



A.S.No.427 of 2011

**A.S.No.427 of 2011**

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**S.S. SUNDAR, J.**  
**and**  
**N. MALA, J.**

**[Order of the Court was made by S.S. SUNDAR, J.]**

Today, the matter is listed under the caption “for being mentioned”.

2.It is brought to the notice of this Court after pronouncement of the judgment in the Appeal that the appellant had already taken steps to bring on record the legal representatives of deceased 2<sup>nd</sup> respondent. Hence, the observations made in Para No.24 are unwarranted.

3.Therefore, Para No.24 of the judgment dated 07.03.2023 is deleted. Registry is directed to issue fresh copy of the judgment.

**(S.S.S.R., J.)      (N.M., J.)**  
**04.07.2023**

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2022

Pronounced on : 07.03.2023

CORAM :

**THE HONOURABLE MR. JUSTICE S.S. SUNDAR**

**AND**

**THE HONOURABLE MRS. JUSTICE N. MALA**

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M/s.Paragon Polymer Products (P) Ltd.,  
Represented by its Authorised Person,  
S.Annadurai,  
Deputy General Manager,  
Registered Office at  
4/84 Kanagagiri Colony,  
Kakapalayam,  
Salem-Sankari Road,  
Salem – 637 504.

... Appellant

Vs.

- 1.M/s.Kerala Roadways Limited,  
Represented by its Director V.K.Moidoo Haji
- 2.V.K.Moidoo Haji, Director  
Kerala Roadways Limited
- 3.C.P.Kunhi Mohammed, Director  
Kerala Roadways Limited



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4.V.K.Sekariya, Director,  
Kerala Roadways Limited

5.Dr.M.Kunhabdulla, Director  
Kerala Roadways Limited

6.K.V.Salim, Director,  
Kerala Roadways Limited

7.Nasly Mohammed, Director  
Kerala Roadways Limited  
Respondents 1 to 7 having office at  
E.R.S.Plaza,  
Indira Gandhi Road,  
Kozhikode – 673 001  
Kerala State.

8.O.P.Ibrahim  
Manager  
Kerala Roadways Limited  
K.R.K. Plaza,  
Indira Gandhi Road,  
Kozhikode – 673 001  
Kerala State.

9.The Manager,  
Kerala Roadways Limited  
4/48 Mariamman Koil Street,  
Gugai,  
Salem – 636 006.

10.Vinod  
Manager,  
Kerala Roadways Limited,  
A.P.Madha Street,  
Tirunelveli – 6.



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11.P.P.Pavithran,  
Manager,  
Kerala Roadways Limited  
607 Ponnaiah Rajapuram,  
Coimbatore – 641 001.

12.Varusai Mohideen  
Modern Agencies,  
Tirunelveli.

13.Varusai Mohideen  
V.M.Agencies,  
Marthandam.

14.The General Manager,  
Kerala Roadways Limited  
Registered office  
39 Wall Tax Road,  
Chennai – 600 079.

... Respondents

*[Appeal dismissed as against R11 to R13  
vide Court order dated 14.10.2022]*

**Prayer** : Appeal Suit filed under Section 96 read with Order XLI of Code of Civil Procedure against the judgment and decree dated 26.10.2010 in O.S.No.342 of 2004 on the file of the Additional District Court (Fast Track Court No.2), Salem.

For Appellant : Mr.T.Murugamanickam  
Senior Counsel  
for M/s.Zeenath Begum



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For R1 : Mr.T.N.Sugesh

R11 to R13 : Dismissed vide Court order  
dated 14.10.2022

## **J U D G M E N T**

### **S.S. SUNDAR, J.**

The plaintiff in the suit in O.S.No.342 of 2004 on the file of the Additional District Court, Salem (Fast Track Court No.2, Salem), is the appellant in the above appeal, aggrieved by the judgment and decree dismissing the suit as against defendants 1 to 11 and 14 in the suit.

