



Civil Suit No.271 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT DELIVERED ON : 04.10.2024

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Suit No. 271 of 2015

IFFCO-TOKIO General Insurance Co.Ltd.

Having its registered office at

IFFCO Sadan, C1 District Center,

Saket, New Delhi – 110 017

Represented by Ms.Sadhna Trehan – Vice President.

... Plaintiff

Vs.

1. M/s.Asveens Air Travels Pvt.Ltd.,
Having its Registered Office at
Suit No.10, Ankur Plaza
II Floor, 113, G N Chetty Road
Near Vani Mahal, T.Nagar
Chennai – 600 017
Tamil Nadu.

2. G.Senthil Kumar

3. Surya Prabha Kumar Senthil

... Defendants

[Defendants 2 and 3 impleaded as per order
dated 05.10.2018 in A.No.6448 of 2018
in C.S.No.271 of 2015]



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Prayer:-

Civil Suit has been filed under Order VII Rule 1 CPC, 1908 read with Order IV, Rule 1 of O.S. Rules, prays for a judgment and decree :-

i) directing the defendants to pay the principal amount of Rs.1,49,99,588/- (Rupees one crore forty nine lakhs ninety nine thousand five hundred and eighty eight) along with interest at 24% per annum from 16.02.2012 to 13.02.2015 amounting to Rs.1,07,99,704/- (Rupees one crore seven lakhs ninety nine thousand seven hundred and four) totally amounting to Rs.2,57,99,292/- (Rupees two crores fifty seven lakhs ninety nine thousand two hundred and ninety two) to the plaintiff and directing the defendants to pay future interest on Rs.1,49,99,588/- (Rupees one crore forty nine lakhs ninety nine thousand five hundred and eighty eight) @ 24% p.a. to the plaintiff from the date of the plaint till the date of realization;

ii) costs of the suit.

For Plaintiff : Mr.Adarsh Subramanian

For Defendants : Mr.S.Patrick



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JUDGMENT

The suit is filed seeking to direct the defendants to pay the principal amount of Rs.1,49,99,588/- (Rupees one crore forty nine lakhs ninety nine thousand five hundred and eighty eight) along with interest at 24% per annum from 16.02.2012 to 13.02.2015 amounting to Rs.1,07,99,704/- (Rupees one crore seven lakhs ninety nine thousand seven hundred and four) totally amounting to Rs.2,57,99,292/- (Rupees two crores fifty seven lakhs ninety nine thousand two hundred and ninety two) to the plaintiff and also directing the defendants to pay future interest on Rs.1,49,99,588/- (Rupees one crore forty nine lakhs ninety nine thousand five hundred and eighty eight) @ 24% p.a. to the plaintiff from the date of the plaint till the date of realization and for costs.

2. The facts that have led to this suit are as follows :-

2.1. The plaintiff is an Insurance Company and the first defendant is a travel agent. The plaintiff had issued a Credit Risk Insurance Policy No.61015171 to International Air Transport Association [hereinafter referred to as 'IATA' for brevity] to indemnify IATA in



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respect of any financial loss caused to it due to default in making payments by IATA accredited agent. Based on the representations and assurance made by the first defendant, IATA agreed to supply the Air tickets to the first defendant on credit basis. They entered into a 'Passenger Sales Agency Agreement dated 12.04.2002' [hereinafter referred to as 'the said agreement'] with the first defendant. Therefore, the first defendant, as a travel agent, is accredited by IATA. In other words, the plaintiff is the insurance company and IATA is the insured. As per the said agreement, IATA supplied Air tickets to the first defendant and issued various invoices from 16.02.2012 to 15.04.2012. In accordance to the said agreement, the first defendant was to make payments within two weeks from the date of issue of the invoice. However, the first defendant failed to make the said payments and defaulted in payment. As such, the outstanding amount of Rs.1,49,99,588/- remained due and payable by the first defendant to IATA. Thus, the first defendant had issued a cheque for a sum of Rs.50,40,522/- (Rupees Fifty Lakhs Forty Thousand Five Hundred and Twenty Two) on 15.03.2012 and the same was dishonoured. Hence IATA issued a letter dated 19.03.2012 calling upon the first defendant to pay the amount that was due, failing which, IATA would be



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Company has settled the claim amount of Rs.1,49,99,588/- to IATA.

Having honoured the same, IATA has given a Letter of Subrogation dated 19.07.2012 to the plaintiff, whereby IATA had subrogated, assigned, transferred and abandoned all its actionable claims, rights, title and interest in and to the aforesaid debt and all rights against person or persons, whoever is liable in respect thereof to the plaintiff. By virtue of the aforesaid subrogation, the plaintiff Insurance Company is entitled to receive a sum of Rs.1,49,99,588/- from the first defendant. While that being so, the plaintiff Insurance Company vide demand notice dated 24.09.2012 called upon the first defendant to remit the sum of Rs.1,49,99,588/- along with interest towards the outstanding amount to the plaintiff. Since there was no response, the plaintiff again issued a legal notice dated 31.10.2014 to the first defendant, for which also there was no response. Since the first defendant-Company failed to discharge its liability towards the plaintiff Insurance Company, despite various demands, the plaintiff was constrained to file the present suit for the relief stated supra.

2.2. It is stated that while the suit was pending for trial, the



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plaintiff received an information that the first defendant-Company had been struck off from the Registrar of Companies with the Ministry of Corporate Affairs, in view of statutory non-compliances under the Companies Act, 1956. While so, one of the Directors of the first defendant-Company filed an affidavit dated 16.03.2018 stating that the first defendant-Company has been struck off and no steps have been taken to revive it by complying with the statutory requirements. It is further stated that the defendants 2 and 3 with *malafide* intention to defraud its creditors, have wantonly put the first defendant-Company in such a dire situation, even the balance sheets were not filed from the year ending of 2013. It is further stated that defendants 2 and 3, being the Directors of the first defendant-Company have a fiduciary responsibility to the company and are responsible for the maintenance of the company. Due to the intentional activities of the defendants 2 and 3, the first defendant-Company has been struck off from the Registrar of Companies with the Ministry of Corporate Affairs. Hence, the corporate veil of the first defendant-Company has to be pierced and defendants 2 and 3 are made personally liable to the plaintiff to pay the amounts claimed by in the above suit.



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3. The first defendant-Company has filed a written statement contending *interalia* that the suit is not maintainable under Order XXIX of CPC., as the first defendant-Company alone has been shown as a sole defendant on the date of filing of the suit and though the first defendant is entitled, it should have been represented by either by the Managing Director or Director. The suit is not maintainable in law for non-joinder of necessary and proper parties namely IATA and in the absence of the same, the present suit cannot be effectively and completely adjudicated. The suit is also not maintainable for recovery of several crores, as there is no privity of contract between the plaintiff Insurance Company and the first defendant-Company. Further, the suit is barred by limitation since all the transactions said to have been made by the first defendant through IATA prior to 17.03.2012, even the cheque issued by the first defendant was dated 15.3.2012 and it has to be construed as an admission of liability to the value of Rs.50,40,522/-, but the plaintiff has laid the suit only on 17.03.2015.

