

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

WEB COPY

RESERVED ON : 30.06.2023**PRONOUNCED ON :25.07.2023****CORAM:
THE HONOURABLE MR.JUSTICE S.SOUNTHAR****C.S.No.115 of 2019**

MSC Agency India Pvt Ltd.,
Having Registered Office at
MSC House, Andheri Kurla Road,
Andheri (East), Mumbai,
Maharashtra – 400 059,
Also having Branch Office at:
1st Floor, KGN Towers,
No.62, Ethiraj Salai, Egmore,
Chennai – 600 105.
Rep by its Authorized Signatory,
Mr.A.Umaibalan.

... Plaintiff

VS

1.The Director,
Calyx Container Terminal Private Limited,
No.28, GNT Road, (NH 5), Puzhal Junction,
Kathirvedu Village, (Near Erattai Eri),
Chennai – 600 066.

2.The Director,
Headwin Exim Private Limited,
Having its Registered Office at
No.116/2, 1st Floor,
11th Cross Street, Malleshwaran,
Bengaluru, Karnataka – 560 003.



3.M.K.Carbon,
No.506, 8th Main, 10th Cross,
Rajkamal Vilas, Extension,
Sadashiv Nagar, Bangalore – 560 080.

4.Ujwal International,
Old No.34, New No.58,
Jaffer Sarang Lane,
Room No.103, Rajaji Salai,
Chennai – 600 001.

5.The Director,
Ningxia TLH Group Company Ltd.,
No.22, Beijing Road,
Yinchun, Ningxia China.

... Defendants

Prayer: Civil Suit is filed under Order IV Rule 1 of O.S Rules r/w Order VII Rule 1 of CPC 1908, as amended by the Commercial Courts Act, praying to pass a judgment and decree jointly and severally against the defendants Nos.1, 2, 3 and 4 herein:

(a) For a sum of Rs.4,52,14,683/- together with interest at the rate of 18% per annum from the date of filing of plaint till the date of realisation;

(b) For costs of the present suit;

(C) For such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.



For Plaintiff : M/s.P.Giridharan
and Mr.C.Thiyagarajan

For Respondents : M/s.K.Bijai Sundar for D1

J U D G M E N T

The suit is filed for recovery of money of Rs.4,52,14,683/- towards local and detention charges and value of the containers. Pending suit by order passed by this Court in A.No.1081 of 2019, the first defendant returned the containers of the plaintiff and hence the suit claim under the value of the containers to the tune of Rs.1,27,08,000/- is not pressed by the plaintiff. The learned counsel for the plaintiff made an endorsement in the plaint confining the relief to the tune of Rs.2,93,52,171/- towards detention charges.

Plaint Averments:

2.1. The plaintiff is carrying on business as a Shipping Line, container operator and ocean carriers globally. The plaintiff is a wholly owned subsidiary of M/s. MSC Mediterranean Shipping Company, SA and is also the steamer agent of M/s. MSC Mediterranean Shipping Company, SA, in India. As an ocean carrier, the responsibility of the plaintiff is to transport



the goods from port of loading to the port of discharge in containers seals intact condition. The containers in which goods are carried from port to port belong to the principals of the plaintiff. The plaintiff as an agent of the M/s. MSC Mediterranean Shipping Company, SA is entrusted with the obligation to receive and return the containers to the principal, after the delivery of the cargo stuffed in the containers, to the importers.

2.2. It is the case of the plaintiff that the agent of its principal in China was approached by the 5th defendant to export Shipments of Electricity Calcined Anthracite Coal from Xingang, China to Chennai. The defendants 2 and 3 are importers of the said cargo. The shipment was made under seven bills of lading, dated 25.06.2018. The bills of lading were issued by the Principal of the plaintiff. The said cargo was shipped on board the vessel on 19.06.2018 and 25.06.2018 respectively. The shipments reached Chennai and discharged from the vessel during last week of July 2018. Thereafter, all the containers were moved to the container terminal owned by the first defendant on various dates during August 2018. The first defendant is a licensed Container Freight Station as per the provisions of Customs Act.



