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W.P.(MD)NO.12073 OF 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.12073 of 2012 and
M.P.(MD)No.2 of 2012 & W.M.P.(MD)No.7741 of 2019

1. N. Rajkumar

2. Umesh Shipping Services Private Ltd.,
Rep. By its Director,
N.Rajkumar,
S/o.K.Nambiraj,
79, Brayant Nagar,
12th Street,
Tuticorin – 8.

(Petitioner No.2 is impleaded vide Order
dated 20.07.2022 in W.M.P.(MD)No.7740 of 2019)

... Petitioners

Vs.

1. The General Manager,
Tamil Nadu Newsprint and Papers Limited,
Kagithapuram,
Karur,
Karur District.

2. The Inspector of Police,
SIPCOT Police Station,
Tutcorin.
(R-2 is *suo motu* impleaded
vide order dated 16.12.12)

... Respondents



Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records from the first respondent pertaining to the impugned order dated 24.08.2012 and quash the same and directing the first respondent to release the amount of Rs.29,36,011/- recovered from the petitioner with interest.

(Prayer in amended vide Order dated 20.07.2022 in W.M.P. (MD)No.7740 of 2019)

For Petitioner : Mr.M. Srinivasa Raghavan

For R-1 : Mr.M.P. Senthil

For R-2 : Mr.N. Ramesh Arumugam,
Government Advocate.

* * *

ORDER

Heard the learned counsel on either side.

2. Tamil Nadu Newsprint and Papers Limited had a warehousing arrangement with M/s.Umesh Shipping Services Private Ltd. The first petitioner N.Rajkumar and his wife R.Flower are its directors. Tamil Nadu Newsprint and Papers Limited also had an independent contractual arrangement



with Ms.R.Flower and had hired her godown for storing their imported Pulp. While so, the goods stored in the godown of Ms.R.Flower were stolen on 31.05.2012. Crime No.141 of 2012 was registered on the file of SIPCOT police station, Tuticorin. Since Tamil Nadu Newsprint and Papers Limited had suffered loss to the tune of Rs.29,36,011/-, Rajkumar was called for talks to resolve the issue. A meeting was held on 24.08.2012 and a decision was taken to recover from the said bill amount of M/s.Umesh Shipping Services Private Ltd. Challenging the said decision, the present writ petition came to be filed.

3. The learned counsel appearing for the writ petitioner took me through the contents set out in the affidavit filed in support of this writ petition and called upon this Court to quash the impugned minutes and direct the Tamil Nadu Newsprint and Papers Limited to pay their dues.

4. Per contra, the learned counsel for TNPL raised very many objections. His foremost objection was that the minutes were jointly signed by both the parties and hence the



petitioner cannot be allowed to wriggle out of the legal consequences flowing therefrom.

5. The second contention is that the writ petition was filed only by Rajkumar in his individual capacity and therefore, the addition of the company several years later cannot revive a claim that has already become time-barred. His further contention is that the subject matter of the transaction falls in the realm of private contract and the writ petition is not maintainable. He placed reliance on the decision reported in **(2015) 4 SCC 670 (K.K.Saksena V. International Commission on Irrigation and Drainage and others)**. He called upon this Court to follow the ratio laid down in the aforesaid decision. He would also point out that Ms.R.Flower is none other than the wife of Rajkumar and that she was also the Director of M/s.Umesh Shipping Services Private Limited. According to him, the parties as well as the company are interlinked and merely because M/s.Umesh Shipping Services Private Limited bears the cloak of limited company, one cannot assume that it is an independent entity by itself. He pressed for dismissal of this writ petition.



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6. I carefully considered the rival contentions and went through the materials on record.

