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A.S.No.326 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-06-2025

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

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1.K.Brahmanaidu
Proprietor KBN Exports,
Having office At 5-264-3,
Cinema Hall Road, Ganapavaram,
Nadendla Mandal, Guntur,
Andhra Pradesh – 522 619.

2.Ahcof Industrial Development Company Limited
Sunon Plaza No. 389-399,
Jinzhai Road,
Hefei, Anhui, China,
represented by its Power Of Attorney, K.Srinath,
49/26, 1st Floor, Coral Merchant Street, Chennai-1

Appellant(s)/Plaintiff(s)

Vs

Hyundai Merchant Marine Company Limited, Korea
194 Yulgok-ro, Jongro-ko, Seoul 110 754, South Korea,
represented by its Agent
Hyundai Marchant Marine India Private Limited,
EGA Trade Center, 3rd Floor, D.No.318,
Poonamalle High Road, Kilpauk, Chennai 600 010

Respondent(s)/Defendant(s)



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First Appeal filed under Order XLI Rule 1 r/w Section 96 of the CPC to set aside the judgment and decree dated 31.10.2018 passed in O.S.No.2426 of 2017 on the file of the XV Additional City Civil Court, Chennai.

For Appellant(s): Mr.P.Giridharan

For Respondent(s): Mr.S.Vasudevan

ORDER

Unsuccessful plaintiffs have preferred the appeal as against the judgment and decree dated 31.10.2018 passed in O.S.No.2426 of 2017 on the file of the XV Additional City Civil Court, Chennai.

2. Suit is filed for recovery of money from the defendant for a sum of Rs.24,99,000/- together with interest at 18% per annum from the date of filing of the suit till the date of realization. The trial Court dismissed the suit.

3. The parties are referred to as per rankings in the trial Court.



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WEB COPY 4. The brief case of the plaintiffs is as follows:

4.1 The first plaintiff is a merchant and exporter of various kinds of textile products *inter alia* including cotton yarn and cotton yarn waste and the defendant is engaged in the business of freight forwarding and logistics. During the month of May 2015, the first plaintiff through their forwarder had approached the defendant for the purpose of exporting the shipment of 5x40 feet containers of cotton yarn waste from the Port of Chennai to Xinging, Tianjin, China, to the second plaintiff. The defendant agreed for the same and issued a bill of lading dated 25.11.2015, wherein, the first plaintiff and second plaintiff were reflected as the Shipper and Notify Party/Consignee, respectively. The port of loading was Chennai, India and the port of discharge was Shanghai, China and the place of delivery was Xinging, Tianjin, China. The cargo mentioned in the bill of lading as “cotton yarn waste” and the total gross weight of 1,28,690 kgs.

4.2 The first plaintiff raised an invoice on the second plaintiff dated 16.11.2015 for the value of the cargo for a sum of USD 1,13,252/-, wherein,



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the goods were denoted as “cotton yarn waste” and also in the packing list dated 16.11.2015, it was denoted that 720 fully pressed bales of “cotton yarn waste”. Similarly, Certificate of Origin dated 25.11.2015, Stuffing Report dated 23.11.2015, Phytosanitary Certificate dated 23.11.2015 and Fumigation Certificate dated 23.11.2015 were also issued indicating the cargo as “cotton yarn waste”. The first plaintiff have also furnished a Certificate for Pre-Shipment Inspection of Recycling Scraps to China dated 05.12.2015 declaring that the cargo was in conformity with the provision of the Chinese Standard GB. The said consignment would reach the Port of Shanghai on 10.12.2015.

4.3 The defendant had never informed the first plaintiff prior to the goods reaching Shanghai that there is a restriction for the import of waste in Shanghai.

4.4 Despite several reminders and correspondences *vide* email and personal visits, the defendant failed to complete the contract of carriage, due to which, the second plaintiff had incurred additional charges of expenses at the Port of Shanghai for clearance of the consignment and get the same



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delivered at the Xinging, Tianjin, China, to the tune of Rs.26,30,678/-. The first plaintiff has also paid freight to the defendant to the tune of Rs.8,41,522/-.

4.5 The first plaintiff issued a notice dated 05.07.2016 demanding the payment of Rs.26,20,678/- for the outstanding invoices. The defendant sent a reply through email dated 21.07.2016, asking the plaintiffs' Advocate a detailed breakdown of expenses incurred by the plaintiffs. The plaintiffs had sent a demand notice to the defendant for a sum of Rs.26,20,678/-, but, the plaintiffs reconstructed and limited their claim to a sum of Rs.24,99,000/-. Both the shipper and the consignee are suing together, as both of them have suffered loss due to breach of contract. Hence, the suit.

