IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.08.2023

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.S.(Comm. Div.) No.135 of 2022

M/s.HMM Shipping India Pvt. Ltd.
Formerly known as
M/s.Hyundai Merchant Marine India Pvt. Ltd.
EGA Trade Centre, 3rd Floor, Door No.318 (Old No.809)
Poonamallee High Road, Kilpauk
Chennai 600 010
Rep. by its authorised signatory D.Balaji .. Plaintiff

Vs.

1.Bharath Kumar
Sole Proprietor
M/s.Hiyansh Glass World
Door NO.27-37-165, 1st Floor
M.G.Road, Vijayawada 520 002

2.M/s.Prabhu Shipping Systems
No.6, 2nd Floor, Krishnan Koil Street
Chennai 600 001 .. Defendant

Plaint filed under Order VII Rule 1 CPC read with Section 7 of the Commercial Courts Act, 2016, read with Order IV Rule 4 of the Original

Side Rules, praying to pass a judgment and decree against the 1st and 2nd defendants jointly and severally

(a) for a sum of Rs.1,16,82,902.40/- (Rupees one crore sixteen lakh eighty two thousand nine hundred and two and paise forty only) with interest at 18% p.a. thereon (being a commercial transaction) from the date of the plaint till the date of realization in full;

(b) for a sum of Rs.4,75,338/- (Rupees four lakh seventy five thousand three hundred and thirty eight only) with interest at 18% p.a. thereon from the date of the plaint till the date of realisation in full; and

(c) for costs of the suit.

For Plaintiff : Ms.M.Deeptha Devi

<u>J U D G M E N T</u>

The suit is for recovery of a sum of Rs.1,16,82,902.40/- together with interest @ 18% p.a. thereon and a further sum of Rs.4,75,338/- with interest @ 18% p.a. These two amounts constitute detention charges that are payable by the defendants for retaining the containers beyond the period of 90 days and for having lost three containers that has been given by the plaintiff.

2. To appreciate the issue on hand, it is necessary to briefly allude to the facts of the plaintiff's case:

2.1. The plaintiff would submit that they provide booking service for the export of cargo from the ports in India to other countries and *vice versa*. The plaintiff provides delivery orders for the clearance and discharge of the import cargo/containers. On the strength of these delivery orders, the persons purchasing the goods are able to destuff/remove the cargo from the containers. Thereafter, the importers had to return the empty containers to the plaintiff. The time taken for destuffing was factored in as free days. It is the agreement between the importer and the plaintiff that the containers were to be returned within 21 days tariff free period. Over and above 21 days, the detention charges would become payable.

2.2. The 1st defendant is an importer and trader of glass and glass products, having his place of business at Vijayawada and other locations in the state of Andhra Pradesh. The 1st defendant's godown is also located at Yerrubalem, Mangalagiri Mandal, Guntur District. The 2nd defendant acted as clearing agent of the 1st defendant.

2.3. In the course of business between the plaintiff and the 1st defendant, on 10.09.2019, the defendants have executed an indemnity bond at Chennai for the period from 10.04.2019 to 31.03.2020, under which the 1st defendant had undertaken to return the containers booked by them within 15 days from the date of its removal from the yard. The 1st defendant further undertook that in case, the defendants have failed to return the containers within the specified time, they would be liable to compensate the plaintiff for each of the containers.

2.4. On 27.01.2020, the 1st defendant had imported aluminium glass from Qinhuangdao Green Star Mirror Co. Ltd. under two Ocean Bills of Lading and the port of loading was Tianjin, China. The cargo was shipped on board the vessel MV Harpy Hunter 024W and the port of discharge was Kattupalli, India. The consignments were stuffed in 6 x 20 feet FCL containers.

2.5. The vessel had arrived at the port of Kattupalli, Thiruvallur on 16.02.2020. The defendants have surrendered the Bills of Lading on

19.02.2020 to the plaintiff, following which, the plaintiff had issued two delivery orders to the management of the STP Services, as agents of the plaintiff and directed them to release six containers to the 2nd defendant.