2.The appellant filed the suit against defendants 1 to 14 for recovery of a sum of Rs.19,61,916/- towards the value of goods under 10 consignments, delivered to defendants 12 and 13, with an interest @ 18% p.a. till the date of plaint.



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WEB COPY 3.The case of the plaintiff in the plaint is as follows :

3.1.The plaintiff is a manufacturer of rubber footwear popularly known as Hawaii with brand name “Paragon”. The 1<sup>st</sup> defendant is a transport company having head office at Calicut and branches throughout the country. Defendants 2 to 7 are the Directors of the 1<sup>st</sup> defendant. 8<sup>th</sup> defendant is the Manager at Calicut Branch. 9<sup>th</sup> defendant is the Manager at Salem Branch. 10<sup>th</sup> defendant is the Manager at Tirunelveli Branch. 11<sup>th</sup> defendant is the Manager at Coimbatore Branch. Defendants 12 and 13 are the agents of products of plaintiff at Tirunelveli and Marthandam. Defendants 12 and 13 are the proprietary concerns owned by an individual by name Varusai Mohideen. 14<sup>th</sup> defendant is the General Manager of 1<sup>st</sup> defendant, having office at Chennai.

3.2.The plaintiff used to entrust consignments to the 1<sup>st</sup> defendant's Branch office at Salem, namely, the 9<sup>th</sup> defendant, for the purpose of transportation for about 7 years. For the period from 30.06.2003 to 07.10.2003, certain goods were entrusted with the 1<sup>st</sup> defendant's Branch



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office at Salem under 10 different invoices to be delivered to defendants 12 and 13. Simultaneously, the sale documents along with the consignee copy of “Goods Consignments Notes” were sent to the plaintiff’s Bankers to Tirunelveli for negotiation. Since the plaintiff did not receive payments in respect of 10 invoices, they contacted the Bank and informed that the parties, namely defendants 12 and 13, did not turn up to clear the documents. The Bankers returned the sale documents and “Goods Consignments Notes” to the plaintiff on 04.11.2003 and 18.12.2003. Thereafter, the plaintiff contacted the 10<sup>th</sup> defendant and demanded return of goods. In spite of personal demand and demand over phone, the 10<sup>th</sup> defendant did not send any reply nor returned the consignments. Therefore, the plaintiff sent a notice, dated 12.04.2004, to the 14<sup>th</sup> defendant with a copy of such notice marked to defendants 1, 9, 10 and 11.

3.3. On enquiry, the plaintiff came to know that the goods transported through the 9<sup>th</sup> defendant reached the destination. Without receiving the sale documents and the consignee copy of “Goods Consignments Notes”, the goods were delivered to the consignees by the 10<sup>th</sup> defendant.



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Therefore, the plaintiff issued a notice to the defendants 1 to 8, 10 and 11 through their Advocate on 07.06.2004. The defendants sent a reply notice dated 02.07.2004, through their Advocate, containing false allegations. Thereafter, the plaintiff issued a rejoinder, dated 19.10.2004, addressed to the Advocate of the defendants. The value of the goods covered by 10 invoices is Rs.16,41,771/- and therefore, the defendants were called upon to clear the said account with 18% interest, from the date of notice.

3.4.The defendants 12 and 13, with the knowledge and consent of other defendants, have conspired together and effected illegal delivery and defendants 12 and 13 have misappropriated the value of consignments. A police complaint was also lodged with the concerned police and the same is pending.

3.5.The plaintiff entrusted the consignments to 9<sup>th</sup> defendant on the undertaking that the consignments will be promptly delivered to the destination upon receipt of sale documents and consignee copy of “Goods Consignments Notes”. The 1<sup>st</sup> defendant, having delivered the



consignments to the consignees without the knowledge and consent of the plaintiff, is liable for the value of consignments along with the consignees.