5. The brief case of the defendant is as follows:

5.1 The suit is barred by limitation and the liability is extinguished under Article III Rule 6 of the Schedule to the Indian Carriage of Goods by Sea Act, 1925 (for brevity “the Act”), which is applicable as the suit transaction involved carriage of goods from the Port of Chennai, India, to the Port of Xinging, China, as required under Section 2 of the Act. The



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defendant being a carrier, is not responsible for loss or damage and it is entitled to protection under Article IV (2)(i) of the Act.

5.2 The first plaintiff through its forwarding agent Dahnay Logistics Private Limited/agent booked seven containers of the cargo “cotton and yarn” from the post of Krishnapatnam to the Port of Qingdao, China, on 11.11.2015. Neither the first plaintiff nor its agent questioned or objected to the transshipment though Shanghai, China. The first plaintiff through its agent sought an amendment to the booking note on 16.11.2015 to change the port of discharge as Xinging Port, China, instead of Qingdao Port, China, as instructed earlier. The defendant agreed and effected the necessary corrections. The first plaintiff was able to lode only five containers of the cargo of “cotton and yarn” on board defendant's vessel at Chennai for safe carriage and deliver at Xinging Port, China via Shanghai Port. The defendant then raised its tax invoice dated 26.11.2015 for the freight, expenditure and other charges amounting to Rs.66,243/-. The defendant also raised invoice dated 26.11.2015 towards detention charges at Chennai for Rs.11,457.44/-. The tax invoice also described the cargo as



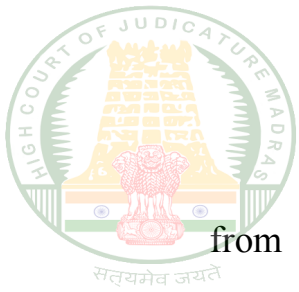
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“cotton and yarn”.

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5.3 The agent of the first plaintiff proceeded to fill in the details of cargo and other details viz. name of the shipper and name of the consignee in online system base, through which, the ocean bill of lading would be issued by the defendant. The agent filled in the details regarding the cargo as “cotton yarn waste” instead of “cotton and yarn” as declared in the booking note. The first plaintiff without notice to the defendant altered the nature of the cargo carried on board the ship. The defendant then proceeded to issue the duly signed ocean bill of lading on 27.11.2015 to the first plaintiff. The defendant did not notice the change in the nature of the cargo effected by the agent of the first plaintiff in the bill of lading.

5.4 This change of declaration of cargo was discovered by the defendant on 09.12.2015, when the ship had reached the Shanghai Port on 10.12.2015. It was found that the cargo having been mentioned as “cotton yarn waste” in the bill of lading prohibited from transshipment in China. The defendant was therefore unable to transship the cargo of the plaintiffs



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from Shanghai to Xinging, Tianjin, China. The defendant immediately informed the same to the agent of the second plaintiff by email dated 09.12.2015, in turn, they sent a reply email dated 09.12.2015 stating that the booking was wrongly placed at their end.

5.5 The five containers had been discharged at Shanghai Port on 10.12.2015 and were lying uncleared due to the fact that it was declared as “cotton yarn waste”. The containers of the defendant were incurring detention charges. The first plaintiff/its agent involved in a prolonged exchange of emails with the defendant and finally the defendant accepted to deliver the cargo at Xinging Port, China through Pusan, South Korea. Hence, new bills of lading dated 31.03.2016 and 01.04.2016 were issued in substitution of the earlier bill of lading, which was surrendered to the defendant. The defendant waived 50% the container detention charges incurred by it at China in order to maintain good customer relationship by its emails dated 16.03.2016 and 18.03.2016. The defendant raised an invoice dated 18.03.2016 on the first plaintiff for Rupee equivalent of CNY 71,312.50 representing 50% of the detention charges together with taxes,



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which workout to Rs.8,41,522.10/-. The first plaintiff paid the same to the defendant. The defendant raised another invoice for 50% amounting to CNY 71,312/- on the second plaintiff/consignee, who has paid the same.

5.6 The vessel of the defendant sailed away from Shanghai, China and delivered five containers at Xinging, Tianjin, China, on 09.04.2016. The second plaintiff has also taken delivery of the same. The defendant is no any way connected with the invoices dated 19.12.2016 and 07.04.2016. The second plaintiff as a consignee is also bound upon the acts of the first plaintiff. Both the plaintiffs are not entitled to make any claim on the defendant. Hence, prayed to dismiss the suit.