2.6. The defendants, after obtaining permission from the customs authorities, had taken delivery of six containers through their transporters from STP Services, CFS. The trucks had left for Vijayawada. The containers were destuffed on 22.02.2020 and the empty containers were to be returned to Sattva-Vichoor CFS at Manali. After a considerable delay and repeated requests, the defendants returned three of six containers, through the very same transporter. As per the contract entered into between the plaintiff and the defendants, the empty containers were to be delivered by 08.03.2020. The three containers which were delivered, were also beyond the agreed period. However, the plaintiff is concerned only with reference to the three unreturned containers, which is the subject matter of the suit in question.

2.7. The plaintiff had addressed the defendants by e-mail to deliver the three containers and the defendants in their e-mail dated 01.04.2020, mentioned that the containers were sent in the same truck that was used to transport the cargo from the port at Chennai. The plaintiff would submit that even when that e-mail was addressed originally, the defendant had taken a stand that they are not liable, since the containers had been handed over to the transporter, who in turn, was required to deliver it to the plaintiff.

2.8. To cut a long story short, the defendants shirked their liability on the ground that the plaintiff had to approach the transporter, since the defendants have already handed over the containers to the transporter. The plaintiff would submit that there is no privity of contract with the transporter and it is the 1st defendant, who had given the undertaking to deliver back the containers and to make good the loss if the containers were lost to the plaintiff under the indemnity bond.

3. The defendants have been served and since they have not entered appearance, they were called absent and set *ex parte* on 12.06.2023 and the

case was listed before the learned Master for recording *ex parte* evidence.

4. The learned Additional Master-IV had recorded the evidence of D.W.1 and Exhibits P1 to P19 were marked. Thereafter, the matter has been forwarded to this Court.

5. Ms.M.Deeptha Devi, learned counsel appearing on behalf of the plaintiff would submit that under Ex.P1 Indemnity Bond, signed by the defendants, they have undertaken to remove the containers from the container terminal after destuffing the cargo, within 15 days of its removal. They had further undertaken that in the event of their failure to remove the containers within 15 days period, they would obtain necessary permission from the plaintiff and customs authorities to remove the containers beyond the period of 15 days. The indemnity bond further provides that in the case of the containers being lost, the defendants would be liable to pay the costs of the containers as per the rate given in clause (5) of Ex.P1.

6. It is her case that on 16.02.2020, that cargo had arrived at the port and on 19.02.2020, it was handed over to the defendants. Ex.P4 (series) would represent two delivery orders, from which, it is clear that containers have been removed by the 1st defendant and they had been directed to return it on or before 08.03.2023. However, it is her case that ultimately, only three containers were returned. The learned counsel fairly conceded that they are not making any claim for the delayed return of the containers, however, three containers which had been given to the defendants had been lost by them. The e-mails attached as Ex.P7, P8 and P9 would show that a letter received from Sattva-Vichoor CFS, clearly stating that three of the containers had not been received back at the gate at Sattva-Vichoor, which is evident from the records.

7. It is her further contention that under Ex.P13, the 1st defendant had issued a legal notice to the plaintiff, M/s.Falcon Logistics, the transporter and the Director General of Police, Mangalagiri, Andhra Pradesh, in which, they would set out that the containers had been handed over to the

transporter and it is the transporter, who had lost the containers and therefore, they had advised the plaintiff to proceed against the transporter.

8. She would further draw the attention of this Court to Ex.P6, which is the import tariff as on February' 2020, which gave the detention charges that was leviable during the relevant period. It is her contention that since the container had not been returned beyond 19 days, Sl.No.17 of the tariff would be applicable *i.e.,* the plaintiff would be entitled to 80 USD per day, since the container in question was over 20 feet long. She has also produced Ex.P17, which gives the details of the cost of the container in USD. She would further argue that the quote given for the cost of the containers was made, after giving due credit to the depreciation. The plaintiff has also filed exchange rate as on 14.02.2020 as Ex.P18 and it is on this basis, the plaintiff has made the suit claim.

9. Since the defendants been set *ex parte*, the only issue to be considered by this Court is, whether the plaintiff is entitled to the relief as claimed by them.