7. The basic facts are not in dispute. Tamil Nadu Newsprint and Papers Limited had independent contractual relationships with M/s.Umesh Shipping Services Private Limited and Ms.R.Flower. Theft in question took place in the godown maintained by Ms.R.Flower. The materials enclosed in the typed set of papers would show that Tamil Nadu Newsprint and Papers Limited issued independent work order to Ms.R.Flower and one cannot intermingle the said transaction with the transaction which Tamil Nadu Newsprint and Papers Limited had with M/s.Umesh Shipping Services Private Limited. I am more than satisfied that the transactions are independent.

8. Now the first question that calls for consideration is whether the loss suffered by Tamil Nadu Newsprint and Papers Limited on account of the theft committed in Ms.Flower's godown can be saddled on M/s.Umesh Shipping



Services Pvt. Ltd. The answer has to be necessarily in the negative. M/s.Umesh Shipping Services Private Limited is an incorporated company. The fundamental maxim of Corporate Law is that an incorporated company has an independent existence of its own. Neither the Directors nor the shareholders can be equated with the company itself. The company is separate from the shareholders as well as the directors. When that is the legal position, to transpose the liability incurred by Ms.R.Flower in her individual capacity on the limited company is unsustainable.

9. It is true that the impugned minutes signed by themselves are not amenable to legal challenge. The writ petitioner voluntarily or probably out of business compulsion had signed the impugned minutes. The impugned minutes do not have any statutory or legal force. Therefore, I sustain the contention of the learned counsel appearing for Tamil Nadu Newsprint and Papers Limited that the impugned minutes cannot be challenged. Yet another question that calls for consideration is whether Tamil Nadu Newsprint and Papers Limited can withhold the amount in question from what is payable to M/s.Umesh Shipping Services Private Limited.



10. I cannot lose sight of the fact that Tamil Nadu

Newsprint and Papers Limited is a Government of Tamil Nadu undertaking. It is a state instrumentality. It is too well settled that the state instrumentality even in contractual dealings will have to adopt the principles of fairness and reasonableness. It has been time and again held by the Hon'ble Supreme Court that even though the contractual transaction of state instrumentalities can be scanned through Article 14 of the Constitution of India. If the Court comes to the conclusion that the contractual transactions of a state instrumentality fail the test of fairness and reasonableness, in exercise of judicial review there can be interference. The case on hand would come under such category. It is true that originally the petition was filed by Mr.Rajkumar and later the company was impleaded as the second petitioner. In my view, such impleading was done only for technical purposes. Even without impleading the company, the writ petition can be maintained. Rajkumar is afterall a Director of M/s.Umesh Shipping Services Private Limited. He is very much its Director and shareholder. Therefore, he can also espouse the cause of the company.



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11. What is to be specifically noted is that Ms.R.Flower, wife of Rajkumar had not committed any act of misappropriation or financial irregularity. What has happened is a case of theft. Ms.Flower cannot be blamed for the theft that had taken place in her godown. In any event, a criminal case was registered and it can be seen from the materials on record that whatever was stolen had also been recovered. Tamil Nadu Newsprint and Papers Limited should have moved the jurisdictional Magistrate for return of the articles. That was not done. They probably thought that based on the impugned minutes they can make good the entire loss by withholding the amount payable to M/s.Umesh Shipping Services Private Limited.

12. In these circumstances, I hold that Tamil Nadu Newsprint and Papers Limited has to necessarily clear all their dues payable to M/s.Umesh Shipping Services Private Limited. This writ petition stands allowed by directing



Tamil Nadu Newsprint and Papers Limited to pay the dues of Rs.29,36,011/- forthwith and without any delay. If the amount is paid within a period of two months, it will not carry any interest. If within two months the amount is not paid, Tamil Nadu Newsprint and Papers Limited will have to pay interest @ 6% p.a right from the date of filing of the writ petition. No costs. Consequently, connected miscellaneous petitions are closed.

20.07.2022

Index : Yes / No

Internet : Yes/ No

PMU

To:

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Kagithapuram,
Karur,
Karur District.
2. The Inspector of Police,
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G.R.SWAMINATHAN,J.

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