Since the defendants failed to return the goods or pay the value thereof as agreed upon, the plaintiff is constrained to file the suit for recovery of the amount from the defendants for the value of 10 consignments transported by 1<sup>st</sup> defendant, along with interest.

4.The suit was contested by defendants 1 to 11. The written statement filed by the 9<sup>th</sup> defendant was adopted by defendants 1 to 8, 10 and 11. The entire suit claim was disputed by defendants 1 to 11. They disputed the claim mainly on the following grounds :

- (a) The plaint does not even disclose in what manner defendants 2 to 11 can be held liable and therefore, the suit as against defendants 2 to 11 is an abuse of process of law and the suit is liable to be dismissed as against defendants 2 to 11 as they are not necessary or proper parties.
- (b) The goods were entrusted to the 1<sup>st</sup> defendant at its Branch office at Salem for transportation and delivery to defendants 12 and 13. Since the goods have been delivered to defendants 12 and 13 promptly, the



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contention of the plaintiff that the carrier is responsible for the value of goods cannot be sustained.

- (c) When it is admitted by the plaintiff that the goods have been delivered to defendants 12 and 13, the plaintiff, instead of filing the suit against defendants 12 and 13 for recovery of money (value of goods), has filed the suit against defendants 1 to 11.
- (d) The suit filed by the plaintiff through his representative by name S. Annadurai without certified copy of the Board resolution authorising the representative to file the suit, is not maintainable.
- (e) The consignments of footwear were entrusted to the Branch office at Salem by the plaintiff for the purpose of transportation and delivery to defendants 12 and 13. At the time of handing over of the goods, copies of invoices evidencing the sale of consignments to defendants 12 and 13 were also delivered to the 1<sup>st</sup> defendant Branch office at Salem. Therefore, the goods were delivered to the consignees, namely defendants 12 and 13, with the knowledge and approval of the plaintiff.
- (f) There was no instruction to defendants 1 to 11 by the plaintiff to



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withhold delivery till payment was made by consignees, namely defendants 12 and 13 or production of consignee copy of “Goods Consignments Notes”. Though the plaintiff was aware of the delivery immediately within a week, they did not object or protest delivery of subsequent consignments. This itself would show that the case of the plaintiff against defendants 1 to 11 is false.

(g) The defendants 1 to 11 never agreed to undertake either to collect payment or to withhold delivery till the value of goods is paid by the consignees. Defendants 1 to 11 have not been benefited by delivering the goods to defendants 12 and 13 and therefore, the case of plaintiff that the defendants 1 to 11 have committed criminal breach of trust or misappropriation is false and the suit itself is an abuse of process as against defendants 1 to 11.

(h) The goods entrusted to the 1<sup>st</sup> defendant's Branch office was handed over to the consignees, namely defendants 12 and 13, as per the trade practice and also as in the past business transactions with the plaintiff with the consent of the plaintiff. The plaintiff has acknowledged the delivery as authorised by its conduct and therefore, the plaintiff is



estopped from questioning the delivery of goods.

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- (i) As per the practice in the industry, the consignments were delivered to the consignees with the knowledge and approval of the plaintiff. After taking delivery, the consignee used to send payment directly to the plaintiff by means of Demand Drafts. This fact is also admitted by the plaintiff in the rejoinder notice dated 19.10.2004. Defendants 1 to 11 are no way connected or responsible in the dispute between the Principal, namely the plaintiff, and its agents, namely defendants 12 and 13. The contention of the plaintiff that the sale documents along with the consignee copy of “Goods Consignments Notes” were sent through plaintiff's Bankers to Tirunelveli for negotiation is false and the goods entrusted to the 1<sup>st</sup> defendant were promptly delivered to the consignees as per instruction and therefore, the defendants 1 to 11 are not responsible for the value of goods.
- (j) The 1<sup>st</sup> defendant never undertook to withhold delivery till payment by the consignees. The liability of the 1<sup>st</sup> defendant as common carrier comes to an end at the moment the consignments reach the destination upon delivery effected to the consignee.