4. It is further stated that any document brought into existence



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between the plaintiff Insurance Company and IATA is not binding on the first defendant-Company. The Letter of Subrogation is an unilateral document since the said document has not been signed by the plaintiff. The plaint document No.3 – Insurance Policy is not sufficiently stamped and the said document is inadmissible in evidence. The premium for the insurance policy paid by IATA by debiting the account of the first defendant is not binding on the first defendant. The date of Insurance Policy Number : 61015171 is totally absent and the Letter of Subrogation dated 19.07.2012 does not satisfy the essential requisites of subrogation within the meaning of Section 92 of the Transfer of Property Act. Thus, there is no documentary proof of payment of the amount, alleged to be payable to the plaintiff by IATA by means of any legal documents and in the absence of such proof, the question of subrogation does not arise. The right which was available to the insured IATA as against the defendants alone can be enforced. It is further stated that the plaintiff Insurance Company has paid a sum of Rs.1,49,99,588/- to IATA, whereas, the present suit has been laid for a recovery of a sum of Rs.2,57,99,292/- after charging interest at the rate of 24% per annum and such rate of interest is not available to the plaintiff under the Letter of Subrogation or



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in the said agreement. In view of the payment said to have been received by IATA from the plaintiff, the loss said to have been suffered by IATA over the default made by the first defendant, IATA ought to have restored the licence of the first defendant-Company.

5. The defendants 2 and 3 have filed the written statement and reiterated the averments made in the written statement filed by the first defendant-Company and have stated that defendants 2 and 3 have been impleaded by this Court vide order dated 05.10.2018 in A.No.6448 of 2018 in C.S.(Comm.Div.) No.271 of 2015 and on the date when they were impleaded as defendants in the suit, the suit claim is barred by limitation under Section 21 of the Limitation Act. Further, the defendants 2 and 3 have categorically denies the allegations in the plaint and has stated that there was no *malafide* intention on their part to defraud their creditors and for that purpose the balance sheets were not filed. Further, defendants 2 and 3 as the Ex-Directors did not have fiduciary responsibility to the first defendant-Company and the first defendant was not allowed to be struck off due to the intentional activity of defendants 2 and 3. Further, defendants 2 and 3 are not at all personally liable to pay



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the suit amount, since the same is time barred coupled with the fact that defendants 2 and 3 cannot be made personally liable, for the liability of the first defendant-Company towards IATA. Since there is no cause of action as against defendants 2 and 3, the suit is liable to be dismissed.

6. Upon considering the pleadings and the draft issues filed by both the parties, the following issues have been framed by this Court on 12.12.2017 :-

"1. Whether International Air Transport Association has validly subrogated/assigned/transferred all its actionable claims and rights in relation to the debt owed by the defendant to the plaintiff ?

2. Whether the suit has been filed contrary to Order 29 of CPC and if so, what are the consequences ?

3. Whether IATA is a necessary party ? If so, whether the suit ought to be dismissed for non-joinder of necessary parties ?

4. Whether the relief sought ought to be denied to the plaintiff due to the non-existence of privity of contract between the plaintiff and the



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defendant ?

5. Whether the suit is barred by limitation ?

6. Whether the plaintiff is entitled to the suit claim as set out in the plaint prayer ?

7. The following additional issue has been framed by this Court on 07.02.2019 :-

Whether, this is a fit case for piercing the corporate veil to make the 2nd and 3rd defendants also jointly liable to pay the plaintiff ?

8. After framing of issues, during trial, on the side of the plaintiff, Navneet Singh Bawa was examined as P.W.1 and Rodney D'Cruz was examined as P.W.2 and 16 documents were marked as Exs.P1 to P16. On the side of the defendants, one G.Senthil Kumar was examined as D.W.1 but no documentary evidence is marked.

9. Learned counsel for the plaintiff submitted that the plaintiff is an Insurance Company and the first defendant is a travel agent. The first defendant as a travel agent is accredited to IATA. The plaintiff have



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insured IATA *qua* credit risks. In other words, the plaintiff is the Insurance Company and IATA is the insured. Based on the said agreement, IATA supplied Air tickets to the first defendant-Company on various invoices. He further submitted that owing to some default on the part of the first defendant-Company, IATA lodged certain claims with the plaintiff Insurance Company and plaintiff Insurance Company has honoured the same. Having honoured the same, IATA has given a Letter of Subrogation dated 19.07.2012 to the plaintiff, based on which the instant suit has been filed against the first defendant-Company for recovery of a sum of Rs.1,49,99,588/- along with interest, as according to the plaintiff, IATA had lodged the insurance claim owing to certain commissions and omissions on the part of the first defendant. He further submitted that defendants 2 and 3, who are the Directors of the first defendant-Company were not initially made as parties to the suit that was originally filed in the year 2015. When the suit was pending for trial, the plaintiff received an information that the first defendant-Company had been struck off from the Registrar of Companies with the Ministry of Corporate Affairs, in view of statutory non-compliance under the Companies Act, 1956 and the same has not been revived. Hence



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defendants 2 and 3, who are the Directors of the first defendant-Company have been impleaded in the suit. He further submitted that defendants 2 and 3 with *malafide* intention to defraud its creditors, have wantonly struck off the first defendant-Company and hence the corporate veil of the first defendant company has to be pierced. The defendants 2 and 3 are now personally liable to the plaintiff to pay the amount claimed by them in the above suit and prayed for decreeing the suit.

10. Learned counsel for the plaintiff contended that the suit has been filed in compliance with Order XXIX C.P.C. The pleadings in the plaint have been signed and verified by a person, who is able to depose to the facts of the case. The proof affidavit of the second defendant has been signed in his capacity as a Director of the first defendant-Company, which is in accordance with Rule 1 of Order XXIX C.P.C. Further, Letter of Subrogation-Ex.P15 entered into between the plaintiff and IATA is that of a subrogation-cum-assignment, which is evident from Clauses 2 to 4 of the Letter of Subrogation, which states that IATA subrogates all rights and remedies they possess against the defendants to the plaintiff with respect of their defaults in payments and authorizes the plaintiff to institute any proceedings in the plaintiff's name for recovery. Further, the Head of



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IATA Mr. Rodney D'Cruz was examined as P.W.2 and he has clearly deposed about relationship between the parties and the liability. The defendants were given sufficient opportunities to cross examine and pose question to P.W.2, but failed to do so and hence, the defendants cannot claim that IATA has to be made as a party to the present suit. The concept of subrogation involves one person or group substituting another in cases of insurance claims by transfer of all the rights and duties associated with it. It comes into picture when an insurance carrier wants to take legal action against a third party, who was responsible for the loss caused to the insured and other similar instances. Subrogation arises out of the existing relationship between the parties. He further submitted that the Hon'ble Supreme Court in ***Krishna Pillai Rajasekharan Nair (D) by Lrs. Vs. Padmanabha Pillai (D) by Lrs. and Ors.*** reported in ***(2004) 12 SCC 754***, held that a subrogation rests upon the doctrine of equity and the principles of natural justice and not on the privity of contract. It clearly lays down the law with respect to non-existence of privity of contract in subrogation. Therefore, although there is no privity of contract between the plaintiff and the defendants, through the principle of subrogation, the defendants shall now be liable to the plaintiff.



