



Application No.6697 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2025

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

**Application No.6697 of 2024
and
C.S.(COMM. DIV) No.258 of 2024**

M/s.Maxicon Container Line PTE Ltd.,
Having Office at 14-01A,
South Point 200, Cantonment Road,
Singapore - 089 763.
Represented by its agent
Seaways Liner Agencies Private Limited,
Having registered office at
Plot No.731, Road No.36, Jubilee Hills,
Hyderabad - 500 034.
Having its office at,
Plot No.39/4, Maithili's Signets,
501/502, Sector 30/A Vashi,
Navi Mumbai - 400 703
and having office at
Voltas International Centre,
3rd Floor, No.107, Armenian Street,
Chennai - 600 001.
Represented by its Power of Attorney Holder,
Mr.Mathivanan

... Applicant / Plaintiff

Vs.



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1. Lancer Container Line SDN BHD,
Suite 16-09, Level 16, Centro,
No.8, Jalan Batu Tiga Lama,
41300, Klang, Selangor,
Malaysia,
Represented by their Indian counterpart
M/s.Lancer Container Lines Limited,
No.26/27, Arenja Tower, CHS Limited,
Plot No.49/50/51, Sector 11,
CBD Belapur, Navi Mumbai,
Having branch office at
Maruthi Enclave, 2nd Floor,
No.1, Bhimsena Garden Street,
Mylapore, Chennai - 600 004.
Represented by its Director

2. M/s.NDR Infrastructure Private Limited,
Nandiambakkam Port Road,
Ponneri Taluk,
Thiruvallur District,
Chennai - 600 120.

Represented by its Director

... Respondents / Defendants

PRAYER: Application filed under Order XIV Rule 8 of OS Rules read with Order XXVI Rule 9 of Civil Procedure Code, 1908, to appoint an Advocate Commissioner to seize the containers as morefully described in schedule to the Judges summons which are lying under the custody of the second respondent / second defendant or their men, agents, servants or anyone with police aid and by breaking open locks if necessary, make an inventory and give possession of the same to the applicant / plaintiff.



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For Applicant : Mr.P.Giridharan
For Respondents : Ms.Ashly K Prakash
for M/s.Mohamed Rafiq for R1 / D1
Mr.K.Bijaisundar for R2 / D2

ORDER

The suit was filed to recover a sum of Rs.2,03,11,221/- with interest on the principal sum jointly and severally from the two defendants. In addition, the plaintiff prayed for a mandatory injunction to direct defendants 1 and 2 to return the 25 containers described in the schedule to the plaintiff or, in the event of default in doing so, to direct the defendants to pay the value of the said containers.

2. By this interlocutory application, the plaintiff makes a request for the appointment of an Advocate Commissioner to seize the containers described in the schedule to the Judges summons, prepare an inventory thereof and grant possession of the same to the applicant / plaintiff.



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3. Learned counsel for the plaintiff submits that the plaintiff is an ocean carrier goods and owns numerous containers, including the containers described in the schedule to the plaint. In the course of business, it is stated that the first defendant had approached the plaintiff in the month of January 2018 in relation to the shipment of cargo containing 4000 drums of low aromatic white spirit from Port Klang, Malaysia to Chennai, India. By accepting the said request, it is stated that the plaintiff provided 25 containers for the said purpose. Learned counsel also submits that the importer of the cargo, M/s.P.A.S Petro Product, failed to take delivery of the cargo. He further submits that the first defendant handed over the containers with the cargo to the custody of the second defendant, which is a customs authorised container freight station. Thereafter, the cargo was auctioned on 04.09.2021 through the agency of the Customs Department, namely, MSTC, in accordance with Section 48 of the Customs Act, 1962.



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4. In spite of the cargo being auctioned on 04.09.2021, learned counsel states that the containers were not returned to the plaintiff by either the first or the second defendant. Therefore, he contends that the plaintiff is entitled to detention charges for the period subsequent to the date of auction and that the suit claim is in respect thereof. Meanwhile, he submits that the plaintiff is entitled to the relief claimed in this application because the plaintiff is admittedly the owner of the containers. In this connection, learned counsel also refers to and relies upon the counter of the first defendant, wherein the first defendant has stated that the second defendant auctioned the cargo after considerable delay and that any claim in respect thereof should be directed to the second defendant. As regards the second defendant, learned counsel submits that the second defendant has stated that it could not release the containers because the first defendant had not provided a 'No Objection Certificate' (NOC) in such regard.



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5. By relying on the judgment of the Hon'ble Supreme Court in *Dorab Cawasji Warden V. Coomi Sorab Warden and others* [(1990) 2 SCC 117], learned counsel contends that an interim mandatory injunction may be granted if a strong *prima facie* case is made out and if it is established that irreparable injury would be caused to the applicant if such relief were not granted.

6. In response, learned counsel for the first defendant submits that the suit is barred by limitation inasmuch as the cargo arrived at the Chennai Port in 2018. The next contention of learned counsel is that Lancer Container Lines Limited, the Indian entity, is not the representative of Lancer Container Lines SDN BHD, the Malaysian entity. The third contention is that the plaintiff is not entitled to claim detention charges from the first defendant and that any such claim should be directed solely at the second defendant. Without prejudice, learned counsel submits that the first defendant has no objection to the containers being handed over to the plaintiff.