WEB COPY

2.3. The containers which were stationed at Container Freight Station (hereinafter referred to as CFS) of the first defendant are subject to two kinds of charges namely:

- (i) Detention and other charges payable to the plaintiff;
- (ii) Demurrage charges for parking the containers in the the Container Freight Station.

2.4. It is the specific case of the plaintiff that the person who is desirous of obtaining delivery of containers from the plaintiff has to first submit the original Bill of Lading to the plaintiff, pay the charges of the plaintiff i.e., the detention and other charges and obtain a valid “delivery order” from the plaintiff. Thereafter, on presentation of valid delivery order, the first defendant would calculate the demurrage charges till date of presentation and on payment of the demurrage charges, the containers would be released after complying the customs formalities.

2.5. The cargo in the containers shall be released by first defendant only on production of valid delivery order in original issued by the



plaintiff. The importers namely the defendants 2 and 3 had issued letters along with Indemnity Bonds to the plaintiff nominating the first defendant as the CFS of their choice to which the containers have to be moved after unloading.

2.6. After the containers were moved to CFS of the first defendant, the plaintiff was waiting for the defendants 2 and 3 as importers to pay the detention and other charges to the plaintiff and collect the delivery order for submission before the first defendant for taking delivery of cargo. From the containers movement summary sent by the first defendant, the plaintiff came to know that the importers (D2 and D3) were given delivery of the containers by the first defendant without collecting the delivery order issued by the plaintiff. The act of the first defendant in releasing the consignment without insisting production of the original delivery order issued by the first defendant is improper and illegal.

2.7. The importers namely the defendants 2 and 3 failed to submit original bill of lading and also failed to pay the detention charges payable to the plaintiff and hence no delivery order was issued by the



plaintiff in their favour. The first defendant illegally without insisting production of delivery order by the plaintiff released the containers to the defendants 2 and 3. The first defendant sent a communication admitting to the release of cargo, without delivery order, on request by defendants D2 and D3. The defendants 2 and 3 colluded with the first defendant and illegally removed the cargo without submitting their requisite documents. Due to illegal release of containers by the first defendant, the plaintiff suffered a loss said to the tune of Rs.2,93,52,171/- and hence the suit is laid for recovery of said amount.

Averment contained in the written statement of the first defendant:

3.1. The plaintiff is only a local agent of the disclosed Foreign principal namely M/s.MSC Mediterranean Shipping Company SA, Geniva and the said Principal has not filed the present suit for alleged loss. The suit filed by the agent without impleading the disclosed principal is not maintainable.

3.2. The defendants 2 and 3 are two different consignees under two different contracts of carriage undertaken by the plaintiff and hence



cannot be jointly sued in the present suit. Hence, the suit is bad for mis-joinder for cause of action.

3.3. The defendants 2 and 3 along with the 4th defendant had executed Indemnity bonds undertaking to return the empty containers to the plaintiff and pay alleged charges. Hence, the first defendant is not a proper and necessary party for the suit claim.

3.4. The averments made by the plaintiff as if, cargo was delivered to the defendants 2 and 3 without delivery order is false. The delivery order had been issued by the plaintiff as seen from the invoices raised by the plaintiff mentioning levy of fees for delivery orders.

3.5. As an agent of M/s.Mediterranean Shipping Company SA, the plaintiff has acted only in a limited capacity to receive and return the containers to its principal after delivery of cargo to the importers. The plaintiff is not the owner of the containers and as an agent it is not entitled to detention charges. The plaintiff has no *locus standi* to maintain the present suit. The plaintiff has no title to the suit containers or right to claim alleged



detention charges. The plaintiff has no cause of action to file the present suit as it acted only as an agent of a disclosed principal. It was also averred by the defendant, the cargoes were released only on valid or proper documents and no cargo had been permitted to be taken delivery without any documents as averred by the plaintiff. The indemnity bond was obtained by the plaintiff from the other defendants and hence the first defendant is not a necessary party to the suit.