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11. Learned counsel for the plaintiff further submitted that the suit is not barred by limitation. In the instant case, the suit has to be deliberated in two parts. The first part is the filing of the suit in itself and the second part being the impleadment of the defendants 2 and 3. The original suit was well within the period of limitation as the last communication issued was in the year of 2014 and the suit was filed in the year 2015. Further, the impleadment of defendants 2 and 3 is also well within the period of limitation, as the proof affidavit of the second defendant has been filed on 16.03.2018, wherein it is stated that the first defendant-Company had been struck off and that application for impleadment was made on 10.08.2018. This Court by order dated 05.10.2018 impleaded the defendants 2 and 3 as parties in the suit. Thus, the suit in its entirety is not barred by limitation. He further contended that in accordance with Section 62 of the Indian Stamp Act, 1899 for execution of an inadequate stamped document would incur a penalty up to Rs.500/-. However, the Hon'ble Supreme Court in ***N.N.Global Mercantile Pvt. Ltd. vs. Indo Unique Flame Ltd. And Ors.*** reported in ***MANU/SC/0014/2021***, held that the non-payment of stamp duty on the



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commercial contract would not invalidate even the arbitration agreement, and render it non-existent in law and un-enforceable. In the present suit, document No.3 – Insurance Policy and Letter of Subrogation are of commercial in nature and thus, the ratio laid down by the Hon'ble Supreme Court will apply. Although admittedly the documents have not been adequately stamped, it does not render it non-existent in law and that inadequately stamped is a curable deficiency upon the payment of the requisite stamp duty. The documents in question shall be enforceable, giving effect to the Insurance Policy that was entered into by IATA and the plaintiff and consequently, the Letter of Subrogation.

12. Learned counsel for the plaintiff further submitted that as per the said agreement the first defendant-Company had to make payments within a period of two weeks from the date of issuance of the invoice to IATA. As stated above, the first defendant-Company had outstanding dues which were owed to IATA, in this regard, the first defendant had issued a cheque on 15.03.2012, which stood dishonoured and the first defendant failed to make payments for over a consecutive period of three months. However, first defendant had been enjoying the



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privilege of the accreditation during such period without making timely payments. The first defendant has been dexterously silent to all the communications from IATA even since the cheque was dishonoured. During the cross examination, the second defendant agreed that the first defendant-Company has not made any payments for the tickets supplied by IATA. He further submitted that defendants 2 and 3 were well aware of such payments due from IATA and subsequently to the plaintiff, and it was a willful default on behalf of the first defendant and its Directors, i.e., defendants 2 and 3 herein. The stance of the defendants that the first defendant-Company has been struck off, due to the losses incurred in moonshine is a stand taken belatedly. Hence it is stated that the defendants 2 and 3 are in full knowledge, but conveniently chose to not pay the due amount rightfully to the plaintiff and it is such mismanagement and fraudulent transactions is the sole reason why the first defendant-Company ran into losses and was eventually struck off. Since it was a willful default and fraud on the part of the defendants 2 and 3, the defendants 2 and 3 should be held accountable for such default on behalf of the first defendant. He further submitted that due to the nature of the transaction, being one of a commercial transaction, the defendants



shall be liable to pay 24% interest on the principal sum due of Rs.1,49,99,588/-. Further, the defendants have defaulted on the payment for the said transactions for a period of 2012 to 2015. Thus, compounding interest for the said period shall amount to Rs.1,07,99,704/- as claimed.

13. In support of his contentions, the learned counsel for the plaintiff relied upon the following decisions :

(i) ***Sunrise Associates Vs. Govt. of NCT of Delhi and others*** reported in ***[(2006) 5 SCC 603]***;

(ii) ***Santuram Hari Vs. Trust of India Assurance Co., and another*** reported in ***[1944 SCC Online Bom 93 : AIR 1945 Bom 11: (1944) 46 Bom LR 752]***;

(iii) ***Standard Chartered Bank Vs. Andhra Bank Financial Services Limited and Others*** reported in ***[(2016) 1 SCC 207]***;

(iv) ***Jugalkishore Saraf Vs. Raw Cotton Co. Ltd.,*** reported in ***[Manu/SC/0005/1955]***;

(v) ***Delhi Development Authority Vs. Skiper Construction Company (P) Ltd., and Ors.*** reported in ***Manu/SC/0497/1996 [I.A.Nos.23, 27 and 29 in SLP (C) No.21000 of 1993 dated 06.05.1996]***;



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(vi) ***Cosmopolis Properties Private Limited Vs. Loyal Credit and Investments Limited*** reported in ***[Manu/TN/5055/2021]*** ***[O.P.No.183 of 2017 and A.No.1404 of 2017 dated 15.07.2021]***;

(vii) ***P.V.Ar.Kr.Arunachalam Chettiar Vs. Madaswami and others*** ***[S.A.No.1144 of 1918 dated 03.11.1919]***; and

(viii) ***Divyadaru Chandrasekharalingam being minor by next friend Divyadaru Basavamma Vs. Arigapudy Nagabushanam and another*** ***[S.A.Nos.1232 and 1233 of 1924]***.

14. On the other hand, learned counsel appearing for the defendants submitted that originally the suit was filed as against the first defendant-Company. While the suit was pending for trial, on 16.03.2018, an affidavit was filed by the second defendant as a Director of the first defendant, wherein, it is stated that the first defendant-Company has been struck off from the Registrar of companies and the last balance sheet was submitted to the Registrar of Companies on 31.03.2011 and the same is disclosed in the online certificate issued by the Ministry of Corporate Affairs. It was further stated that as on 16.3.2018, the status of the company has not been changed and no action has been taken over the



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company as "struck off". Thereafter, the plaintiff filed two applications in A.Nos.6448 and 6449 of 2018 in the second week of August 2018 seeking for impleadment and for permitting the plaintiff to amend the plaint. This Court vide order dated 05.10.2018 allowed the said applications and had observed that defendants 2 and 3 have been impleaded in the above suit only in their personal capacity and not as a person representing the first defendant-Company. This Court in paragraph No.6 of the order has specifically observed that "without prejudice to their rights and contentions in the main suit and with regard to his rights and contentions on the merits of the matter he has no serious objections or oppositions to these applications." It is stated that admittedly the last payment made by the first defendant by way of cheque is on 15.03.2012 and the original suit has been laid only on 17.3.2015 and hence the suit filed as against the first defendant-Company was barred by limitation. That being so, when the defendants 2 and 3 were sought to be impleaded in August 2018, the date of filing of the application is to be reckoned for the purpose of Limitation Act as provided under Section 21 of the Limitation Act. According to Section 21 of the Limitation Act, where after the institution of the suit, a new plaintiff or defendant is substituted



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or added, the suit shall, as regards him, be deemed to have been instituted, when he was so made a party. By virtue of the above said provisions and in view of the applications filed in August 2018 for impleadment of defendants 2 and 3, the suit deemed to have been instituted only in August, 2018 insofar as defendants 2 and 3 are concerned, and on that ground the above suit is hopelessly barred by limitation.

15. Learned counsel for the defendants further submitted that the plaintiff has filed a Proof affidavit of P.W.1 (Navaneeth Singh Bawa), in which, only the first defendant has been shown as a party and defendants 2 and 3 were omitted to be shown as parties and paragraph No.14 of the Proof Affidavit reads as follows :

"Since the 1st defendant failed to discharge its liability towards the plaintiff despite various demands and follow up, the plaintiff has no other remedy except to file the present suit for recovery of his legitimate dues from the 1st defendant."

