STT-HPH-2003001 dated 11/03/2020 and contained in Container No.CBHU9083374 after waiving the container detention charges applicable till the date of clearance of the goods in terms of the letter dated 03/10/2020 and 10/11/2020 of the Deputy Commissioner of Customs (Group 3) Chennai, issued in F.No. S59/30/2020-Gr.3.

For Appellant : Mr.Hari Radhakrishnan



(Delivered by the Hon'ble Chief Justice)

There is no merit in the appeal and this misadventure can only be seen to be an attempt to hoodwink the Court and obtain a benefit to the prejudice of the respondents.

2. The appellant claims to have imported certain goods that were detained by the customs authorities. Pursuant to an order obtained on a writ petition filed in this Court, the goods have been provisionally assessed and released for delivery. However, during the interregnum, considerable time was lost which resulted in the containers of the first respondent herein being detained.

3. The appellant seeks to rely on the Handling of Cargo on Customs Area's Regulations, 2009, to suggest that upon an appropriate certificate being issued by the customs authorities, the rent and demurrage for the relevant period that the goods may have been detained in course of an investigation would stand waived. Some of the regulations from the said Regulations of 2009 have been placed.

4. It is one thing to suggest that rent or demurrage during the period of detention of goods would stand waived qua the customs or the port authorities and quite another that a private party's container or containers may be detained without any compensation. The waiver under the said Regulations would not apply to the party whose containers have been detained.

5. On a specific query of this Court as to whether the first respondent has raised any claim on account of detention or the like, it is submitted on behalf of the appellant that a bill for an amount in excess of Rs.70 lakh has been raised, though the value of the goods imported is approximately Rs.14 lakh.

6. The first respondent is not represented despite service. According to the appellant, the first respondent was represented by one of its directors appearing in person before the Single Bench. The order impugned was passed on May 19, 2021 on a pre-reference petition under Section 9 of the Arbitration and Conciliation Act, 1996.

7. It is recorded that the matter has been taken up on the appellant's submission that the appellant has no claim against the second respondent and the order that the appellant seeks will not prejudice the second respondent.

8. In view of the fact that the first respondent has already made a claim on account of container detention charges or the



delay that was occasioned to the first respondent as a result of the goods being detained, the first respondent cannot be called upon to release the goods without its demand being met or an adjudication that the demand may not be tenable.

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9. Accordingly, the appellant is not entitled to any relief at this stage. O.S.A.(CAD) No.45 of 2021 is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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Copy to

1.The SAR,
Original Side,
High Court,
Madras.

O.S.A. (CAD) No.45 of 2021

AKII (CO)
PR (18/08/2021)