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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

C O R A M

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.NO.297 OF 2017

DRS Logistics Private Limited
221, Kabara Complex, 61 -M.G.Road,
Secunderabad - 500 003
Represented by its Dept.Manager and
Authorised Signatory Mr.Babulal Sharma

... Appellant/
Defendant

Vs

1. Blue Star Limited
Kasturi Buildings, Mohan T.Advani Chowk,
Jamshedhi Tata Road, Mumbai - 400 020
Represented by its Power Agent/Subrogee
The Oriental Insurance Co Ltd
Represented by their Sr.Divisional Manager
R.Viswanathan
2. The Oriental Insurance Company Limited
Oriental House, A25/27, Asaf Ali Road,
New Delhi - 110002,
Rep.by their Sr.Divisional Manager R.Viswanathan
Also at No.10, Dwaraka, II Floor, No.79,
Nungambakkam High Road, Chennai - 600034

... Respondents/
Plaintiffs

Second Appeal filed under Section 100 read with Order XLII Rule 1 of Civil Procedure Code against the judgment and decree dated 04.11.2016 in A.S.No.330 of 2015 on the file of XVIII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 25.02.2015 in O.S.No.1787 of 2011 before XIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.Satish

For Respondents: Mr.G.Guruswaminathan
for M/s Nageswaran &
Narichania



JUDGMENT

Challenging the judgment and decree passed by XVIII Additional Judge, City Civil Court, Chennai in A.S.No.330 of 2015 dated 04.11.2016 confirming the judgment and decree passed by XIII Assistant Judge, City Civil Court, Chennai dated 25.02.2015 in O.S.No.1787 of 2011, the defendant has filed the present Second Appeal.

2. The case of the appellant is that the first defendant/first plaintiff during their course of business despatched 110 Window Air Conditioners of various models from Manali to Secunderabad. The said consignment was entrusted with the appellant/defendant to deliver the same at Secunderabad. The consignment was insured by the first respondent/first plaintiff with the second respondent/second plaintiff. The appellant/defendant delivered 11 Air Conditioners out of 110 Water Coolers of the consignments in a heavily damaged condition, which was found on 12.12.2007. According to the appellant, the registered office of the appellant and the branch office of the respondent/1st plaintiff situate at Secunderabad. Therefore, learned counsel for the appellant submits that in the present case, jurisdiction will lie either at Secunderabad or at the origin of the goods i.e., Manali.

3. Further, learned counsel for the appellant/defendant submits that subrogation agreement was entered into by the first plaintiff in favour of second plaintiff on 22.07.2008 and it was the contention of the appellant that the first respondent/first plaintiff made claim against second respondent/second plaintiff and the second respondent/second plaintiff compensated in terms of subrogation agreement.

4. Learned counsel for the appellant/defendant contended that the defendant took a point of jurisdiction before both the Courts below and contended that no cause of action for the suit arose at Chennai and the jurisdiction lies either at Secunderabad or Manali. Both the Courts failed to consider the same and wrongly held that the suit filed at Chennai is maintainable and the Court has got the jurisdiction to try the case. Learned counsel further submits that in similar situation, between same parties, goods were transported from Manali to Secunderabad and in that case, goods were damaged and the first respondent/first plaintiff made claim against the second respondent/second plaintiff and the second respondent/second plaintiff settled the claim and on the basis of subrogation agreement, the plaintiffs instituted the suit at Chennai and the first appellate Court also upheld the judgment, however, in the second appeal in S.A.No.822 of 2015, (DRS Logistics Private Limited vs Blue Star Limited) reported in CDJ 2017 MHC 1262,



this Court on 17.03.2017, held that the plaintiffs cannot file a suit against the appellant/defendant at Chennai as the jurisdiction will lie either at Manali or Secunderabad.

5. This Court, on 03.02.2021, while admitting the present Second Appeal, framed the following substantial questions of law:-

"i) Whether the Court can have jurisdiction on the basis of a Letter of Subrogation and Special Power of Attorney when the Defendant is not a party to the said documents?

ii) Whether the Court can have jurisdiction on the basis of branch office of a Defendant which has no connection with the transaction in respect of which suit is filed?

iii) Whether the Court can override the explicit contractual agreement between the Plaintiff and Defendant when the same are legal, reasonable and explicit and have been agreed to between the parties?"