Along with the proof affidavit, the plaintiff filed Exs.P1 to P15 and



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in the entire proof affidavit, the plaintiff has omitted to seek any relief against the defendants 2 and 3. In other words, there is no whisper in the proof affidavit that defendants 2 and 3 are liable to make good for the loss suffered by IATA, who has executed letter of subrogation in favour of the plaintiff under Document No.Ex.P15. He further submitted that Exs.P9 to P15 are photocopies of the documents and originals were not produced for comparison and this Court vide order dated 22.08.2019 was pleased to pass an order in A.No.4750 of 2019 and observed that the genuineness of the documents 6 to 13 (Exs.P9 to P15) will be decided at the stage of final arguments. At this juncture, now the defendants raised the objections with regard to the admissibility of the document, however, the plaintiff has miserably failed to prove Exs.P9 to P15, which are in the nature of secondary evidence, and the plaintiff is not entitled to let in secondary evidence in utter violation of Section 65 of the Indian Evidence Act. He further submitted that there is no plea in the plaint about the loss of the original document viz., the Letter of Subrogation-Ex.P15 dated 19.07.2018 and the entire plaint averments proceeded on the basis that the original of Ex.P15 was very much available with the plaintiff. While examining P.W.1 he has deposed on the basis of Ex.P.2-



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Power of Attorney and has stated that he was not personally aware of the transactions between the plaintiff and IATA as well as IATA and the first defendant. In view of the said admission by P.W.1, the entire evidence is to be rejected. As per the decision of the Hon'ble Supreme Court in ***A.C.Narayanan Vs. State of Maharashtra*** reported in ***[2005(3) CTC 128 (SC)]***, the Power of Attorney holder does not have personal knowledge of the matter of the appellant and therefore, he can neither depose on his personal knowledge nor can he be cross examined on those facts which are to the personal knowledge of the principal. The Hon'ble Apex Court further held that no one can delegate the power to appear in witness box on behalf of himself. The above judgment of the Apex Court has been approved by the three judges Bench of the Apex Court in ***Janki Vashdeo Bhojwani and another Vs. Indusind Bank Limited and another*** reported in ***[(2014) 11 SCC 790]*** wherein the Apex Court has held categorically, while dealing with Section 138 of the Negotiable Instruments Act, that it is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in



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the case. In the instance case, there is no whisper in the plaint or in the proof affidavit that P.W.1 as a power of attorney has a personal knowledge about the suit transactions.

16. Learned counsel for the defendants further submitted that insofar as documents under Exs.P9 to P12 are concerned, the documents are generated under system and for non-compliance of Section 65-B of the Evidence Act, those documents are liable to be rejected. The documents under Exs.P9 to P15 are photocopies and those documents are squarely hit by Section 65 of the Indian Evidence Act. Further, Exs.P.10, P.11 and P.12 are documents which came into existence at the instance of IATA and those documents are photocopies marked with objections through P.W.1. It has been admitted by P.W.1 that the plaintiff is not a party to Exs.P.9 to P.12. Further, place of execution and mode of payment by the plaintiff to IATA have not been specified in Ex.P.15 – Letter of Subrogation. He further submitted during trial P.W.1 has categorically admitted that the pleas raised in paragraph 12(c) of the amended plaint and on the face of the said admission, no motive can be attributed to defendants 2 and 3 as regards the fraud. A specific question



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was put to P.W.1 that only on and after Ex.P.15, P.W.1 can depose on behalf of the plaintiff and the answer was "yes" and on the face of his admission, the evidence of P.W.1 cannot be relied on in relation to the suit transactions prior to 19.07.2012. Insofar as Ex.P.4 – Insurance policy, is concerned the date of execution of policy is conspicuously absent. Based on the entire evidence of P.W.1, the entire claim raised in the suit is liable to be rejected. On coming to know that the evidence of P.W.1 will in no way substantiate the case of the plaintiff in the matter of recovery of money of nearly Rs.3 crores and to fill up the lacuna of non-joinder of necessary parties viz., IATA, the Power of Attorney of IATA was examined as P.W.2 and Ex.P.16 – original Power of Attorney was marked. Ex.P.16 does not authorize P.W.2 to depose as a witness on behalf of the plaintiff in the suit. Further, P.W.2 has categorically stated that Exs.P.10 and P.13 are xerox copies of the documents and insofar as the originals are concerned, there is no plea in the plaint that those documents have been sent to the defendants in original. From the evidence of P.W.1 and P.W.2 along with the pleas raised in the plaint, the plaintiff has miserably failed to establish that the suit filed against the defendants is within time and the non-joinder of necessary party viz.,



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IATA will not cut at the root of the matter and the absence of IATA will in no way affect the right to recover the amount from the defendants on behalf of IATA. In the absence of necessary averments in the proof affidavit, the suit is to be dismissed as against defendants 2 and 3 for the liability incurred by the 1st defendant. He further submitted that on behalf of the defendants, 2nd defendant was examined as D.W.1 and he has filed a detailed proof affidavit in consonance with the written statement filed by the defendants. In the cross examination of D.W.1, nothing has been elicited in support of the claim made by the plaintiff for the recovery of the suit amount. Hence, the suit against the defendants are liable to be dismissed with costs

17. In support of his contentions, the learned counsel for the defendants relied upon the decision of the Hon'ble Apex Court in ***Economic Transport Organization Vs. M/s.Charan Spinning Mills (P) Ltd. and Another*** reported in ***[(2010) 2 SCR 887]***.

18. Heard the learned counsel for the plaintiff and the learned counsel for the defendants and perused the materials available on record.



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19. The specific case of the plaintiff is that on the basis of the representation and assurance made by the first defendant, IATA agreed to supply Air tickets to the first defendant-Company on credit basis and a Passenger Sales Agency Agreement was entered into between them. Consequently, the first defendant became a registered travel agent and ticketing service provider of IATA. From the period of 16.02.2012 to 15.04.2012, IATA supplied Air tickets to the first defendant-Company and accordingly, issued various invoices. In accordance with the said agreement, the first defendant-Company was to make payments within a period of two weeks from the date of issue of the invoice. However, the first defendant failed to make the said payments and had defaulted on the payments. The outstanding dues was arrived at Rs.1,49,99,588/-, for which, the first defendant-Company issued a cheque for Rs.50,40,522/- and the same was dishonoured. Pursuant to which, IATA had issued a letter dated 19.03.2012 calling upon the first defendant to pay the amount that was due and also sent a 'Notice of Default' informing about the proposed suspension of the first defendant as a registered member of IATA. Subsequently, notice of termination of the agreement was also



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conveyed which would be effect from 30.04.2012, but it would be reversed if the first defendant clears the outstanding amount. Since there was no reply from the first defendant, a letter of termination was also issued to the first defendant-Company on 02.05.2012. However, the first defendant did not even make any attempt to repay the said dues and also no reply was given. Therefore, IATA made a claim with the plaintiff on 02.05.2012 based on Credit Risk Insurance Policy No.61015171 dated 01.07.2011. The scheme of Insurance Policy was to pay IATA any financial loss that it may have incurred which arises solely from default in payments by an IATA agent. The Insurance Policy further only covers defaults of agents who are specifically listed in the Schedule to the Insurance Policy in which the first defendant-Company is distinctly included. Thus, the plaintiff-Insurance Company settled a sum of Rs.1,49,99,588/- to IATA, for which, IATA issued a Letter of Subrogation dated 19.07.2012 in favour of the plaintiff. Therefore, the plaintiff issued a demand notice dated 24.09.2012 to remit the above said amount along with interest. However, the first defendant neither sent any reply nor paid the said amount. The plaintiff issued a legal notice dated 31.02.2014, even for which also there was no response from the first defendant.



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Therefore, the plaintiff has no other option except to file the present suit based on the Subrogation agreement.

