



AS.No.703 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2025

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

AS.No.703 of 2019

M/s.Seven Seas Carrier (P) Ltd.,
39, Tarachand Dutta Street,
Kolkatta-700073.

... Appellant/Defendant
V.

1.M/s.MRF Ltd.,
Rep. By Power Agent/Subrogee
M/s.United India Insurance
Company Limited,
No.58, Purasaiwalkam High Road,
Chennai – 600 007.

2.M/s.United India Insurance
Company Limited,
No.58, Purasaiwalkam High Road,
Chennai – 600 007.

... Respondents /Plaintiffs

Prayer : This First Appeal is filed under Section 96 Code of Civil Procedure 1908 to set aside the judgment and decree dated 21.11.2017 made in OS.No.3102 of 2015 on the file of the XVI Additional Judge (FAC) XVII Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Vijayan

For Respondents : Mr.Nageswaran Navichania



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J U D G M E N T

The unsuccessful defendant has preferred this first appeal. The suit is filed for a sum of Rs.15,00,000/- together with interest thereon at the rate of 12%p.a. The trial Court decreed the suit. The plaintiffs are entitled to recover the amount of Rs.15,00,000/- from the defendants together with interest at the rate of 9%p.a. from the date of plaint i.e.,04.11.2013 till the date of decree and thereafter at the rate of 6% p.a. till the date of realisation. The parties are herein after referred to as per their litigative status i.e., the trial Court.

2. The brief case of the plaintiffs is as follows :-

The first plaintiff in the course of their business dispatched a consignment of Tyres and Tubes from Kolkatta to their consignees M/s.Tyre Centre, M/s.Makkalu Tyre Center Pvt Ltd M/s.International Tyre Centre at Kathmandu Nepal as per the invoice on various dates and the total value of the cargo in Rs.34,43,096/-. The said consignment was securely packed and entrusted with the defendant carrier at Kolkata for safe carriage and delivery to the consignees at Kathmandu, Nepal. In acknowledgement of such entrustment in goods order and condition, the



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defendant issued their various Goods consignment note and thereby undertaking to care for, carry and deliver the said consignment in the same good order and condition as was entrusted with them. The first plaintiff also entered into an agreement with the defendant on 04.11.2008 as regards transportation. The suit consignment was insured by the first plaintiff with the second plaintiff under a Marine Cargo Policy of insurance bearing No.010300/21/10/02/00000007. The defendant carrier failed to deliver the said consignments, the defendant informed the first plaintiff about the fire accident in the defendant's godown and that the entire consignment was damaged. The first plaintiff acquired knowledge of the loss on 10.11.2010, upon such non delivery, the 2nd plaintiff appointed M/s.Kothari Surveyors & investigators Pvt Ltd to conduct investigation in the premises.

2(i). The first plaintiff, who is the owners of the suit consignment at all relevant times issued statutory notices of loss to the defendant on 30.11.2010 by hand delivery informing the defendant about the loss and claiming the loss amount from them. The defendant while acknowledging the receipt of such notice of loss issued their damage



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certificate dated 11.11.2010 admitting non delivery of the suit consignment. Due to non delivery of the suit consignment by the defendant, the first plaintiff suffered a pecuniary loss of Rs.34,43,096/-, The loss caused only as a result of negligence, lack of care and caution, failure on the part of the defendant common carrier to care for, carry and deliver the suit consignment. The contract dated 04.11.2008, the defendant has undertaken the responsibility for damage and loss to the cargo carried and stored by them. As per the terms and conditions of the policy, the claim of the first plaintiff was settled by the 2nd plaintiff for payment of Rs.15,00,000/- being the proportionate insured value of the consignment totally damaged. In acknowledgement of such indemnity, the first plaintiff executed a letter of subrogation and special power of attorney and section 79 of the Marine Insurance Act. The second plaintiff is entitled to file and maintain the suit in their own name Though the plaintiffs are entitled to recover the loss amount of Rs.34,43,096/-, the suit amount is being restricted to Rs.15,00,000/- being the proportionate insured value of the consignment totally damaged. Hence, the suit.