3.6. The plaintiff has not rendered any services for delay and non-clearance and hence not entitled to claim any detention charges. The claim for detention charges is based on imaginary loss. The claim made by the plaintiff, as if, the employee of this defendants had admitted that the cargo was released without delivery orders was not correct. The said communication was made only under the circumstances when the plaintiff informed this defendants that delivery orders submitted by the importers were forged one. The averments contained in the plaint as if, the defendants illegally released the cargo to the defendants 2 and 3 is not correct and hence, the plaintiff is not entitled to suit claim, the plaintiff has not suffered any loss or defect. It was the defendant who suffered loss due to uncleared containers



of the plaintiff. On these pleadings, the 1st defendant sought for dismissal of the suit.

4. The defendants 2 and 3 were set ex-parte on 02.09.2022 and the 5th defendant was set exparte on 22.06.2023.

5. On the basis of the pleadings, the following issues were framed by trial court by order dated 03.09.2021:

(i) *Whether the plaint presented by an authorized signatory of the plaint is maintainable?;*

(ii) *Whether the suit is barred for non joinder of proper and necessary parties?;*

(iii) *Whether the delivery order issued in the name of the plaintiff is true and valid?;*

(iv) *Whether the first defendant and the fourth defendant colluded to take illegal delivery of the cargo by the second and the third defendants?;*

(v) *Whether the plaintiff is entitled to claim the charges viz., value of the containers, import customs duty for*



containers, local and detention charges?;

(vi) If issue (v) is affirmative, whether the plaintiff is also entitled for interest at the rate of 18% p.a.

(vii) whether the first defendant is jointly and severally liable with the other defendants, when the bill of lading and indemnity bonds were issued by the principal of the plaintiff and the other defendants 2 to 4?;

(viii) To what other reliefs?.

6. During trial, the plaintiff examined its Authorized Signatory as PW.1 and twenty six documents were marked. On behalf of the first defendant, a memo was filed on 22.04.2022 stating that it has no evidence.

Submission of the learned counsel for the plaintiff:

7.1. The learned counsel for the plaintiff by taking this Court to the evidence of PW.1 and the documents filed in support of the suit claim submitted that the cargo stuffed in the containers of the plaintiff were imported from China to India by the defendants 2 and 3 and the first defendant being a licensed Container Freight Station ought not to have



allowed the importers to take delivery of the cargo without producing the original delivery order issued by the plaintiff. The first defendant by allowing the defendants 2 and 3 to take delivery of the cargo illegally caused loss to the plaintiff in the name of non payment of detention charges by importers. The learned counsel by taking this Court to the e-mail communication between the plaintiff and defendants marked as Ex.P20 submitted when plaintiff acquired knowledge about the illegal delivery of the cargo to the defendants 2 and 3 by the first defendant sent an e-mail questioning the same. The first defendant in his e-mail dated 21.09.2018, replied that due to urgent request by the importer they were allowed to take delivery of the cargo and they have been following with the importer for the delivery order. In the said e-mail, the first defendant also assured in future delivery of cargo would not be permitted unless delivery order for the containers is produced. It is the contention of the learned counsel that the email of the first defendant dated 21.09.2018 amply proved that the cargo was delivered without delivery order issued by the plaintiff. The learned counsel by also taking this Court to Ex.P21 invoice series for detention and local charges submitted that a sum of Rs.2,93,52,171/- was due for the plaintiff from defendants 2 and 3 under the head detention and local charges.



WEB COPY

7.2. The learned counsel by relying on Section 148 of Customs Act submitted that under the Customs Act, the agent has got a statutory duty and therefore, he can maintain a suit.