10. The plaintiff has marked Ex.P1, which is the Indemnity Bond that has been executed by the defendants in favour of the plaintiff. The following clauses need to be extracted, in order to appreciate the undertaking given by the defendants to the plaintiff :

> *"4. In case we fail to return the containers within FIFTEEN DAYS from the date of removal, we shall obtain necessary permission from you and customs authorities to retain the containers with us beyond 15 days.*
>
> *5. In case the containers are lost whilst in our custody we shall pay you the cost of the containers and the customs duty applicable on the containers at the rate of INR 271000/INR 540000 per 20'/40' as the case may be.*
>
> *8. We shall keep you and carriers completely indemnified and harmless from and against all consequences which may arise from your complying with our request."*

11. Ultimately, the defendants have given the following assurance to the plaintiff :

> *"We as consignee of the cargo would be fully responsible for all the cost and consequences for the same. We further reaffirm that the containers would only be taken to our premises at CFS/FACTORY and that we would approximately take FREE days to return the containers back to your empty storage yard after removal."*

12. In pursuance of the indemnity executed by the defendants, the plaintiff has provided the booking service of the import of their cargo from Tianjin, China to port of discharge *viz.*, Kattupalli, Chennai. This is evidenced by Exs.P2 Bills of Lading dated 26.01.2020. The cargo had reached the port on 16.02.2020, following which, the steamer agent representing the plaintiff had filed Ex.P3 Import General Manifest.

13. Upon their surrendering the Bills of Lading, the plaintiff had issued two delivery orders to the 1st defendant marked as Ex.P4 (Series) dated 19.02.2020, permitting the 1st defendant to remove the containers totally numbering six and they were to return the containers by 08.03.2020. However, the 1st defendant had not returned the containers as undertaken. The plaintiff had addressed e-mails to the 1st defendant stating that three containers had not been received, which is evident from the e-mail by Sattva-Vichoor CFS. To this, the 1st defendant had sent a response that their transporter had offloaded all the containers at the yard of Sattva-Vichoor CFS, which is evidenced by Ex.P7.

14. In Ex.P8 (Series) of e-mails, the plaintiff had enclosed the letter received by them from Sattva-Vichoor CFS, wherein, it was clearly stated that the three containers bearing Nos. TEMU1545926, TLLU2517067 and GCXU2136051 have not been received at the yard. Thereafter, under Ex.P10, the plaintiff had issued a final notice for long idling container through e-mail dated 04.06.2020 to the 1st defendant. In Ex.P11 claim letter, dated 15.06.2020, the plaintiff had demanded a sum of 7,920 USD, which constituted the detention charges and the 1st defendant was called upon to pay the above sum on or before 29.06.2020. To this, a reply was issued by the 1st defendant, in which, they had stated that their transporter had confirmed discharge of the empty containers and therefore, that the claim letter as if the cargo was lying uncleared is against the true fact and that the empty containers had been returned to the empty container yard as directed in the delivery order. Therefore, they had contended that they did not owe any money to the plaintiff.

15. However, under Ex.P13 notice dated 16.08.2020, which was issued by the 1st defendant to the plaintiff, M/s.Falcon Logistics, the

transporter and the Director General of Police, Mangalagiri, Andhra Pradesh, in which, it is stated that the six containers were transported by Falcon Logistics and Vaaman Roadlines. The letter would further state that after the goods were unloaded at their godown, the empty containers were returned back to the yard, through the drivers of the two trucks. The letter would further state that the said Falcon Logistics and Vaaman Roadlines have not responded to the 1st defendant's letters in collusion with the plaintiff. The letter would further indicate that the 1st defendant had thereafter, initiated criminal proceedings against the said two transporters. Ultimately, the 1st defendant had directed the plaintiff to recover the due from the two transporters.

16. The plaintiff has filed Ex.P6 import tariff to show the calculation for the detention charges and Ex.P17 is filed to substantiate the cost for the three lost containers, which is calculated in USD. It is also noticed that the quotation given in Ex.P17 is one which has been arrived at, after factor in the amounts that had to be deducted towards depreciation. The plaintiff has also made available Ex.P18, which would go to show that the exchange rate

as on 14.02.2020, being the day when the cargo were arrived. The suit amount has been calculated on the basis of Ex.P6 and Ex.P17.

17. The plaintiff, by filing these documents, have proved their contract with the defendants and the fact that three of the containers had gone missing, for which, as per the indemnity bond, the defendants were liable to reimburse the plaintiff. Accordingly, the issue is answered in favour of the plaintiff.

In fine, the suit is decreed as prayed for with costs.

14.08.2023

Internet : Yes
Neutral Citation: Yes / No
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P.T.ASHA., J.

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