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(k) There is no cause of action against defendants 1 to 11 and the suit is liable to be dismissed as against defendants 1 to 11 as there is no negligence or misconduct or breach of trust on the part of the defendants 1 to 11.

(l) The suit is barred by limitation.

5. On the basis of pleadings, the trial Court framed the following issues :

- i. *Whether the consignments were entrusted to the 9<sup>th</sup> defendant ?*
- ii. *Whether the defendants failed to discharge this entrustment ?*
- iii. *Whether the suit is bad for non-issuance of notice under Section 10 of Carriers Act ?*
- iv. *Whether the suit is bad for non-joinder of parties ?*
- v. *Whether the plaintiff is entitled for the suit claim ?*
- vi. *Cost and other reliefs ?*

6. Before the trial Court, the authorised representative of plaintiff by name Annadurai was examined as P.W.1 and through him, Exs.A1 to A67



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were marked. On the side of the defendants, one Prasath and Saseendran were examined as D.W.1 and D.W.2. On behalf of defendants, Exs.B1 to B35 were marked.

7.The trial Court, on the first issue, from the admission of plaintiff in the plaint and the documents Exs.A37 and A49, held that the plaintiff has admitted the said delivery of goods entrusted to the 1<sup>st</sup> defendant to the consignees and held that the goods entrusted for transportation to the 9<sup>th</sup> defendant had in fact been delivered to the consignees, namely defendants 12 and 13. The trial Court then considered the evidence of P.W.1 and P.W.2 along with documents marked on either side and held that the consignments were delivered to defendants 12 and 13 as per the trade practice and custom, only on the instruction of plaintiff. Therefore, the trial Court held that the plaintiff can only sue defendants 12 and 13 for the payment due on the suit consignments and that the suit against defendants 1 to 11 and 14 cannot be sustained. The trial Court also held that the notice under Ex.A33, stated to have been issued under Section 10 of the Carriers Act, is out of limitation and the suit is therefore, barred. The trial Court held that the Directors of 1<sup>st</sup>



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defendant company and other defendants 2 to 11 and 14 are not necessary parties to the suit. While granting decree as against defendants 12 and 13, the suit as against defendants 1 to 11 and 14 was dismissed by the trial Court.

8. Aggrieved by the judgment and decree of the trial Court, the above appeal is preferred by the plaintiff.

9. From the plaint averments, it is seen that the suit itself is laid only on the basis of consignments entrusted to the 9<sup>th</sup> defendant on the ground that the 9<sup>th</sup> defendant failed to return the goods inspite of the demand notice and the rejoinder notice issued by the plaintiff to defendants 1 to 11. Therefore, the suit is in the nature of compensating the plaintiff for the unauthorised delivery of consignments which were booked through the carrier, namely the 1<sup>st</sup> defendant, to the consignees namely defendants 12 and 13. It is admitted in the plaint and in other documents that the goods consigned under 10 different invoices were in fact delivered by the 1<sup>st</sup> defendant to defendants 12 and 13. Having regard to the nature of the case



pleaded by the plaintiff in the plaint, the grounds raised in this appeal and the arguments advanced by learned counsel appearing on either side, the following points arise for determination in this appeal :

- i. *Whether the goods were entrusted to the 1<sup>st</sup> defendant under the 10 consignments which are the subject matter of the suit with specific instruction or on the basis of any express agreement that the 1<sup>st</sup> defendant should deliver the goods to the consignees only upon receipt of sale documents and consignee copy of “Goods Consignments Notes” ?*
- ii. *Whether there is an implied agreement as per trade practice and custom that the defendants are under a legal obligation to deliver the goods only upon receipt of sale documents along with consignee copy of “Goods Consignments Notes” which were sent to the plaintiff's Bankers for negotiation ?*
- iii. *Whether the defendants 1 to 11 and 14 are liable for the suit claim ?*