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7. Learned counsel for the second defendant responded to the submissions of learned counsel for the plaintiff by submitting that the present application is liable to be rejected inasmuch as the relief claimed herein is the same as the third relief claimed in the suit. By referring to the counter of the second defendant, learned counsel further submits that the second defendant was constrained to deal with a police complaint lodged by the auction purchaser, M/s.R.K. Tradelinks, on account of short delivery of the cargo. In fact, by referring to the settlement deed, learned counsel submits that the second defendant was constrained to pay a sum of Rs.32,00,000/- to the auction purchaser. Therefore, he submits that the second defendant is entitled to exercise lien over the containers. He also submits that the first defendant failed to provide a 'No Objection Certificate' and that, in the absence thereof, the second defendant was not in a position to release the containers to the first defendant or the plaintiff. By relying on the judgment in *Dorab Cawasji Warden* and the judgment of the Hon'ble Supreme Court in *Samir Narain Bhojwani V. Aurora Properties and*



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Investments and another [(2018) 17 SCC 203], learned counsel submits that the relief of interim mandatory injunction is liable to be granted only in exceptional circumstances for the purpose of preserving or restoring the *status quo* of the last non-contested status and not for the purpose of restoring the *status quo ante*.

8. In view of the above submissions, the question that falls for consideration is whether the plaintiff is entitled to the relief claimed at this juncture. The first defendant admits that the 25 40' containers described in the schedule to the plaint belong to the plaintiff. In fact, the first defendant has no objection to these containers being handed over to the plaintiff. The primary defence raised by the first defendant is that any liability for detention charges should be fixed on the second defendant and not on the first defendant in view of the belated conduct of the auction by the second defendant. As a preliminary objection, the first defendant also claims that the suit is barred by limitation. As regards the second defendant, a preliminary objection that the interim relief mirrors the final relief has been



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raised. A further objection that an interim mandatory injunction should not ordinarily be granted has also been raised.

9. Apart from acknowledging that the containers concerned are owned by the plaintiff, it is also the undisputed position that the first defendant has not made any claim against the plaintiff as on date. As regards the second defendant, the said defendant asserts that it has no privity of contract with the plaintiff. However, in reply dated 15.07.2023, the second defendant has reserved its right to call upon the plaintiff and the first defendant to pay a sum of Rs.1,68,75,000/-. Admittedly, no such claim has been lodged as on date. Since the second defendant does not have a contractual relationship with the plaintiff, the second defendant is not entitled to exercise a contractual lien in respect of the containers. The second defendant has also been *prima facie* unable to establish that it is entitled to exercise a statutory lien in respect thereof.

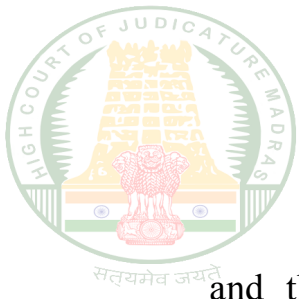


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10. As contended by learned counsel for the second defendant, an interim mandatory injunction is not ordinarily granted and the plaintiff is required to establish a strong *prima facie* case to succeed in an application for such relief. As discussed above, the suit claimed is in respect of amounts allegedly payable by the defendants 1 & 2 , jointly and severally, towards detention charges for the period subsequent to the date of auction in September 2021. Pursuant to the trial, it is possible that only the first defendant or only the second defendant or neither of the defendants may be held liable in respect of such detention charges.

11. As regards the third relief of return of containers, however, the counter-party to the contract with the plaintiff, i.e., the first defendant, does not dispute the plaintiff's ownership of the containers and has no objection to the containers being handed over to the plaintiff. Therefore, especially in the context of no claim having been made by the second defendant and in the absence of a contractual lien over such containers, a strong *prima facie* case is made out. The current condition of the containers is also not known



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and the possibility of damage to or depreciation in the value of the containers cannot be disregarded. Therefore, in the facts and circumstances outlined above, the plaintiff is entitled to the relief claimed. Since the first defendant has admitted that the containers belong to the plaintiff and indicated in the course of oral submissions that the said containers may be handed over to the plaintiff, the NOC requested for by the second defendant has effectively been provided by the first defendant.

12. Therefore, the following directions are issued:

(i) Mr.Sharanya Vaidyanathan, Partner, Natraj, Rao, Raghu & Sundaram Advocates, Haji.S.Madharsha & Sons Building, 5th Floor, No.148 (Old No.44), Second Line Beach, Chennai - 600 001, Primary Mail Address: sharanvaidhya@yahoo.com, Phone No.9791110603, Advocate, is appointed as Commissioner. The plaintiff is directed to pay an initial remuneration of Rs.50,000/- (Rupees Fifty Thousand only) to the Advocate Commissioner.



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(ii) Advocate Commissioner is directed to put all the parties on reasonable notice and thereafter visit the premises of the second defendant and take inventory of the containers.

(iii) In the preliminary report, the Advocate Commissioner shall state whether the assistance of a Surveyor or any other person is necessary in relation to these containers.

(iv) The Registry shall issue the warrant on or before 09.06.2025.

13. List the mater on 25.06.2025 for the Advocate Commissioner to file a preliminary report.

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Speaking Order

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NCC : No



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