6. Based on the above pleadings, the trial Court framed the following issues:

(1) Whether the defendant is liable to pay the loss of damages due to failure of the defendant in delivery the consignment handover by the second plaintiff?

(2) Whether the first plaintiff is entitled to claim the suit amount of



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Rs.24,99,000/- from the defendant?

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(3) Whether the plaintiff is entitled to claim 18% interest from the amount claimed in the suit?

(4) To what other relief the plaintiff is entitled?

7. On the side of the plaintiffs, one Srinath was examined as PW1 and Exs.A1 to A15 were marked. On the side of the defendant, one D.Balaji was examined as DW1 and Exs.B1 to B10 were marked.

Findings of the trial Court:

8. A perusal of the email communication in Ex.B2 dated 09.12.2015 shows that the defendant had alleged that the plaintiffs have wrongly described the cargo as “cotton yarn waste” and in the booking note in Ex.B1 dated 11.11.2015 in the column of commodity, it has been filled up as “cotton and yarn”, but, in the bill of lading in Ex.A7 dated 25.11.2015, the commodity has been shown as “cotton yarn waste”. As per Ex.B8 in Article 5 dumping storage and disposal of waste cannot be transported to China. Hence, due to the mistake made by the plaintiffs the consignment



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was unable to be transmitted to Xinging, Tianjin, China *via* Port of Shanghai. The additional transportation charges incurred by the second plaintiff has to be given by the first plaintiff itself, because, the whole mistake was done by the first plaintiff's booking sources. Therefore, the defendant is not liable to pay damages.

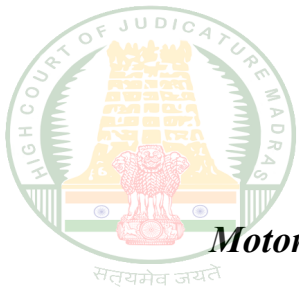
9. The points for determination that arise in this appeal are as follows: (1) Whether the defendant is liable to pay loss or damages caused to the plaintiffs? and (2) Whether the defendant committed breach of contract of carriage by not delivering the goods to the second plaintiff in the Port of Xinging, Tianjin, China, for delivery?

10. The learned counsel appearing for the appellants/plaintiffs would submit that though the trial Court failed to consider the bill of lading in Ex.A7, ought not to have considered the booking confirmation note in Ex.B1. It is evident from the terms of bill of lading that the defendant alone breached the contract. Further, he would submit that the defendant, as a carrier, ought to have aware of the contents of the cargo as the description of



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the cargo in the bill of lading dated 25.11.2015 was given as “cotton yarn waste”, since the document has been issued by them. It is his further submission that in the Packing List in Ex.A2, Stuffing Report in Ex.A3, Phytosanitary Certificate in Ex.A4 and Fumigation Certificate in Ex.A5, the description of the cargo was mentioned as “cotton yarn waste” and hence, the booking confirmation note has no significance. He would also submit that D.Balaji/DW1 categorically admitted that the said certificates were required, only when, if the commodities are “cotton yarn waste” and therefore, the defendant, as a carrier, ought to have been aware of the import restrictions of the transshipment of cotton yarn waste to Shanghai, China, to Xinging, Tianjin, China, for delivery. He would further argue that it was specifically admitted by Srinath/PW1 that the commodity details of cotton and yarn mentioned in the booking note was selected, as it was the only option available on website by the defendant. The defendant had committed breach of contract under the contract of carriage by dispatching the goods in Shanghai, China instead of Xinging, Tianjin, China. To strengthen his arguments, he relied upon the judgment of this Court in ***Supreme Paper Mills Ltd., Calcutta Vs. Owners and Other Persons interested in the***



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Motor Vessel “ARABELLA” and Ors. reported in **1998 (3) CTC 85**, to show that the plaintiff is entitled to recover the expenses incurred on account of the breach committed by the defendant by dispatching the cargo to another port. He further relied upon the yet another judgment of this Court in **Singapore Airlines Cargo Pvt. Ltd. Vs. HCL Info Systems Ltd. and Ors.** reported in **(2017) 6 MLJ 211**, to show that the burden is on the carrier to show that they had followed proper procedure and in spite of their best efforts, they could not prevent loss or damage.