**Point Nos.(i) and (ii) :**

10.Learned Senior Counsel appearing for the appellant/plaintiff referred to the original invoices marked as Exs.A1, A4, A7, A10, A13, A16, A19, A22, A25 and A29 with corresponding consignee copy of invoices to



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impress the Court that the consignments were sent through Bank and that the carrier, namely the 1<sup>st</sup> defendant, had effected delivery directly to defendants 12 and 13, quite contrary to the trade practice and custom. Learned Senior Counsel submitted that the carrier has pleaded that they have effected delivery directly to defendants 12 and 13 as per trade practice and therefore, the burden lies on them to prove such practice. When it is admitted that the goods have been directly delivered to the consignees without the sale documents being negotiated through the plaintiff's Bankers, the learned Senior Counsel submitted that the 1<sup>st</sup> defendant is liable to compensate the plaintiff for the value of goods transported through the 1<sup>st</sup> defendant. The learned Senior Counsel further submitted that the plaintiff is supplying goods to various consignees throughout India through the respondent Carrier and that therefore, the fact that the plaintiff engaged the services of 1<sup>st</sup> defendant even after the dispute, has no significance. The learned Senior Counsel further submitted that the trial Court has not appreciated the implied contract as seen from the invoices pertaining to the suit claim. The learned Senior Counsel made a distinction between the goods sold and entrusted to the carrier for transportation to the buyer and



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the sale of goods through Bank and transportation of goods through the carrier, meant for delivery with specific instructions.

11.The learned Senior Counsel then submitted that documents Exs.B8 to B25 are only photocopies of letters issued by the consignees to the plaintiff and that they are not admissible in evidence. Since the trial Court has relied upon these letters to show that payments were being sent by the consignees directly to the plaintiff, the learned Senior Counsel submitted that the judgment of the trial Court is vitiated. He also submitted that the documents Exs.B8 to B25 are not proved to be payments made in respect of the suit consignments. The learned Senior Counsel focused much by referring to the mentioning of name of Bank under the heading “Terms of Payment”. In all the consignee copy of invoices, under the heading “Special Instructions”, the Invoice Number is given. Since each invoice specifically indicates that the payment should be through Bank, it is argued that the transporter/carrier is expected to withhold delivery till production of sale documents and the consignee copy of “Goods Consignments Notes”, which are meant to be handed over to the plaintiff. The learned Senior Counsel



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strenuously argued that the trial Court failed to consider the documentary evidence in a proper perspective and focused much on the admission of D.W.1 and D.W.2 who have also pleaded ignorance about the agreement, if any, between the plaintiff and the 1<sup>st</sup> defendant.

12.Per contra, learned counsel appearing for the contesting respondents referred to the admission of P.W.1 to the effect that there is no written agreement between the plaintiff and the 1<sup>st</sup> defendant for delivery of consignments upon receipt of documents sent through Bank. The learned counsel relied upon several letters, copies of which were marked as Exs.B8 to B25, and submitted that the consignee was making payments directly to the plaintiff and there is no specific contract or understanding between the plaintiff and the carrier to withhold the delivery till the consignees produce the sale documents which were supposed to be obtained by the consignees upon payment of the value of goods. The learned counsel pointed out several payments directly made by consignee even in respect of goods consigned through identical invoices with identical endorsement mentioning the name of Bank under the heading “Terms of payment”. The learned



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counsel then submitted that trade practice has also been argued by appellant's counsel and therefore, the burden lies on the appellant to prove the existence of a trade practice or custom in the absence of any agreement in relation to the suit transaction so as to make the carrier liable for the value of goods, when the goods are delivered without consignee copy of “Goods Consignments Notes”.

13.The learned counsel appearing for the contesting respondents then relied upon several other documents and the evidence of plaintiff's witness to impress the Court that the suit claim is not supported by any material evidence or document so as to make defendants 1 to 11 liable for the suit claim.