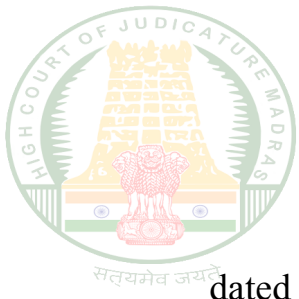
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3. The brief case of the defendant is as follows :-

The second plaintiff cannot prosecute the suit for and on behalf of the first plaintiff. Therefore, the suit is liable to be dismissed and the suit be barred by limitation. The averments and allegations made in para 3 of the plaint are denied as false assuming without admitting for the sake of argument, the averment as to it clearly proves that none of the happenings took place within the jurisdiction of trial Court and therefore, the suit cannot be filed before the trial Court.

3(i). The defendant is not aware of the alleged report dated 24.05.2011, and the plaintiffs are put to strict proof of the same. The plaintiffs are put to strict proof of the allegations that the first plaintiff had issued a statutory notice of loss to the defendant on 31.10.2010 by hand. Due to the alleged non-delivery of the suit consignment, the first plaintiff was put to pecuniary loss of Rs.34,43,096/- is denied as false. The allegation that the defendant should disclose about the suit consignment was handled is denied, that the plaintiff cannot shift the burden of proof on the defendant. The plaintiffs are not entitled to claim any amount from the defendant and therefore the demand notice



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dated 09.08.2013 has no leg to stand. The defendant is not liable to pay any amount to the plaintiff. No cause of action arose within the jurisdiction of the Court, the entire allegation of entrustment of goods, fire, loss of goods, even if admitted as true, happened in the State of West Bengal. Therefore, the trial Court has no jurisdiction to entertain the suit. The letter of subrogation and special power of attorney executed by the plaintiff at Chennai, it will not vest the jurisdiction of trial Court and their entire process is an abuse of process of law. The suit filed by S.Sathiyavathi, Senior Divisional Manager of the second plaintiff and she is not authorised by the 2nd plaintiff to institute the suit, hence, the suit is not maintainable.

4. Based on the above pleadings, the trial Court has framed the following issues :-

- (1) Whether the plaintiff is entitled to receive the sum of Rs.15,00,000/- together with 12%p.a from the defendant as prayed for?
- (2) Whether the suit is maintainable?
- (3) Whether the suit is barred by limitation?
- (4) Whether this Court has got jurisdiction to try the suit?



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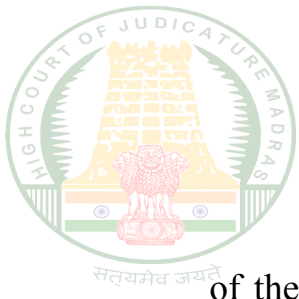
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(5) To what other relief the plaintiff is entitled?

5. On the side of the plaintiff one N.P.Indumathi was examined as PW1 and Ex.A1 to Ex.A12 were marked. On the side of the defendant, no witness was examined and no documents were marked.

6. The findings of the trial Court

All the invoices it has been mentioned in condition No.17 terms of the sale that the Court in Chennai City shall have jurisdiction to try any suit or decide the dispute in respect of any matter arising out of transaction under the invoice. The second plaintiff has appointed a surveyor and filed a report and through documents it is clear that trial Court is having jurisdiction to try the suit. The suit has been filed on 04.11.2013, the goods were destroyed by fire and intimated on 10.11.2010, the suit has been filed within the period of three years and it is not barred by limitation. Since, the goods were destroyed in fire, as insurer, the second plaintiff has paid the amount to the first plaintiff and as per subrogation, the plaintiffs filed the suit for recovery of the amount and the suit is maintainable. As per the terms of the agreement, the plaintiffs are entitled to recover the money from the defendant. By virtue



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of the letter of subrogation and special power of attorney under Section 79 of the Marine Insurance Act, the second plaintiff is entitled to recover the amount.

7. The point for determination arises in this appeal is as that :-

- (i) Whether the trial Court has got jurisdiction to try the suit? and
- (ii) Whether the plaintiffs are entitled to recover the amount from the defendant as prayed for in the plaint?

