SENTHILKUMAR RAMAMOORTHY J.

This application is filed seeking unconditional leave to defend the suit.

2. The applicant is the Shipper under the relevant bills of lading. The suit is filed by the Carrier, SP Container Line Pvt Ltd. The suit was filed in view of the default in clearing the consignment and returning the empty containers. The suit claim is for a sum of Rs.1,01,07,702.46 along with interest thereon at 24% p.a. The various elements of the suit claim are set out at paragraph-10 of the plaint. The applicant seeks unconditional leave to defend on about three grounds. The first ground is that the bill of lading imposes the obligation to return the empty containers on the consignee and, in fact, states that the return of empty containers would be at the cost and risk of the consignee. The applicant states that the consignee is Eagle Logistics LLC, a company incorporated in Dubai, UAE. The second ground is that the goods/cargo in question is owned by M/s.Jain Granites & Projects India Ltd. As such, the applicant states that it acted as an agent of M/s.Jain Granites & Projects India Ltd, which is the disclosed principal. Consequently, it is contended that the principal would be liable and not the agent in terms of Section 230 of the Indian Contract Act 1872. The third

ground is that the suit claim is in respect of unliquidated damages. As such, it is outside the purview of Order 37 of CPC read with the Original Side Rules. For all these reasons, unconditional leave is prayed for.

3. The plaintiff refutes these contentions on multiple grounds. The first ground is that the suit is founded upon bills of lading. The said bills of lading constitute a contract between the Shipper and the Carrier. The plaintiff relies upon the terms and conditions specified in the relevant bills of lading. In particular, the definition of merchant, which includes Shipper, is relied upon. The plaintiff also relies upon clause 16 of such terms and conditions which imposes the obligation on the merchant to indemnify the Carrier against all loss, damage, delay, fines, etc. arising out of and in connection with the goods. Since it is an indemnity obligation arising out of a written contract, the plaintiff contends that it falls within the scope of Order 37 Rule 2(b) of CPC. The plaintiff further submits that its contractual relationship is with the Shipper and not with the owner of the goods. Likewise, it is contended that the transfer of risk to the consignee is a matter between the owner/Shipper and such consignee.

4. On examining the bills of lading, it is evident that the defendant herein is the Shipper under the relevant bills of lading. As contended by the plaintiff, therefore, the contractual relationship is between the Shipper and the Carrier / plaintiff. Turning to the various elements of the suit claim,

which are set out at paragraph 10 of the plaint, it appears that the fourth element relates to compensation for non-use of containers from 13.10.2014 to 19.10.2014. This claim appears to be a claim for unliquidated damages and may not fall within the scope of Order 37 Rule 2(b) of CPC. The other claims are claims for costs incurred by the Carrier. The other significant aspect to be noticed is that the plaintiff issued a notice on 19.01.2015 to the defendant and Jain Granites India Pvt Ltd. By such notice, a sum of Rs.20,47,562/- was claimed towards detention charges, local costs, storage charges and interest. No claim was made by such notice towards compensation towards non-use of containers.

5. By taking all the aforesaid facts and circumstances into consideration, this is not an appropriate case for grant of unconditional leave. The plaintiff has made out a strong *prima facie* case in respect of the claim for detention charges, local costs and storage charges. As per the relevant bills of lading, the liability is imposed on the Shipper. It is another matter that the Shipper may, in turn, have a claim against the owner of the cargo. Therefore, leave to defend is granted to the defendant on condition that the defendant establishes an interest bearing fixed deposit account in a nationalised bank for a sum of Rs.15 lakh (Rupees Fifteen Lakh only) in the name of the Registrar General, Madras High Court, to the credit of C.S.No.79 of 2016. Such fixed deposit account shall be established within a period of four weeks from the date of receipt of a copy of this order. The

original fixed deposit receipt shall be handed over to the Registrar General and a copy thereof should be provided to the plaintiff. The fixed deposit shall be for an initial period of one year on auto renewal, both principal and interest, basis. It is needless to say that such fixed deposit shall be subject to the outcome of the suit.

List on 27.04.2022.

30.03.2022

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SENTHILKUMAR RAMAMOORTHY, J

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Appln.No.3836 of 2021
and
C.S.No.79 of 2016

30.03.2022