14.In the present case, it is established that the goods entrusted to the 1<sup>st</sup> defendant had been promptly delivered to the consignees namely defendants 12 and 13. Defendants 12 and 13 are owned by same individual and therefore, defendants 12 and 13 will be hereinafter referred to as consignee. In the pre-suit notice, the plaintiff's claim was originally for a



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sum of Rs.19,78,808/- on the allegation that the goods transported through the 1<sup>st</sup> defendant had been delivered to the consignee without receiving the sale documents in respect of 11 bills which are tabulated in the said notice which is marked as Ex.A37 dated 07.06.2004. Invoice No.380 is found in the notice in Item No.2 and the value of goods covered under the invoice is a sum of Rs.3,37,037/-. It is stated that the said invoice is also sent through Union Bank. It is admitted by the plaintiff in the rejoinder that payment due for the consignment despatched under Invoice No.380 dated 30.06.2003 was made directly to the plaintiff. Therefore, it is admitted that the plaintiff has received payments directly from the consignee. The plaintiff though produced other invoice related documents, did not produce documents to demonstrate that several consignments entrusted to the 1<sup>st</sup> defendant in the past with specific instructions to deliver them to the consignee upon receipt of sale documents along with consignee copy of “Goods Consignments Notes”, had been delivered only upon production of sale documents sent to the Bank. Goods were entrusted to the 1<sup>st</sup> defendant to transport them to the consignee, without paying any charges. In such circumstances, Court cannot presume any agreement. There is no corresponding obligation on the



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part of plaintiff in case the consignee fail to take delivery after getting the sale documents from Bank.

15.Exs.B8 to B25 are photocopies of letters issued by consignee to the plaintiff along with Demand Drafts for the value of goods supplied to the consignee mentioned therein. Though the said documents are photocopies and the same were produced by the contesting defendants, the payments which are found in Exs.B8 to B25 are acknowledged by plaintiff as seen from Exs.A63 and A64 which are the Day-Book and Ledger maintained by the plaintiff company. Therefore, the trial Court has relied upon these documents and held that consignments were delivered to the consignee namely defendants 12 and 13 without insisting consignee copy of “Goods Consignments Notes” as in the past.

16.P.W.1 is the General Manager of plaintiff company who has been authorised by the plaintiff company to file the suit. He also deposed that he is the person who knew the facts directly and therefore, he is competent to speak in relation to the suit transaction. During cross-examination, he has



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admitted as follows :

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“வா.சா.ஆ.33-ல் வங்கி கிளியரன்சுக்கு பிறகு தான் சரக்கை டெலிவரி செய்ய வேண்டும் என்று குறிப்பிடவில்லை. ... வங்கி பேப்பர் தாக்கல் செய்யப்பட்டால் தான் சரக்குகள் டெலிவரி செய்யப்பட வேண்டுமென்று குறிப்பான அறிவுறுத்தல் கொடுக்கப்பட்டதற்கு ஆதரவாக ஆவணம் எதுவும் தாக்கல் செய்யப்படவில்லை. வா.சா.ஆ.2, 5, 8, 11, 14, 17, 20, 23, 26 மற்றும் 29 ஆகிய அனைத்திலும் குறிப்பான இன்ஸ்ட்ரக்ஷன் என்று ஒரு காலம் உள்ளது. அதில் எதுவும் நிரப்பப்படவில்லை. ... 12, 13 பிரதிவாதிகள் தான் 1ம் பிரதிவாதிக்கு லாரி வாடகையை செலுத்துவார்கள்.”

