



WEB COPY

CRP No.2281 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P. No.2281 of 2019

and

CMP Nos. 14888 & 18182 of 2019

M/s.Imperial Shipping Services,
2/3, 3rd North Beach Road,
Parrys, Chennai – 600 001.

....

Petitioner

Vs

1. M/s.MSC Agency Pvt Ltd,
Having office at 1st Floor,
KGN Towers,
No.62, Ethiraj Salai, Egmore,
Chennai – 600008.

2. M/s.A1 Nasir Exports Private Limited,
H.No.59, Block-7A, W.E.A,
Channa Market,
Pusa Road, Karol Bagh,
New Delhi -110 005

....

Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 31.01.2019 in I.A.No.212 of 2018 in O.S.No.4596 of 2018 on the file of the learned XV Additional Judge, City Civil Court, Chennai.



For Petitioner : Mr.K.F.Manavalan
For R1 : Mr.H.Siddarth
for Mr.P.Giridharan
For R2 : No appearance

ORDER

This Civil Revision Petition has been filed as against the fair and decretal order dated 31.01.2019 in I.A.No.212 of 2018 in O.S.No.4596 of 2018 on the file of the learned XV Additional Judge, City Civil Court, Chennai, thereby dismissing the petition leave to defend the suit.

2. The petitioner is the first defendant in the suit filed by the first respondent for recovery of money to the tune of Rs.23,63,497.11/-. On receipt of the suit summons, the petitioner, being the first defendant in the suit, filed a petition to leave the suit. The case of the first respondent is that the first respondent carries on its as steamer agents of M/s.MSC Mediterranean Shipping Company and he is engaged in shipping related business operating as an ocean carrier and carrying containerized business worldwide. The petitioner is into logistics business operating as a foreign forwarder and the second respondent herein is an exporter or exhaustive range of Frozen Halal Boneless Meat from India.



WEB COPY

CRP No.2281 of 20



3. During the course of their business, the petitioner, being a Freight Forwarder and Customs Agent, had approached the first respondent intending to take containers for the purpose of stuffing “Frozen Buffalo Meat”. The first respondent accepted the said request and realised a total 9 empty 40 HR Reefer Containers for stuffing to the second respondent herein through the petitioner herein. As per the Booking Release Orders issued by the first respondent, the petitioner was reflected as the booking party and the second respondent as the shipper. As per the booking release order, the said empty containers were to be picked from a yard viz., Reefer Care Services Pvt Ltd., Manali and after stuffing, the same has been delivered at Chennai Port to the first respondent herein. However, the petitioner and the second respondent defaulted in returning the said containers. Therefore the first respondent is entitled to levy detention charges after a period of 7 days from the period, at appropriate rates.

4. The petitioner filed leave to defend the suit on the ground that the first respondent is not represented by its authorised signatory since, it was not authorised signatory filed a Board Resolution dated 28.05.2012



does not provide any authentication to file a suit as against the petitioner.

The petitioner is the agent of a disclosed principal, viz., the second respondent herein, to express the knowledge of the first respondent. Therefore, the suit itself is barred under Section 230 of the Indian Contract Act as against the petitioner. Further, they had a specific stand that no part of cause of action arose within the jurisdiction of the Trial Court and as such, the Trial Court had no territorial jurisdiction to try the suit. Further, the Court below, without considering any of the evidence adduced by the petitioner, dismissed the petition on the ground that the documents which were filed/annexed along with the plaint clearly established the business transaction between the petitioner and the first respondent herein.

5. Admittedly, the Trial Court, without answering any evidence raised by the petitioner, simply dismissed the petition without any discussion on the ground raised by the petitioner herein. Admittedly, the petitioner is an agent of the second respondent herein. On perusal of the provision under Section 230 of the Indian Contract Act, the suit is barred as against the petitioner. Further Section 233 of the Indian Contract Act contemplates that the purpose of the contract with the agent suppressed to



the principal and as such both the principal as well as the agent are jointly liable for any claim.

WEB COPY

6. The learned counsel appearing for the first respondent relied upon the provision under Section 233 of the Indian Contract Act, which shows that the “***right of person dealing with agent personally liable. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable***”.

7. Admittedly, in the case on hand, the petitioner is an agent of the second respondent herein. 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. In the case on hand, the petitioner has been impleaded in his personal capacity and also making claim of the petitioner herein.

8. Further, on perusal of the Board resolution revealed that the first respondent authorised Mr.Umaibalan to file a suit and writ petition as against the Customs Department.



WEB COPY

9. The learned counsel for the first respondent pointed out that booking release orders issued by the first respondent not only to the second respondent as against the petitioner herein. In which, he categorically mentioned as the shipper of the second respondent herein and booked by the petitioner herein. Further, on perusal of e-mail communication revealed that there was a communication between them in respect of the claim of detention amount. The petitioner requested for some waiver. Accordingly, the first respondent waiving 30% of the detention charges and raised invoices. However, the Court below, without considering any of the defends raised by the petitioner, mechanically dismissed the petition leave to defend. Therefore, this Court is inclined to permit the petitioner to defend the suit on condition to deposit the reasonable amount.

10. In view of the above, the order dated 31.01.2019 in I.A.No.212 of 2018 in O.S.No.4596 of 2018 on the file of the learned XV Additional Judge, City Civil Court, Chennai, is hereby set aside and the Civil Revision Petition is allowed on condition that the petitioner shall deposit a sum of Rs.5,00,000/- to the credit of the suit in O.S.No.4596 of 2018 on the file of the XV Additional City Civil Court, Chennai, within the



WEB COPY



CRP No.2281 of 20

period of two weeks from the date of receipt of this order. Consequently,
connected miscellaneous petition is closed. There shall be no order as to
costs.

05.01.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

Lpp

To

1. The XV Additional City Civil Court,
Chennai.



WEB COPY



CRP No.2281 of 20

G.K.ILANTHIRAIYAN,J.

Lpp

C.R.P. No.2281 of 2019

05.01.2023