20. The defence of the defendants is that there is no privity of contract between the plaintiff-Insurance Company and the first defendant Company and that the suit is barred by limitation. The documents brought into existence between the plaintiff and IATA is not binding on the first defendant-Company. Further, the Letter of Subrogation is an unilateral document, since the said document has not been signed by the plaintiff, therefore, it will not bind the first defendant- Company. The insurance policy is also not sufficiently stamped and the same is inadmissible in evidence. Further, the premium for the insurance policy paid by IATA by debiting the account of the defendants is not binding on the defendants. The date of insurance policy number 61015171 is totally absent and the Letter of Subrogation dated 19.07.2012 does not satisfy the essential requisites of subrogation within the meaning of Section 92 of the Transfer of Property Act. There is no documentary proof of payment of the amount, alleged to be payable on behalf of the defendants by the plaintiff to IATA. In the absence of such proof, the question of subrogation does



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not arise and the right which was available to the insured IATA as against the defendants alone can be enforced.

21 . Issue No.1 : Whether International Air Transport Association has validly subrogated/assigned/ transferred all its actionable claims and rights in relation to the debt owed by the defendants to the plaintiff ?

21.1. According to the plaintiff, they are an Insurance Company and the first defendant is a travel agent. The first defendant, as a travel agent, is accredited by IATA. It is the specific case of the plaintiff that they have insured IATA *qua* credit risks. In other words, the plaintiff is the Insurance Company and IATA is the insured. It is the case of the plaintiff that based on the assurance given by the first defendant-Company, IATA agreed to supply Air tickets to the first defendant on credit basis. Subsequently, a Passenger Sales Agency Agreement dated 12.04.2002 was entered into between them. Based on the said agreement, IATA supplied Air tickets to the first defendant from 16.02.2012 to 15.04.2012 and issued various invoices. However, the first defendant failed to make payments and had defaulted in payments. The first defendant thereafter, issued a cheque for Rs.50,40,522/- as part payment



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against the outstanding due of Rs.1,49,99,588/-, but the same was dishonoured. Therefore, IATA by its letter dated 19.03.2012-Ex.P10 called upon the first defendant to pay the amount due. Following the same IATA also sent a "Notice of Default" dated 19.03.2012 informing the suspension of the first defendant-Company as an accredited agent of IATA. Due to non-responsive attitude of the first defendant, IATA terminated the agreement vide Ex.P.13-termination letter on 02.05.2012. However, the first defendant did not even make any attempt to repay the said dues to IATA despite repeated demands and therefore, IATA made a claim with the plaintiff-Insurance Company on 02.05.2012 based on Credit Risk Insurance Policy No.61015171, dated 01.07.2011. As per the Insurance Policy, the plaintiff settled a sum of Rs.1,49,99,588/- with IATA, for which, IATA issued a Letter of Subrogation-Ex.P.15, dated 19.07.2012 in favour of the plaintiff. Based on the said subrogation, the plaintiff placed a demand by sending a notice dated 24.09.2012 to remit the above due amount along with interest. The first defendant neither paid the amount nor issued any reply. The plaintiff issued a legal notice dated 31.02.2014, even for which also there was no response from the first defendant. Hence, the present suit has been filed for recovery of dues



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from the first defendant based on the Letter of Subrogation.

21.2. Initially the suit was filed only against the first defendant-Company, who is the legal entity which is liable to pay the amount that was due to plaintiff. From the above, on a perusal of records i.e., Insurance Policy – Ex.P4, Passengers Sales Agency Agreement – Ex.D1, Statement of Transaction Ex.P9 and Demand Notice dated 24.09.2012 – Ex.P.7, the plaintiff-Insurance Company has proved that IATA supplied Air tickets to the first defendant-Company on credit basis, for which there was an outstanding due of Rs.1,49,99,588/-. Even after much efforts taken by IATA, the first defendant did not repay the due amount, as per the Insurance Policy-Ex.P4. Therefore, IATA made a claim with the plaintiff. The plaintiff as an insurer made payment to IATA. As per Ex.P6, Discharge Voucher dated 06.07.2012 IATA confirmed the payment from the plaintiff. After receipt of the said amount, IATA issued a Letter of Subrogation-Ex.P15 in favour of the plaintiff. Therefore, by virtue of Ex.P4-Insurance Policy, Ex.D1-Passengers Sales Agency Agreement and Ex.P15-Deed of Subrogation, the plaintiff Insurance Company stepped into the shoes of IATA.



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21.3. During the cross examination D.W.1 admitted that the first defendant-Company has not made any payment for the tickets supplied by IATA and also admitted that cheque issued for part payment was also dishonoured. He has also admitted that the accreditation from an organization such as IATA is crucial for running the business of the first defendant-Company. Further, he has also admitted that IATA supplied domestic and international air tickets to the first defendant-Company between February 2012 to March, 2012. He has also admitted that after dishonouring of the cheque, the first defendant-Company has not made any other payments. Further, the first defendant-Company did not satisfy the dues of IATA, even after issuance of Notice of Default dated 19.03.2012 (Ex.P10) and also admitted that he does not know how to say in the context of the essential requisites of subrogation within the meaning of Section 92 of the Transfer of Property Act. He also admitted that in the transaction between IATA and first defendant-Company a running account was maintained. He further admitted that he has not filed any document to show that the first defendant-Company made a payment in respect of invoices raised by the plaintiff. From the evidence



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D.W.1 it would reveal that the first defendant-Company admitted the liability towards IATA

21.4. The main defence taken by the learned counsel for the defendants is that the Letter of Subrogation dated 19.07.2012 does not satisfy the essential requisites of subrogation within the meaning of Section 92 of the Transfer of Property Act and there is no documentary proof of payment of the amount, alleged to be payable by the plaintiff to IATA. However, it is seen that owing some default on the part of the first defendant, IATA lodged certain claims with the plaintiff-Insurance Company and plaintiff-Insurance Company, as per Insurance Policy-Ex.P4 honoured the same. After receipt of the payment, vide Ex.P.6-Discharge Voucher dated 06.07.2012 IATA confirmed the payment from the plaintiff and also issued a Letter of Subrogation - Ex.P15 in favour of the plaintiff. More over, D.W.1 also admitted their liability towards IATA. As per the Letter of Subrogation, the plaintiff stepped into the shoes of IATA. Therefore, the plaintiff has proved its case by oral and documentary evidence that Letter of Subrogation dated 19.07.2012 satisfy the essential requisites of subrogation.



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21.5. In the above context, Section 3 of Transfer of Property Act, 1882 (4 of 1882) as under :

"3. Interpretation clause - In this Act, unless there is something repugnant in the subject or context, -

“immoveable property” does not include standing timber, growing crops or grass:

“instrument” means a non-testamentary instrument:

¹³[“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary:]

“registered” means registered in [any part of the territories] to which this Act extends] under the law for the time being in force regulating the registration of documents:



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“attached to the earth” means -

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings;or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

¹⁷ [“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;]

¹⁸ [“a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I - Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property



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which is being acquired, or of the property wherein a share or interest is being acquired, is situated:]

Provided that -

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,
- (2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II - Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III - A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

21.6. In the light of the above facts and circumstances, this Court



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finds that by virtue of Ex.P15-Letter of Subrogation, IATA has validly subrogated/assigned/transferred all its actionable claims and rights in relation to the debt owed by the first defendant to the plaintiff. This issue is answered accordingly in favour of the plaintiff.