7.3. In support of his contention, the learned counsel for the plaintiff relied on the following judgments:

(i) ***Falcon Tyres Limited Vs. Geodis Overseas Private Limited (India) judgment in C.S.No.65 of 2011***, for the proposition the person who wish to take delivery of cargo has to first pay the charges of the ship liner and obtain a delivery order from the liner and present it to “CFS”.

(ii) ***Sanco Trans Limited Vs. CESTAT, Chennai, reported in 2-17 (350) E.L.T.521 (Mad)***, for the proposition the Container Freight Station “CFS” is responsible for the contents of the containers;

(iii) ***Amba Lal Umrao Singh Ji Vs. L.Harish Chander and others reported in Manu/PH/0075/1995***, for the proposition if the agent does not disclose the name of his Principal, the agent or an undisclosed Principal



is entitled to bring a suit to personally enforce the contract entered into by him on behalf of the Principal.

(iv) *Jaytee Exports Vs. Natvar Parikh Industries Limited and others reported in Manu/WB/0244/2018*, for the proposition that delivery of cargo without original bills of lading would give cause of action to maintain a suit for loss and damages.

(v) *Tashi Delek Gaming Solutions Ltd., and another Vs. State of Karnataka and others reported in (2006) 1 SCC 442*, for the proposition in cases where agency is coupled with interest or the right of an agent is affected by statutory provision agent can sue on his own right.

Submission of the learned counsel for the first defendant:

8.1. The learned counsel for the first defendant by drawing the attention of this Court to Section 230 of Indian Contract Act submitted that the plaintiff in the present suit is only an agent of a disclosed principal in a Foreign Country and hence, the present suit is not maintainable and barred under Section 230 of Contract Act. The learned counsel by taking this Court



to Exs.P2 to P8 bills of lading and Ex.P21-invoices for detention and local charges submitted that bills of lading was issued by the plaintiff's principal and the plaintiff name was only mentioned as agent of the principal at port of discharge.

8.2. The learned counsel further submitted that even in respect of invoices under Ex.P21, the same was raised by the plaintiff's principal but signed by the plaintiff as an agent of its principal M/s. MSC Mediterranean Shipping Company SA. Therefore, it is the case of the plaintiff, the suit filed by the plaintiff who is only an agent of the disclosed principal is not maintainable and liable to be dismissed. The learned counsel also submitted that the import of cargo by the defendants 2 and 3 are separate transactions under separate contract and therefore the cause of action for filing a suit against the defendants 2 and 3 are distinct and separate. Hence, the suit is bad for mis-joinder of cause of action.

8.3. The learned counsel also submitted that the plaintiff not even negotiated the contract with the defendants. The contract for shipment was entered into between the principal and the defendants as per bills of lading and hence the suit filed by the plaintiff without authorization by



principal is not maintainable. The learned counsel for the defendants by taking this Court to Ex.P21 invoice raised by the plaintiff for detention and local charges and also Ex.P12 to P17-gate pass issued by the defendants to de-stuff the cargo submitted in invoices raised by the plaintiff, there is a specific mention about collection of delivery order charges. Therefore, the plaintiff issued delivery order after collection of charges from the importers and cargo were delivered only after production of delivery order. The learned counsel also by drawing the attention of this Court to Clause 14.8 of the Contract of Carriage annexed with Exs.P2 to P8 submitted that the detention charges are payable only to the carrier and therefore, the suit is not maintainable.

8.4. The learned counsel for the defendants further submitted that regarding the agency coupled with an interest, there is no pleading or evidence by the plaintiff and therefore the plaintiff cannot rely on the said principle. Regarding the contention of the plaintiff by referring to statutory duty under Section 148 of Customs Act, the learned counsel for the defendants submitted that the present suit is based on contract. Hence, Section 148 of Customs Act is not applicable.

**Issue No.2:**

WEB COPY

9.1. The suit was mainly contested by the first defendant by relying on Section 230 of Indian Contract Act. It is the specific case of the defendants that admittedly, the plaintiff is an agent of the disclosed principal in a Foreign Country and hence in the absence of any contract to contrary, the present suit filed by the plaintiff is not maintainable.