6. Learned counsel for the respondents/plaintiffs submits that in the earlier case referred above, agreement was entered between the plaintiffs and the respondent at New Delhi, whereas, in the present case, agreement was entered at Chennai. Therefore, he submits that the above said judgment will not be applicable to the present case. Further, he has filed written submissions, wherein, in paragraph - 9, he has stated that in paragraph 6 of the judgment in S.A.No.822 of 2015 dated 17.03.2017, it was held that the Second Plaintiff is having office at New Delhi and that suit is based only on Ex.A.7 Letter of Subrogation and Special Power of Attorney. In this case, the second plaintiff is in Chennai having office at Nungambakkam High Road, Chennai and it is stated in para 3 of the plaint that Policy was issued by the second plaintiff.

7. Learned counsel for the respondents/plaintiffs further submitted that certain points were not considered in S.A.No.822 of 2015. Therefore, the judgment relied on by the learned counsel for the appellant is not applicable to the present case and therefore, prays for dismissal of the appeal.



8. In reply, learned counsel for the appellant/defendant submitted that though the respondents/plaintiffs contend that the judgment in S.A.No.822 of 2015 is not applicable to the present case, the respondents/plaintiffs have not challenged the said judgment. Therefore, as on date, the above said judgment holds good. As long as the respondents/plaintiffs have not challenged the said judgment, they cannot make any objection to the proposition laid down by this Court in S.A.No.822 of 2015.

9. Heard both sides and perused the materials available on record.

10. It is an admitted fact that goods were transported from Manali to Secunderabad. The appellant/defendant delivered 11 Air Conditioners out of 110 Water Coolers in a heavily damaged condition. which was found on 12.12.2007. Thereafter, it appears claims have been made by the first respondent against the Insurance Company and the Insurance Company had settled the claim.

11. Subsequent to the damage, it appears that subrogation agreement was entered into by the first plaintiff in favour of second plaintiff on 22.07.2008 and by virtue of said agreement, the present suit was filed by the respondents/plaintiffs.

12. The jurisdictional point raised by the appellant/defendant was not considered by both the Courts below. It is pertinent to mention that in S.A.No.822 of 2015, this Court has decided all the three substantial questions of law, in a similar situation, where, goods were transported from Manali to Secunderabad and the suit for subrogation was filed at Chennai, upheld by the appellate Court and subsequently in the second appeal, it was reversed on the point of jurisdiction. Against that, no S.L.P has been preferred. Therefore, as on date, the law laid down by this Court in S.A.No.822 of 2015 (DRS Logistics Private Limited vs Blue Star Limited) reported in CDJ 2017 MHC 1262 holds good.

13. In S.A.No.822 of 2015, the following five (5) substantial questions of law were framed:-

" 1. Whether in absence of the author of a document (Surveyor Report Ex.A.4) not being brought in as a witness and not tested by way of cross examination, whether the said document has evidentiary value and can be admissible as evidence?



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2. Whether the plaintiff who is not the author of document (Surveyor Report Ex.A.4) mark the same and thereby deny the defendant an opportunity to test the truthfulness of the document, especially when the author of the document (Surveyor) is alive and available?

3. Whether the Court can have jurisdiction on the basis of a Letter of Subrogation and Special Power of Attorney when the defendant is not a party to the said documents?

4. Whether the Court can have jurisdiction on the basis of branch office of a defendant which has no connection with the transaction in respect of which suit is filed?

5. Whether the Court can override the explicit contractual agreement between the plaintiff and the defendant when the same are legal, reasonable and explicit and have been agreed to between the parties?

14. The questions of law Nos.3,4 and 5 framed in S.A.No.822 of 2015 are one and the same in the present appeal. This Court answered the question nos.3, 4 and 5 in favour of the appellant holding that the suit cannot lie within the jurisdiction at Chennai and the suit for subrogation will lie either at Manali or Secunderabad, where cause of action arose. Therefore, this Court is of the view that there is no need to discuss the same questions of law again.

15. By following the above, I do not find any merit in the contention of the respondents/plaintiffs and the suit is not maintainable. Hence, the same is liable to be dismissed. Accordingly, the judgment passed in O.S.No.1787 of 2011 on the file of XIII Assistant Judge, City Civil Court, Chennai is set aside.

16. Accordingly, Second Appeal is allowed, following the law laid down in S.A.No.822 of 2015 (DRS Logistics Private



Limited vs Blue Star Limited) reported in CDJ 2017 MHC 1262 .
However, this Court grants liberty to the respondents/plaintiffs
to file a suit before the jurisdictional Court and they may rely
upon Section 14 of the Limitation Act.

WEB COPY No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

SR

To

1. The XVIII Additional Judge,
City Civil Court, Chennai,
2. The XIII Assistant Judge,
City Civil Court, Chennai.

+2cc to Mr.S.Satish, Advocate, S.R.No.11101

+1cc to M/s Nageswaran & Narichania, Advocate, S.R.No.107611

S.A.No.297 of 2017

RSI (CO)
CS/30/09/2021