22. Issue No.2 : Whether the suit has been filed contrary to Order XXIX CPC and if so, what are the consequences?

22.1. Initially, the plaintiff filed the suit as against the first defendant-Company based on Ex.P15-Letter of Subrogation. Though the first defendant filed the written statement through its Director i.e., the second defendant herein and has stated that the suit is not maintainable under Order XXIX of CPC., the first defendant-Company alone has been shown as a sole defendant on the date of filing of the suit without impleading any of its Directors or any other persons as officer in charge. Subsequently, the second defendant filed an affidavit on 16.03.2018 stating that first defendant-Company has been struck off from the Registrar of Companies and no steps have been taken to revive the said company. Based on the same, plaintiff filed an application to implead the defendants 2 and 3, who are the Directors as well as major share holders



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of the said company as parties to the suit and the said application came to be allowed on 05.10.2018.

22.2. Admittedly, the first defendant-Company is a private limited company is a legally entity. A legal entity can file the suit or the suit can be filed as against the legal entity. Order XXIX Rule 1 CPC only says about the verification of the pleadings.

22.3. For better appreciation Order XXIX Rule 1 CPC is extracted hereunder :

" In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the security or by any director or other principal officer of the corporation who is able to depose to the facts of the case."

22.4. Therefore, a bare reading of Order XXIX Rule 1 CPC, it is seen that a suit can be filed by or against the corporation if the suit filed by corporation and the same has to be verified on behalf of the corporation. In the instant case, the suit was filed against the first



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defendant - Company, which is a legal entity. After filing of the suit, summons were served on the first defendant-Company, thus, the second defendant herein filed the written statement for and on behalf of the first defendant-Company. Further, the second defendant as a Managing Director of the first defendant-Company has signed and verified the pleadings on behalf of the first defendant-Company and thereafter the second defendant also filed the affidavit dated 16.03.2018, in which, he has deposed that due to non-filing of the Income Tax returns from the Assessment year 2012 onwards by the first defendant-Company, the first defendant-Company has been struck off from the Registrar of Companies and the last balance sheet was submitted to the Registrar of Companies on 31.03.2011. The said affidavit was recorded by this Court and subsequently, the plaintiff was permitted to implead second and third defendants as parties to the suit.

22.5. The first defendant-Company is the legal entity. The second defendant as a Managing Director of the first defendant-Company received the summons, filed the written statement and has signed and verified the pleadings for and on behalf of the first defendant-Company.



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Therefore, this Court finds that the present suit filed by the plaintiff is not contrary to Order XXIX Rule 1 CPC. This issue is answered accordingly in favour of the plaintiff.

23. Issue No.3 : Whether IATA is a necessary party ? If so, whether the suit ought to be dismissed for non-joinder of necessary parties ?

23.1. Insofar as third issue is concerned, as already discussed above the plaintiff is the insurer and IATA is the insured. The first defendant, as a travel agent, is accredited by IATA. Owing to some default on the part of the first defendant, IATA made certain claims with the plaintiff Insurance Company and based on the Ex.P4-Insurance Policy the plaintiff Insurance Company honoured the claim and paid a sum of Rs.1,49,99,588/- to IATA. On receipt of such payment, IATA had also issued Ex.P.6-discharge voucher dated 06.07.2012 by confirming the payment from the plaintiff and also issued a Letter of Subrogation-Ex.P15. As per Ex.P15, the plaintiff has stepped into the shoes of IATA. The Letter of Subrogation executed between the plaintiff and IATA is that of a subrogation-cum-assignment which is evident from Clauses 2 to 4 of



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the Letter of Subrogation, which states that IATA subrogates all rights and remedies they possess against the defendants to the plaintiff with respect of their defaults in payments and authorizes the plaintiff to institute any proceedings in the plaintiff's name for the said recovery. Therefore, the plaintiff is entitled to recover the outstanding dues from the first defendant-Company.

23.2. The main defence taken by the defendants is that IATA was not impleaded as a party in the suit since the liability of the first defendant-Company towards IATA was not denied by the defendants. During cross examination D.W.1 has admitted that based on the agreement IATA supplied Air tickets to the first defendant-Company on credit basis and issued various invoices from 16.02.2012 to 15.04.2012 and also admitted their liability. Once the liability of the first defendant towards IATA was admitted by defendants and the plaintiff-Insurance Company has also established its case that they compensated loss caused by the first defendant and paid claimed amount to IATA, after receipt of the said amount IATA issued Letter of Subrogation. Though IATA was not impleaded as a party, however, the Power of Attorney of IATA was



examined as P.W.2 and he has clearly deposed about the relationship between the parties and liability of the first defendant which was met out by the plaintiff to IATA. When the defendants had sufficient opportunity to cross examine and pose question to a representative of IATA, they failed to do so to establish their defence. Moreover, D.W.1 also admitted the liability of the first defendant with IATA. Therefore, the suit is not liable to be dismissed based on the non-joinder of necessary parties. Further, based on the admitted facts and also based on Ex.P15, as the plaintiff being the insurer has already stepped into the shoes of IATA and therefore, IATA is not a necessary party. This issue is answered accordingly.

24. Issue No.4 : Whether the relief sought ought to be denied to the plaintiff due to the non-existence of privity of contract between the plaintiff and the defendant ?

As already stated the first defendant as a travel agent is accredited by IATA. Based on Ex.D1-Passenger Sales Agency Agreement dated 12.04.2002, IATA supplied Air tickets to the first defendant - Company on credit basis and issued various invoices which were marked as Ex.P9.



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The said transactions were admitted by D.W.1 during cross examination.

D.W.1 also admitted the relationship between first defendant and IATA, the liability of the first defendant towards IATA, dishonour of the cheque, which was issued by the first defendant to IATA for the part payment of the outstanding amount and also admitted that post dated cheque was given on 15.03.2012, but no payment was made to honour the dues. It is the specific case of the plaintiff that they have insured IATA qua credit risks. Due to some default on the part of the first defendant, as per the Insurance Policy, the plaintiff Insurance Company satisfied the claim of IATA, for which, IATA issued a Deed of Subrogation in favour of the plaintiff. Therefore, the plaintiff has stepped into the shoes of IATA. Even though there is no privity of contract between the plaintiff-Insurance Company and the first defendant-Company, directly through the principles of subrogation, the first defendant-Company is liable to pay the dues to the plaintiff. Therefore, based on the Letter of Subrogation, the plaintiff-Insurance Company is entitled to recover the outstanding amount from the first defendant Company. This issue is answered accordingly in favour of the plaintiff.



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25. Issue No.5 : Whether the suit is barred by limitation ?