9.2. A perusal of Exs.P2 to P7 bills of lading would suggest that bills of lading were issued by the Principal of the plaintiff namely M/s. MSC Mediterranean Shipping Company SA. In bills of lading, the 5th defendant herein is named as the shipper. In Ex.P2 bills of lading, the 2nd defendant is mentioned as importer. In Exs.P3 to P8 bills of lading, the 3rd defendant is mentioned as importer. In all the bills of lading, the plaintiff is mentioned only as agent in the port of discharge of the principal M/s. MSC Mediterranean Shipping Company SA, which issued the bills of lading. A reading of Clause 14.8 of the contract of carriage annexed with Ex.P8 bills of lading would suggest the detention charge was payable to the carrier. Therefore, Exs.P2 to P8 clearly establish the importers the defendants 2 and 3 entered into the contract for import of certain cargo from the principal of the



plaintiff M/s. MSC Mediterranean Shipping Company SA. The containers and cargo therein are all belong to the principal and the plaintiff's role is only that of an agent in port of discharge. Therefore, it is clear, the main contract is between the principal of plaintiff and the importers. The detention charges are payable to the principal of the plaintiff.

9.3. A perusal of Ex.P21 invoices produced by the plaintiff would suggest all the invoices were raised by the Principal of the plaintiff M/s. MSC Mediterranean Shipping Company SA and the same was signed by the plaintiff only as agent of the Principal. The invoices also refer to collection of fees for delivery order. The detention advice was also prepared only in the name of principal M/s. MSC Mediterranean Shipping Company SA. Therefore, Ex.P21-series invoice for detention and local charges also clearly proved that those charges are payable to the principal of the plaintiff and not to the plaintiff individually. In such circumstances, Section 230 of Contract Act assumes significance.

9.4. Section 230 of Contract Act, reads as follows:

Agent cannot personally enforce, nor be bond by,



contracts on behalf of principal:-

“In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of Contrary to the contrary:

Such a contract shall be presumed to exist in the following cases :-

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;*
- (2) where the agent does not disclose the name of his principal; and*
- (3) where the principal, though disclosed, cannot be sued.”*

9.5. A perusal of the above Section would make it clear that an agent cannot personally enforce contracts entered by him on behalf of the principal nor he is personally bound by it. As discussed earlier Exs.P2 to P8 and P21 clearly establish contract of carriage was entered into between the plaintiff's principal and the importer. The role of the plaintiff is that of an agent in port of discharge. There is no evidence available on record to



suggest a contract to the contrary. No authorization has been produced by the plaintiff to show that he has been authorized by its principal either by contract or otherwise to sue. It is not the case of the plaintiff that contract was entered into or negotiated by him on behalf the principal. It is clearly disclosed in the plaint M/s. MSC Mediterranean Shipping Company SA is the principal of the plaintiff, therefore, it is clear, the plaintiff is only an agent of the disclosed principal. It is also not the case of the plaintiff that its principal cannot be sued. In such circumstances, none of the instances mentioned under second limb of Section 230 of Indian Contract Act got satisfied. Therefore, the plaintiff is not entitled to maintain a suit for recovery of detention charges, which is payable to the principal under the contract.

9.6. The learned counsel for the plaintiff by relying of Tashi Delek Gaming Solutions Ltd., and another Vs. State of Karnataka and others reported in (2006) 1 SCC 442, submitted that if agency is coupled with an interest, notwithstanding Section 230 of Contract Act, he is entitled to maintain a suit independently. However as rightly pointed out by the learned counsel for the defendants, there is no plea by the plaintiff that he is an agent coupled with interest and hence he is entitled to maintain the suit. In the



absence of specific plea regarding agency coupled with an interest, at the stage of arguments, it is not open to the plaintiff to say that he is an agent coupled with an interest.