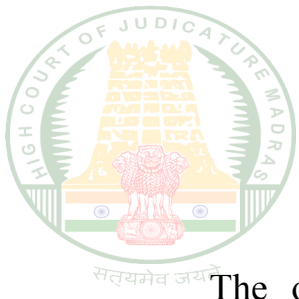
8. The learned counsel for the appellant/defendant would submit that goods belong to the 1st plaintiff/MRF limited was consigned to be transported from Kolkatta to Nepal. The goods which were stored in the warehouse at Bharatia Coloney, Raxual, Bihar was destroyed by fire on 10.11.2010. In this regard, the communication from the appellant/defendant from its office at Kolkatta to MRF limited at Kolatta was issued under Ex.A8. Admittedly, the entrustment happened at Kolkatta and the goods were damaged at Raxual in Bihar, thus no part of cause of action arose within the jurisdiction of Court at Chennai.



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9. The learned counsel would further submit that the cause of action is the bundle of facts which are to be proved to obtain a judgment in its favour. Section 20 CPC, deals with cause of action to file suit is not applicable and Section 19 CPC alone is applicable to the facts of the case. Section 19 of CPC mandates that where the suit is for compensation for the wrong done to the person or to movable property, suit can be filed either at the place where wrong done or where the defendant resides and carries on business or personally works. In view of Section 19 of CPC the suit before the Court at Chennai is without jurisdiction. To strengthen his contention, he has relied upon the judgment of this Court reported in **1976 LW 350 – M/s.Sreepathi Hosiery Mills (P) Ltd., Calcutta and another V. M/s.Chitra knitting Co, Tiruppur** to show that as per Section 19 CPC when the damage was done to the movable property, the suit can be filed within the jurisdiction of two courts referred above. He has also relied upon the judgment of the Hon'ble Apex Court reported in **(2005) 7 SCC 791 – Harshad Chiman Lal Modi V. DLF Universal Ltd and another** to show that Section 20 of CPC leaves no room for doubt that it is a residuary provision and covers those cases not falling within the limitation of Section 15 to 19 CPC.

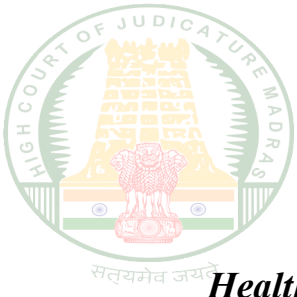


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The opening words of the Section start with the “*subject to the limitations aforesaid*” are significant and make it abundantly clear that Section 20 will be applicable to those issues not covered by Section 15 to 19 of CPC.

10. The learned counsel would further submit that Ex.A4 is a photocopy of the agreement said to have been entered into between the 1st plaintiff/MRF limited and appellant/defendant. The original was not produced and objections was made and objections were made with regard to the marking of document and the Court is not entitled to compare the signature in a photocopy and hold that the said document is valid. The jurisdiction clause in the said agreement cannot be pressed into service since it is conferring the jurisdiction of the Court which is not otherwise having jurisdiction. If two Courts or more Courts are having jurisdiction over the subject matter, the parties by agreement restrict to one Court. However, the parties cannot confer jurisdiction by their consent on a Court which has no jurisdiction over the subject matter. The learned Counsel also relied upon the judgment of the Hon'ble Apex Court repored in **2013 (10) SCC 136 -Jagmittar Sain Bhagar v. Director,**

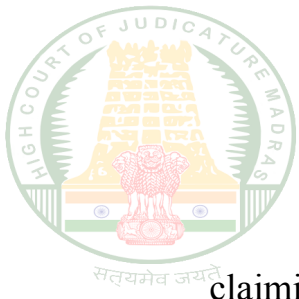


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Health Services to show that law does not permit any court to usurp jurisdiction on any matter on any ground whatsoever and that the objections in this regard will go to the root of the matter. The jurisdiction clause referred in Ex.A4 cannot be pressed into service and on contrary in Ex.A6 it was clearly held that the Court at Kolatta alone shall have the jurisdiction. He would submit that the subrogation agreement is the agreement between the 1st plaintiff and the 2nd plaintiff and it cannot confer jurisdiction on the Court at Chennai. The surveyor report as Ex.A9 cannot be held to be proved without examining the author of the document.