17.From the candid admission of P.W.1, it can be inferred that there is no specific agreement between the plaintiff and the 1<sup>st</sup> defendant or an undertaking by or on behalf of the 1<sup>st</sup> defendant to the effect that the goods would be delivered only upon receipt of sale documents or consignee copy of “Goods Consignments Notes”. In all the invoices, the column under the heading “Terms of Delivery” is not filled up. In other words, there is no specific instruction to the carrier about the manner in which the delivery should be effected. Admittedly, freight charges are paid only by the consignee, namely defendants 12 and 13.



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18. In the present case, it is admitted that there is no agreement between plaintiff and defendants regarding payment of demurrage charges for any delay in case the consignees do not take delivery by producing the consignee copy of “Goods Consignments Notes”. If there is an agreement by which the carrier undertakes to deliver goods only upon receipt of sale documents or consignee copy of “Goods Consignments Notes”, there must be a corresponding agreement regarding payment of transport charges or demurrage charges, to which the plaintiff alone is liable to the carrier in case the goods have to be re-transported to the plaintiff. There is no plea regarding this aspect by the plaintiff in the whole plaint. Similarly, there is no plea or evidence to show that the carrier was expected to keep the goods for a specified period expecting payment from the consignee. It is true that, in some of the invoices, the word “Direct” is mentioned under the heading “Terms of payment”. From this alone, this Court is unable to accept the argument of learned Senior Counsel appearing for the plaintiff/appellant that insofar as the suit transactions covered by 10 invoices are concerned, the 1<sup>st</sup> defendant was duly informed that the goods are supposed to be



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delivered only upon receipt of consignee copy of “Goods Consignments Notes”.

19. Another fact which is relevant to be considered in this case is the remarks found in several invoices produced by the plaintiff in this case. In all the invoices produced by the plaintiff, there is a specific reference to the responsibility of the plaintiff in respect of the goods covered under the invoice. Under the column “Remarks”, in all invoices, the following endorsement/passage is found in capital letters. “OUR RESPONSIBILITY CEASES ON DELIVERY OF GOODS TO CARRIERS.” P.W.1 has categorically admitted during cross-examination that the transport charges are paid only by the consignee, namely defendants 12 and 13. The typed information to the effect that the responsibility of the plaintiff ceases once the goods are entrusted to the carriers, gives a clear indication that the plaintiff does not retain ownership over the goods upon entrustment of goods to the carrier, who is the 1<sup>st</sup> defendant in this case, to be delivered to the consignee. When the plaintiff gives a specific declaratory statement to the defendants, particularly the carrier that the goods will be treated as the



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goods of consignee upon entrustment of goods with the carrier, this Court is unable to imagine a situation by which the carrier is expected to retain the goods till the consignee hands over the consignee copy of “Goods Consignments Notes”. The plaintiff by making specific statement acknowledges the completion of sale and transfer of ownership in favour of consignee upon entrustment of goods with the carrier (9<sup>th</sup> defendant).

20. After considering the documents and evidence on both sides, the trial Court has also rendered a finding that the goods were delivered to the consignees by the carrier only on the instruction given by the plaintiff. This Court is unable to find any irregularity in the said finding having regard to the nature of evidence given by P.W.1. From the invoices and the corresponding consignee copy of “Goods Consignments Notes”, this Court is unable to find any specific instruction meant to the carrier at all. All the entries found in the invoices do not indicate a specific undertaking by the carrier to deliver goods only on receipt of consignee copy of “Goods Consignments Notes”.



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21. From the specific averments in the plaint, it is to be noted that the goods were transported as per 10 invoices referred to in the plaint from 11.07.2003 to 07.10.2003. After the supply of goods under the first invoice dated 11.07.2003, the plaintiff knew within one week about the non-payment of price by the consignee. Even though the plaintiff was aware of non-payment of value of goods by the consignee by the end of July, 2003, this Court is unable to justify the conduct of plaintiff in supplying the goods again and again to the same consignee, who has failed to take delivery of goods by making payments to the Bank to get the consignee copy of “Goods Consignments Notes”. It is the case of the plaintiff that they were informed by their Bankers only when their Bankers returned the sale documents to the plaintiff on 04.11.2003 and 18.12.2003. This Court is unable to believe the story of the plaintiff that they did not know about the delivery of goods by the carrier to the consignee. It is to be noted that the defendants, in their written statement, have specifically stated that the goods were delivered to the consignee either on the same day or on the next day of booking. It is admitted that the defendants 12 and 13 are the agents/dealers of the plaintiff.