11. *Per contra*, the learned counsel appearing for the respondent/defendant would submit that the suit is barred by limitation and the law is extinguished under Article III Rule 6 of the Schedule to the Act. The agent of the first plaintiff proceeded to fill in the details of the cargo and other details in the system based, on which, ocean bill of lading could be issued by the defendant, pursuant to which, the agent filled in the details regarding the cargo as “cotton yarn waste” instead of “cotton and yarn” as declared in the booking note. Further, he would submit that the agent of the first plaintiff had without notice to the defendant altered the nature of the



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cargo carried onboard the ship and the defendant did not notice the change in the nature of cargo effected by the agent of the first plaintiff in the bill of lading. It is his further submission that the conditions on the reverse bill of lading particularly Clause 21 makes it clear that the defendant is bound by the rules and regulations at the port of discharge and it was found that the cargo having been mentioned as “cotton yarn waste” in the bill of lading was prohibited for transshipment in China and therefore, the defendant was unable to transship the cargo of the plaintiffs from Shanghai to Xingting, Tianjin, China and the same was immediately informed to the agent of the first plaintiff by email on 09.12.2015, in turn, the agent of the first plaintiff replied through email dated 09.12.2015 stating that the booking note was wrongly placed at their end. The second plaintiff being a Chinese company ought to have fully aware of the rules and regulations of its country in respect of the cargo waste. The cargo was delivered by the defendant as required by the plaintiffs and therefore, the defendant is not liable to pay the amount claimed and the first plaintiff is not entitled to file the suit, as it has no title to the cargo and the second plaintiff, having made payments without any protest to the defendant, is also not entitled to file the suit. To



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strengthen his contentions, he has relied upon the judgement of this Court reported in *Container Corporation of India Ltd., vs. Priya Dyes & Chemicals and Others* reported in *2012-4-L.W. 163*, to show that the clauses in the endorsement mentioned on the bill of lading to protect the carrier if there is a complaint of short delivery or non-delivery. He also relied upon the yet another judgement of this Court in *Thakur Shipping Co Ltd., Bombay and another vs. Food Corporation of India* reported in *1981 SCC OnLine Mad 148*, to show that the ship owners would be bound by the number of the bags that were acknowledged in the bills of lading, but so far as weight, contents and values are concerned the particulars given by the shippers and noted in the bills of lading would not bind the shipowners, because of the endorsement that the weight, contents and value when shipped were not known.

12. This Court has considered the submissions made on either side and perused the records.

13. The first plaintiff is the seller and the second plaintiff is the



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purchaser of the cargo. The first plaintiff through its agent Dahnay Logistics Private Limited booked the cargo with the defendant for carriage by the defendant's ship from Chennai Port to Xinging Port, China, *via* Shanghai on 11.11.2015 *vide* booking note in Ex.B1. As per the booking note, the first plaintiff's agent filled up the particulars regarding the cargo as “cotton and yarn” and the port of delivery as Xinging, China and the intermediary transshipment port as Shanghai. After the cargo was loaded onboard the ship, it sailed away to China on 25.11.2015. The first plaintiff's agent thereafter filled up the particulars in the bill of lading in Ex.A7 dated 25.11.2015 and altered the name and description of the cargo from “cotton and yarn” to “cotton yarn waste”. Under the rules and regulations of China, the cargo of “cotton yarn waste” cannot be transshipped and when it landed at Shanghai for transshipment to Xinging Port, the cargo was detained by the Chinese customs as the nature of the cargo was found to be “cotton yarn waste”. The first plaintiff's agent was informed of the same by the defendant on 11.12.2015 and the said agent admitted that it had filled up wrong particulars while booking and apologized by email in Ex.B2 dated 09.12.2015. The defendant, as requested by the plaintiffs, then, routed the



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cargo to Xinging *via* Busan, South Korea and delivered the cargo to the second plaintiff on 09.04.2016.

14. According to the appellants/plaintiffs, the respondent/defendant delivered the cargo at Xinging Port, China, but, with a lot of delay at the intermediary transshipment Port at Shanghai, due to which, the second plaintiff suffered a loss of Rs.24,99,000/-. *Per contra*, it is stated in the plaint in paragraph nos.16 to 19 that the respondent/defendant failed to deliver the cargo and the second plaintiff incurred expenditure of Rs.26,30,678/- for delivering at Xinging. In this regard, Srinath/PW1 admitted that the defendant had delivered the cargo to the second plaintiff. It is to be noted that once it is admitted by Srinath/PW1 that the cargo had been delivered by the defendant to the second plaintiff at China, then, the claim of the second plaintiff incurring expenditure of Rs.26,30,678/- to move the cargo from Shanghai to Xinging, China, is not acceptable one.

15. A perusal of bill of lading in Ex.A7 dated 25.11.2015 and original bill of lading in Ex.B3 dated 01.04.2016 shows that there is a



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contract of carriage by sea, wherein, the defendant agreed to deliver the cargo at Xinging, China. E-mail communications in Ex.B7 shows that the cargo was delivered by the defendant to the second plaintiff on 09.04.2016 at Xinging, China, *via* Busan, South Korea.