9.7. The learned counsel for the plaintiff by relying on Section 148 of Customs Act submitted that he has got a statutory duty under Section 148 of Customs Act. However, the present suit for recovery of money has nothing to do with any of the statutory duty or liability of an agent under Section 148 of Customs Act. The suit is for recovery of charges based on the contract of the carriage between the plaintiff's principal and the importers and violation thereof. Therefore, the arguments advanced by the learned counsel for the plaintiff by relying on Section 148 of Customs act is also of no use.

9.8. In view of the discussions made above, I hold that the principal of the plaintiff is a necessary party to the suit and the suit filed by the plaintiff in its individual capacity without any authorization from the principal is not maintainable. Therefore, issue No.2 is answered in favour of the defendants and against the plaintiff.



10. Issue No.1:

Ex.P1 is the extract of board of resolution passed by the plaintiff company authorizing one A.Umaibalan, Senior Manager to sign and verify the plaint. The said Umaibalan, verified the plaint under the seal of the company. In the absence of any contra evidence to doubt Ex.P1, I hold the present plaint verified by the authorized signatory of the plaintiff company is in accordance with law and issue No.1 is answered, accordingly in favour of the plaintiff.

11. Issue No.III:

During the course of trial, the defendants have not examined any witnesses and marked any documents. It is the specific case of the plaintiff that no delivery order was issued by it in favour of the importers to take delivery of the cargo from first defendant. It is averred by the first defendant in his written statement that delivery order was presented by the importers and based on the same, the goods were delivered. However, no delivery order said to have been issued by the plaintiff was produced by the defendants before this Court. Therefore, this Court takes adverse inference against the defendants for failure to produce the delivery order said to have



been issued by the plaintiff and hold that no delivery order has been issued by the plaintiff. Accordingly, Issue No.3 is answered in favour of the plaintiff as against the defendants.

12. Issue No.4:

As discussed earlier, there is no evidence on record to show that delivery order was issued by the plaintiff and the same was presented to the first defendant at the time of taking delivery of cargo by the importers namely the defendants 2 and 3. The 4th defendant is the customs agent of defendants 2 and 3. A perusal of Ex.P20-e-mail communication between the plaintiff and the first defendant would suggest the first defendant in his e-mail dated 21.09.2018 clearly admitted that the cargo was delivered to the importers based on their urgency. In the said communication it was also mentioned that the first defendant had been regularly following the importers for delivery order and there is some delay on their part in submitting delivery order. In the said communication, it is also mentioned by the first defendant in future they would not deliver the cargo unless delivery orders are produced. Therefore, it is clear, the first defendant delivered the cargo to importers without insisting original delivery order issued by the plaintiff. Though, the



first defendant in his written statement had taken a defence, as if, cargo were released after submission of delivery orders, no such delivery order has been produced by him. The first defendant also failed to examine any witness and lead contra evidence to that of P.W.1. The defendants 2 and 3 remained ex-parte. The 4th defendant though engaged a counsel failed to file a written statement and participate in the trial. In these circumstances, the collusion pleaded by the plaintiff is proved and the issue No.4 is answered in favour of the plaintiff and against the defendants.

13. Issue Nos.5,6 and 8:

In view of the conclusion reached by this Court in Issue No.1 that the suit filed by the plaintiff as agent of disclosed principal is not maintainable, the plaintiff is not entitled to any relief in the suit and accordingly issue 5,6 and 8 are answered against the plaintiff and in favour of the defendants.

14. Issue No.7:

In earlier issues, this Court came to a conclusion that the suit is not maintainable. Hence, the 1st defendant is not jointly and severally liable



to meet the suit claim. Accordingly, issue No.7 is answered against the plaintiff and in favour of 1st defendant.

15. In nutshell:

In the result, the suit is dismissed, however, in the circumstances of the case, there will be no order as to costs.

25.07.2023

Index : Yes / No
NCC : Yes / No
ub



WEB COPY



26

S.SOUNTHAR, J.

ub

Pre-delivery order made in
C.S.No.115 of 2019

25.07.2023