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The plaintiff has business dealings with 1<sup>st</sup> defendant for more than 7 years.

In such circumstances, the plaintiff must have established a regular pattern.

As pointed out earlier, this Court is unable to accept the case of the plaintiff on the basis of documents relied upon by the plaintiff namely the invoices and the consignee copy of “Goods Consignments Notes” that there was an agreement or understanding about the obligation of carrier to withhold goods till production of consignee copy of “Goods Consignments Notes”. The plaintiff, in the absence of any direct evidence may plead a specific case of trade practice or custom, but has failed to plead or prove such practice by producing any independent witness or document.

22.As pointed out earlier, the plaintiff had not paid any demurrage charges to the carrier. If the consignments were to be kept at the warehouse of the carrier beyond certain days, either plaintiff or the consignee is liable to pay demurrage charges. However, the plaintiff has no explanation for the absence of any agreement regarding payment of demurrage charges. Therefore, this Court cannot find fault with the carrier for having effected delivery of goods to the consignee in the absence of any agreement. This



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Court has no hesitation to hold that the consignments were meant to be delivered immediately on its arrival to the consignee and that the defendants 1 to 11 cannot be held liable towards the value of goods supplied by plaintiff to defendants 12 and 13.

**Point No.(iii) :**

23.The entire suit claim is primarily against defendants 1 to 11 and 14, as if the suit is for compensation. The trial Court has now granted a decree as against defendants 12 and 13 and dismissed the suit only against defendants 1 to 11 and 14 for specific reasons. This Court has already held earlier that the plaintiff's claim as against defendants 1 to 11 and 14 is unsustainable. From the entire evidence, this Court is unable to find any agreement enforceable against the carrier to make them liable for the goods supplied by the plaintiff to its own agent/consignee, namely defendants 12 and 13 in this case. Therefore, defendants 1 to 11 and 14 are not liable for the suit claim and the suit has been rightly dismissed as against defendants 1 to 11 and 14.



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24.The 1<sup>st</sup> respondent has filed a memo, dated 19.03.2019, wherein, it is stated that the 2<sup>nd</sup> respondent Mr.V.K.Moidoo Haji, who is the Managing Director of the 1<sup>st</sup> respondent, had died and the present Managing Director of the 1<sup>st</sup> respondent is Mr.M.K.Siraj, who is also the son of 2<sup>nd</sup> respondent. Though the particulars of the legal representatives of the deceased 2<sup>nd</sup> respondent are given in the memo and the memo was filed three years back, the appellant has not taken any steps to implead the legal representatives of the deceased 2<sup>nd</sup> respondent. The appellant's failure to implead the legal representatives of the deceased 2<sup>nd</sup> respondent is itself an irregularity and the appeal is also liable to be dismissed for non-joinder of legal heirs of the deceased 2<sup>nd</sup> respondent.

25.For all the above reasons, this Court finds no merit in this appeal. Therefore, the appeal is dismissed with costs. The judgment and decree of the trial Court in O.S.No.342 of 2004 is confirmed.

(S.S.S.R., J.) (N.M., J.)  
07.03.2023

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**S.S. SUNDAR, J.**  
**and**  
**N. MALA, J.**

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Internet : Yes

Index : Yes / No

To

1.The Additional District Judge,  
(Fast Track Court No.2),  
Salem.

2.The Section Officer,  
VR Section, High Court,  
Chennai.

**Judgment in**  
**A.S.No.427 of 2011**

**07.03.2023**