25.1. Admittedly, the first defendant as a registered travel agent availed Air tickets on credit basis for the period from 16.02.2012 to 15.04.2012 from IATA, for which IATA issued various invoices. Based on the said agreement dated 12.04.2002, the first defendant has to make payments within two weeks from the date of issue of the invoice. However, the first defendant failed to make the payments and had defaulted on the payments. It is relevant to extract the following the table showing the sales period and the outstanding amount due :

S.No.	Sales Period	Billed Value	Overdue Amount
1.	1 st to 15 th March 2012	5,75,442.00	
2.	16 th to 31 st March 2012	1,60,977.00	
Total			7,36,419.00
International			
3.	16 th to 29 th February 2012	50,40,522.00	
4.	1 st to 15 th March 2012	62,30,565.00	
5.	16 th to 31 st March 2012	29,98,795.00	
Total			1,42,69,882.00
Subsequent Debit and Credits			
International			
6.	1 st to 15 th April 2012	(6,713.00)	
Total			(6,713.00)
Net due (Domestic)			7,36,419.00
Net due (International)			1,42,63,169.00
Net due total till date			1,49,99,588.00



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25.2. As indicated in the table mentioned above, the first defendant Company had outstanding dues at Rs.1,49,99,588/- to IATA. The first defendant Company has also admitted the said outstanding dues and issued a post dated cheque dated 15.03.2012 for a sum of Rs.50,40,522/- which stood dishonoured. Pursuant to which, on 19.03.2012 IATA issued a letter calling upon the first defendant-Company to pay the amount which was due and also issued 'Notice of Default' informing about the suspension of the first defendant as a registered member of IATA. Following the same a reminder was also sent to the first defendant on 25.03.2012. Further, a notice of termination of agreement was also issued on 02.05.2012. Despite repeated demands, the first defendant neither repaid the said due amount nor sent any reply to the above said communications. Therefore, IATA lodged certain claims with the plaintiff Insurance Company and according to the insurance policy the plaintiff Insurance Company has settled a sum of Rs.1,49,99,588/- to IATA. Having honoured the same, IATA has issued a Letter of Subrogation on 19.07.2012 to the plaintiff whereby, IATA had subrogated/assigned/transferred all its actionable claims and rights in



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relation to recovery of debts from the first defendant to the plaintiff. By virtue of the aforesaid Letter of Subrogation, the plaintiff/Insurance Company is entitled to recover the sum of Rs.1,49,99,588/- from the first defendant. Therefore, plaintiff-Insurance Company issued a demand notice dated 24.09.2012 calling upon the first defendant to remit the said amount along with interest. Since no response is forthcoming, the plaintiff Insurance Company issued a legal notice dated 31.02.2014, for which also there was no response from the first defendant. Hence, the plaintiff has filed the present suit.

25.3. From the above, on a perusal of the records it is seen that the plaintiff settled the claim amount to IATA, for which, IATA issued Letter of Subrogation-Ex.P.15 on 19.07.2012 in favour of the plaintiff and hence, the plaintiff has got three years time for claiming the same from the first defendant. It is further seen that the suit was filed on 13.02.2015 i.e., within three years from the date of execution of Letter of Subrogation dated 19.07.2012. Even otherwise, the first defendant Company acknowledged their liability and issued a cheque on 15.03.2012 and the same was dishonoured and IATA has communicated letter and notice of



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default on 19.03.2012. Therefore, the date of issuance of cheque on 15.03.2012, is nothing but the acknowledgment of the liability of the first defendant. Even from the date of issuance of cheque i.e., on 15.03.2012, time prescribed for recovery of outstanding amount by IATA is 3 years and the present suit was filed in time i.e., on 13.02.2015. Even otherwise the first defendant availed air ticket on credit basis for a period from 16.12.2012 to 15.04.2012 from IATA for which IATA issued various invoices as indicated in the table supra. Though the plaintiff settled the outstanding amount to IATA, the plaintiff Insurance Company stepped into shoes of IATA and they have obtained the right to recover the said amount from the first defendant under Letter of Subrogation - Ex.P15.

25.4. In the light of the above said facts, this Court finds that the suit was well within the period of limitation as the first defendant accepted the claim and issued cheque on 15.03.2012 and the suit was filed in time. Therefore, the suit is not barred by limitation.

26. Additional Issue : Whether, this is a fit case for piercing the corporate veil to make the 2nd and 3rd defendants also jointly liable to pay



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the plaintiff ?

26.1. Admittedly the relationship between the parties and the liability of first defendant towards IATA is not in dispute and also there is no dispute that the plaintiff Insurance Company settled the claim of IATA, for which, IATA executed Letter of Subrogation. It is the specific case of the plaintiff that according to the Letter of Subrogation, the plaintiff-Insurance Company issued a demand notice to the first respondent calling upon the first defendant to remit the sum of Rs.1,49,99,588/- along with interest to the plaintiff. Since there was no response from the first defendant, the plaintiff issued legal notice, for which also there was no response and hence, the present suit has been filed. Pending suit, the second defendant filed an affidavit stating that the first defendant-Company has been struck off from the Registrar of Companies. Based on that the plaintiff has impleaded the defendants 2 and 3 as parties in the suit.

26.2. It is seen that the suit summons served on the first defendant-Company in the year 2015 itself. Thus, the second defendant as a Director of the first defendant-Company filed written statement for



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and on behalf of first defendant-Company. However, till framing of issues and commencing of the trial, the second defendant has not brought to the notice of this Court or to the parties that the first defendant/ Company has been struck off from the Registrar of Companies. Subsequently, the second defendant filed an affidavit on 16.03.2018 regarding striking off the first defendant-Company and based on that plaintiff impleaded the defendants 2 and 3 as parties in the suit and also amended the plaint. When a specific question was put to D.W.1 during the cross examination on 02.12.2022 that whether the first defendant Company struck off from the Registrar of Companies he answered that he does not know the exact date, may be four years back i.e., 2018.

26.3. Even before impleading the defendants 2 and 3 as parties to the suit, the second defendant as a Director of the first defendant-Company issued a cheque for and on behalf of the first defendant in favour of IATA and the same was dishonoured. Subsequently, after subrogation, the plaintiff issued demand notice and the same was received by the second defendant as a Director of the first defendant-Company. During the cross examination of D.W.1 there is an explicit



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admission of non-payment of dues on behalf of the first defendant and also D.W.1 had not denied that they are not the Directors of the first defendant-Company. It is seen that in the affidavit the second defendant has not specifically mentioned that when the first defendant-Company was struck off, simply he has made a bald statement in the affidavit that it was struck off from the Registrar of Companies, but during cross examination on 02.12.2022 he has stated that may be four years back, which clearly shows that the defendants 2 and 3 purposefully in order to avoid the liability of the first defendant Company they allowed the company to be struck off from the Registrar of Companies.

26.4 Though the second defendant has filed the written statement for and on behalf of the first defendant-Company even prior to impleading the defendants 2 and 3 as parties, subsequently, after impleadment, the defendants 2 and 3 have filed the written statement and have stated that they have been impleaded only after the period of limitation, therefore, the claim against defendants 2 and 3 is barred by limitation. It is the specific case of the plaintiff that the plaintiff was not aware that the first defendant-Company had indeed been struck off. It is



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the submission of the plaintiff that if the plaintiff had the knowledge that the first defendant-Company was struck off, the plaintiff would have made the defendants 2 and 3 parties alone as parties to the suit at the first instance and there is no necessity for the plaintiff to not add the defendants 2 and 3 as parties since the plaintiff case is for recovery of dues that was owed to it.

26.5. As already stated first defendant-Company was a legal entity, the suit can be filed against the legal entity. The main defence taken by the learned counsel for the defendants is that defendants 2 and 3 have been impleaded only after the period of limitation and therefore, the suit claim is barred by limitation under Section 21 of the Limitation Act. It is seen that second defendant filed the affidavit before this Court only on 16.03.2018 that the first defendant-Company was struck off from Registrar of Companies and that subsequently, the defendants 2 and 3, who are the Directors as well as major share holders of the first defendant-Company, have been impleaded by this Court on 05.10.2018. Therefore, it is not barred by limitation and Section 21 of the Limitation Act is not applicable.