16. A perusal of booking note in Ex.B1 dated 11.11.2015 shows that the first plaintiff's agent has filled up the particulars and described the cargo as "cotton yarn" and the port of discharge as Xinging, China *via* Port of Shanghai. E-mail communication in Ex.B2 dated 09.12.2015 shows that the first plaintiff's agent has admitted its mistake stating that the booking was wrongly placed at their end without noticing the commodity as mentioned in the communications and apologized for the mistake. It is also stated that the first plaintiff's agent had wrongly mentioned the cargo in the booking note under Ex.B1, as the first plaintiff was exporting cotton yarn in huge quantities.

17. A perusal of booking note in Ex.B1 dated 11.11.2015 shows that the cargo was booked as "cotton and yarn". While a reference to bill of



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lading dated 25.11.2015, the description of cargo has been mentioned as “cotton yarn waste” without informing the defendant. This was the reason for the apology given by the first plaintiff's agent under email in Ex.B2 dated 09.12.2015. When the second plaintiff is a Chinese company, it would have known that cotton yarn waste is prohibited at Shanghai and it is presumed to know the Chinese law.

18. At this juncture, it is relevant to refer Section 3 of the Indian Bills of Lading Act, 1856, reads as under:

“3. Bill of lading in hands of consignee, etc., conclusive evidence of the shipment as against master, etc.
—Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as, against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board:

Provided that the master or other person so signing



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may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.”

19. Article IV (2)(i) is set out herein as below:

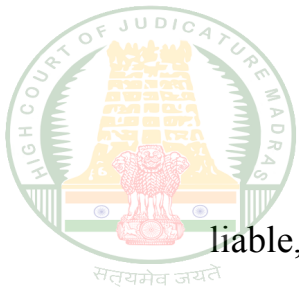
“2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

.....

(i) act or omission of the shipper or owner of the goods, his agent, or representative”

20. A bill of lading is a crucial document in international trade, which serves multiple purposes. The key functions *i.e.* receipt, contract of carriage and document of title. It also facilitates smooth transactions and protects the interests of buyers, sellers and carriers.

21. The Indian Carriage of Goods by Sea Act, 1925, which is applicable to the suit transaction, as it is a export cargo. Article IV (2)(i) of the Schedule to the Act is applicable. Further, Section 3 of the Indian Bills of Lading Act, 1856, is also applicable. The carrier *viz.* the defendant is not



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liable, where, the fault is with the shipper or agent. The first plaintiff is the shipper, as it is described in the bill of lading and the fault of misdescription is admitted by its agent under email communication. Further, the second plaintiff being a Chinese company ought to have known about the Chinese regulations and still chose the Port of Shanghai. Hence, the plaintiffs are responsible for the alleged loss.

22. A perusal of Shanghai VAT invoices dated 19.02.2016, 07.04.2016 (2 nos.) and 13.06.2016 in Ex.A11 and Tianjin VAT invoice dated 26.05.2016 in Ex.A12 along with translation shows that they are only invoices and there are no details of payments made by the plaintiffs. Exs.A11 and A12 are not sufficient to show that the alleged loss of Rs.24,99,000/- incurred to the second plaintiff. The second plaintiff has not chosen to mark any bank account to show that a sum of Rs.24,99,000/- has been paid. As per email communication under Ex.B2 dated 09.12.2015, the detail of detention in China has been admitted by the plaintiffs and there is no proof of having incurred expenditure of Rs.24,99,000/- and the first plaintiff has not suffered any loss. Due to the mistake committed by the



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plaintiff's, the consignment was not able to transmitted to Xinging, Tianjin, China, from the Port of Chennai *via* Port of Shanghai and so, the additional transporting charges incurred by the second plaintiff has be given by the first plaintiff itself, because, the mistake was done by the first plaintiff's booking sources. The plaintiffs have failed to establish their case of the alleged loss of Rs.24,99,000/- incurred upon the second plaintiff due to the delayed transshipment of the cargo by the defendant.

23. In view of the above discussions, there is no reason to interfere with the impugned judgment and decree of the Court below. The points are answered accordingly.

In the result, the first appeal stands dismissed by confirming the judgment and decree dated 31.10.2018 passed in O.S.No.2426 of 2017 on the file of the XV Additional City Civil Court, Chennai. No costs.

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Speaking/Non-speaking order
Internet: Yes; Neutral Citation: Yes/No

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To

The XV Additional Judge,
City Civil Court, Chennai.



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M.JOTHIRAMAN J.

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