



W.A.(MD)No.982 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)No.982 of 2022

and

C.M.P.(MD)No.7903 of 2022

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

... Appellant

Vs.

1.N.Rajkumar

2.Umesh Shipping Services Private Ltd.,
Rep., By Director,
N.Rajkumar,
S/o.K.Nambiraj,
No.79, Bryant Nagar,
12th Street, Tuticorin-8.

3.The Inspector of Police,
SIPCOT Police Station,
Tuticorin.

...Respondents

PRAYER: Appeal filed under Clause 15 of Letters patent, against the order dated 20.07.2022 passed by this Court in W.P.(MD)No.12073 of 2012.



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For Appellant : Mr.ARL.Sundaresan
Senior Counsel
for Mr.M.P.Senthil
For R1 & R2 : Mr.Hari Radhakrishnan
For R3 : Mr.Veeranthiran
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by ***V.LAKSHMINARAYANAN, J.***)

Two contracts had been entered into by the appellant. The first contract was with an entity by name M/s.R.Flower. The purpose of the contract was to store imported bleached hard wood sulphate pulp in the godown belonging to the said entity. Unfortunately, there occurred a theft by which out of 20,803 pulps, 420 pulps went missing. The reason that has been given is that the theft had occurred in the said godown, which obviously is beyond the control of R.Flower.

2.The appellant also entered into an agreement with one M/s.Umesh Shipping Services, which was represented by its Director N.Rajkumar. It is pertinent to point out that M/s.R.Flower belongs to the wife of N.Rajkumar. For the loss, which had occasioned to an extent of 420 pulps, Tamil Nadu Newsprint



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and Papers Limited (in short 'TNPL') decided to withhold the amount of Rs. 29,36,011/- from the payments payable to M/s.Umesh Shipping Services Pvt.Ltd., by the minutes of the meeting dated 24.08.2012. It was agreed by N.Rajkumar that the loss, which occasioned in M/s.R.Flower's godown was due to the theft and for that loss, the appellant can recover the same from the pending bills of M/s.Umesh Shipping Services Private Ltd., which is a sister concern of M/s.R.Flower. In the minutes, it is also recorded that N.Rajkumar had requested TNPL for return of the amount, which had been withheld, in case if he is able to replace the material equivalent in quantity and quality of the above shortfall material.

3.After having agreed to the said minutes of the meeting, the writ petition came to be filed before this Court in W.P.(MD)No.12073 of 2012 challenging the minutes. The prayer in the writ petition was for a writ of certiorari to quash the minutes dated 24.08.2012 and to direct the release of the aforesaid amount of Rs.29,36,011/-.

4.The learned Single Judge held that M/s.R.Flower and M/s.Umesh Shipping Services Private Limited are different entities. He went on to hold that



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the loss caused to the appellant due to the theft in M/s.R.Flower cannot be recovered from M/s.Umesh Shipping Services Private Limited and consequently, quashed the minutes of meeting and allowed the writ petition. Challenging the same, the present writ appeal has been filed.

5.We have heard the learned counsel appearing on either side and perused the materials placed on record.

6.The parties reiterated their contentions as stated before the learned Single Judge. The point to be considered in this appeal is whether the writ petition challenging the minutes of the meeting and seeking recovery of money is maintainable.

7.The aforesaid facts are not disputed. There are two separate contracts. One contract is with M/s.R.Flower and another contract is with M/s.Umesh Shipping Services Private Limited. The loss was not due to the act of M/s.R.Flower, but due to the act of theft. N.Rajkumar had agreed to the minutes of the meeting dated 24.08.2012 to adjust the loss with the pending bills of M/s.Umesh Shipping Services Private Limited.



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8.The learned Counsel for the first and second respondents submitted that the minutes of the meeting was vitiated due to the fact that there was an undue influence, by which N.Rajkumar agreed to the minutes of the meeting. He further submitted that the parties have two separate entities. TNPL cannot withheld the amount, which is due from one entity as against the another.

9.We remind that the civil Courts in this country are still functioning and remedy for recovery of money is only to present the suit before the Civil Court. Writ petition for the purpose of recovery of money is not maintainable. We hasten to add that in case of undisputed amounts, a writ petition would be maintainable. However, these are the exceptional circumstances. We feel that the present writ petition is not maintainable, especially since N.Rajkumar had agreed that he had signed the minutes of meeting dated 24.08.2012. Having agreed to the minutes of the meeting, the question as to whether it is due to vitiating circumstances or not are the matter, which require evidence. A writ petition is not a substitute for the suit of recovery of money, especially when the facts are disputed.



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10. In light of the above, the writ appeal succeeds and the writ petition stands dismissed. Liberty is granted to the writ petitioner to file a civil suit. The time taken from September 2012, that is the date on which the writ petition was filed, till date stands excluded for the purpose of computing the period of limitation. In a properly instituted civil suit, all defences can be raised by the respective parties. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (V.L.N., J.)
29.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

The Inspector of Police,
SIPCOT Police Station,
Tuticorin.



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