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26.6. It is settled proposition of law that the cause of action arose only when the suit was filed originally against the legal entity i.e., the first defendant-Company herein within the period of limitation. Subsequently, the second defendant brought to the notice of the Court by way of affidavit about the striking off of the first defendant-Company from the Registrar of Companies and therefore, the plaintiff impleaded the defendants 2 and 3 as parties in the suit. However, the defendants 2 and 3 have not established that they have brought to the notice of the plaintiff regarding striking off of the first defendant/Company before filing of the affidavit dated 16.03.2018 either before this Court or to the plaintiff. Further, during cross examination D.W.1 himself admitted that the first defendant-Company has been struck off from the Registrar of Companies four years back. It is seen that D.W.1 was cross examined in the year 2022 and as per his deposition the company was struck off on 2018 and the same came to the knowledge of the plaintiff only in the year 2018 and the plaintiff impleaded the defendants 2 and 3 in the suit as they are Directors as well as major share holders of the first defendant-Company. From the oral and documentary evidence, it is seen that in order to avoid the liability of the first defendant-Company the defendants



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2 and 3 have allowed the company to be struck off from the Registrar of Companies. The defendants 2 and 3 have not proved the contra in the case. Therefore, this Court finds that the corporate veil of the first defendant-Company has to be pierced and defendants 2 and 3, who are actually participated in the day-to-day affairs of the company as Directors as well as major share holders of the first defendant-Company have to be made personally liable to the plaintiff to pay the amounts claimed by the plaintiff in the above suit as the first defendant-Company is a private limited company which has been struck off. Considering the pecuniary nature of the case and also considering the citations referred by the learned counsel for the plaintiff, this Court finds that the defendants 2 and 3 are jointly liable to pay the claim of the plaintiff. This issue is answered accordingly in favour of the plaintiff.

27. Issue No.6 : Whether the plaintiff is entitled to the suit claim as set out in the plaint prayer ?

27.1. As elaborately discussed above, since the plaintiff-Insurance Company honoured the claim of IATA and having honouring the same, IATA issued Letter of Subrogation-Ex.P.15. Hence, the plaintiff is entitled



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to recover the defaulted amount of Rs.1,49,99,588/- from the first defendant-Company as per Ex.P15. As the first defendant/Company has been struck-off from the Registrar of Companies, the defendants 2 and 3, who are the Directors as well as major share holders of the first defendant-Company, are jointly liable to pay the said amount due to the plaintiff. Further, the plaintiff-Company has also established their case by oral and documentary evidence.

27.2. As far as interest is concerned, since it is a commercial transaction, the plaintiff is entitled to get interest at the rate of 18% from the date of invoice till filing of the suit. Further, since there is no specific contract or clause for interest, the plaintiff is entitled to get interest at the rate of 12% per annum for the amount of Rs.1,49,99,588/- from the date of filing of the suit till the date of final payment.

27.3. Insofar as the admissibility of documents i.e., Exs.P.9 to P15 are concerned, plaintiff's side witnesses have stated that the originals are with the defendants and that xerox copies have been marked. According to the defendants, insofar as the originals are concerned, there is no plea



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in the plaint that those documents have been sent to the defendants in original. Further, there is no plea in the plaint about the loss of the original document, viz., the Letter of Subrogation-Ex.P15 dated 19.07.2018 and the entire plaint averment proceeds on the basis that the original of Ex.P15 was very much available with the plaintiff. However, P.W.1 has deposed that they misplaced the document. As far as admissibility of the documents are concerned, during the cross examination, the defendants have admitted their liability, as the first defendant-Company has not made any payments for the tickets supplied by IATA. Since the liability is admitted, mere marking of copies of documents will not affect the suit claim made by the plaintiff.

27.4. The main defence taken by the learned counsel for the defendants that the Letter of Subrogation is an unilateral document, since the said document has not been signed by the plaintiff and also the plaint document No.3 – Insurance Policy is not sufficiently stamped and the said documents are inadmissible in evidence. In the instant case, the



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contract between IATA and first defendant-Company has not been denied by the defendants. The plaintiff-Insurance Company had issued a Credit Risk Insurance Policy No.61015171 to IATA to indemnify IATA in respect of any financial losses caused to it due to default in making payments by IATA accredited agent, namely the defendants. As such, due to default in making payment by the first defendant-Company to IATA, the plaintiff compensated the claim of IATA. Further, P.W.2 has clearly stated regarding privity of contract between the IATA and first defendant-Company and also the relationship between them and also clearly stated about the claim compensated by the plaintiff. Even assuming that Insurance Policy is not sufficiently stamped, but it has been marked. On seeing, it is clear that the document is not sufficiently stamped. The Registry of this Court is directed to verify the documents as to whether they are duly stamped or not, if not so, recover the stamp duty penalty from the plaintiff and remit the same to the Government.

28. There is no quarrel with the proposition laid down in the decisions referred by the learned counsel for the defendants, however, considering the pecuniary nature of the facts of the case, this Court finds



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that those decisions are not applicable to the present case on hand.

29. In the result, the suit is decreed to the extent indicated above.

There shall be no order as to costs.

04.10.2024
(1/2)

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

ms

Note : Registry is directed to comply with directions as stated above.

List of Witnesses examined on the side of the plaintiff

Navneet Singh Bawa	-	PW1
Rodney D'Cruz	-	PW2

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Photocopy of Board Resolution authorising to represent the plaintiff in the present suit	29.04.2014
2.	P2	Photocopy of Power of Attorney	16.11.2018
3.	P3	Certified Copy of Certificate of incorporation of the plaintiff	08.09.2000
4.	P4	Office copy of Credit Risk Insurance Policy No.61015171 issued by plaintiff to IATA	
5.	P5	Original Claim Submission Form submitted by IATA to plaintiff	02.05.2012



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6.	P6	Original Discharge Voucher executed by IATA in favour of the plaintiff	06.07.2012
7.	P7	Office copy of Demand Notice dated 24.09.2012 issued by plaintiff to the 1 st defendant along with postal receipts and tracking report from the website of the postal department, along with original postal receipts and tracking report from India Post website	
8.	P8	Office copy of Demand Notice issued by plaintiff to the 1 st defendant along with postal receipts and tracking report from the website of the postal department, along with original postal receipts and tracking report from India Post website	31.10.2014
9.	P9	Photocopy of Running accounts maintained by IATA in respect of defendant's outstanding dues starting February 16,2012 till March 31,2012	
10.	P10	Photocopy of letter issued by IATA to defendant	19.03.2012
11.	P11	Photocopy of letter issued by IATA to defendant	19.03.2012
12.	P12	Photocopy of the letter issued by IATA to defendant	25.04.2012
13.	P13	Photocopy of letter issued by IATA to defendant	02.05.2012
14.	P14	Photocopy of Loss/claim calculation sheet prepared by plaintiff No.1 showing outstanding payment of Rs.1,49,99,588/- against the 1 st defendant	
15.	P15	Photocopy of letter of subrogation issued by IATA in favour of the plaintiff (Counsel for the defendant raised objection for marking Ex.P9 to Ex.P15 stating that they are only photocopies and they are not duly attested and the originals have not been produced for comparison.)	19.07.2012



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16.

P16

Original of the Power of Attorney

06.06.2017

List of Witness examined on the side of the defendants

G.Senthil Kumar

-

DW1

List of documents marked on the side of the defendants : - Nil

04.10.2024
(2/2)



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