11. Per contra, the learned counsel for the respondents/plaintiffs would submit that the defendant's carrier failed to deliver the consignment in the same apparent good order and condition as was entrusted with them and thereby committed a breach of their statutory and contractual obligation. The first plaintiff was the owner of the suit consignment at all relevant time issued statutory notice of loss to the defendant on 30.11.2010 and informing the defendant about the loss and



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claiming the loss amount from them. The non delivery of the consignment and the consequent pecuniary loss suffered by the plaintiff, only because of the negligence, lack of care and caution, failure on the part of the defendant, even in the contract dated 04.11.2008, entered into by the defendant with the first plaintiff. The defendant had undertaken responsibility for damage and loss carried and stored by them. To strengthen his contention, he has relied upon the judgment of the Hon'ble Division Bench of this Court reported in (i)**2004-2-LW-663 – Bond Food Products Private Limited, Registered office at Bangalore and another V. M/s.Planters Airways Ltd and (ii)judgment reported in 2000-2-LW-751 – Patel Roadways Ltd V. Indo Matushita Appliances Co Ltd and another.**

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

13. It is the specific case of the defendant/appellant that the suit has been filed without cause of action and the first plaintiff company represented by Power Agent and the second plaintiff company is not a natural person and therefore the suit is not maintainable. It is also the



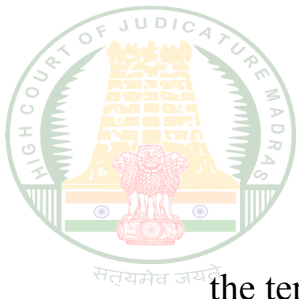
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case of the defendant is that the goods were delivered from Calcutta to Kathmandu, Nepal and therefore the trial Court has no jurisdiction to entertain and try the suit.

14. It is noted that Section 19 and Section 20 of the Code of Civil Procedure 1908 deal with the place of suing, specifically for suits involving compensation for wrongs and other types of suits, respectively. Section 19 CPC, allows a plaintiff to sue for compensation for wrongs to the person (or) movable property in either the jurisdiction, where the wrong occurred (or) where the defendants reside. Section 20 on other hand provides that other suits can be instituted, where the defendant resides (or) where the cause of action arises.

15. A perusal of Ex.A4, it is the agreement dated 04.11.2008 entered into between the first plaintiff and the defendant, wherein the company agrees to deliver the goods and agrees to transfer the products for the company customers to the godown or the storage facilities of the contractors or their agents in the cities/town/places referred to in the schedule attached to that agreement. The condition No.13, 14 and 23 of



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the terms of the agreement is extracted hereinunder :-

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“13. The contractors agree to accept full responsibility for the products delivered to them until they are turned over to the respective customers against lorry receipts The contractors also agreed to accept the responsibility and to hold themselves liable for loss, damage, non delivery of short delivery of the products due to any act of God. Fire Explosion, Floods, Earthquake, rain water, strikes, lockouts, riots civil commotion, malicious damage, wind storm, seizure of trucks, road accident, breakage theft burglary, pitterage and/or any other reasons whether in the course of transit or while the products are lying at the godowns or storage facilities of the company in respect of all claims for loss, damage, non delivery or short delivery as aforesaid shall be final and binding on the contractors. The company will be entitled, without prejudice to any other right or remedy



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vested in it under or in pursuance of this agreement or at law, to deduct, recover and/or set off all or any of the contractors bills or any account whatever the amount determined by the company to be payable to it by the contractors for loss, damage, non-delivery or short delivery of the products as aforesaid

14. The contractors shall also maintain adequate and uninterrupted comprehensive insurance in respect of products entrusted to them by the company to cover the risks more particularly referred to in Clause 13 above while the products are (a) in transit and (b) in the custody of the contractors of their agent at their respective godowns/storage facilities until the products are delivered to the customers or returned to the company as stated in Clause 15. The contractor will intimate the company the name of the Insurance Company with whom the company's product are insured and will also notify the details thereof and



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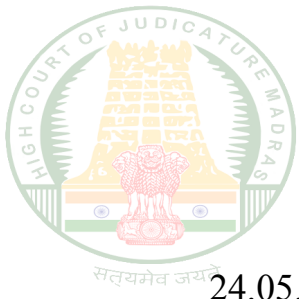
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the changes made therein from time to time. Copies of the relative insurance policies and premium receipts for renewal each year will be produced to the company by the contractors.

23. It is hereby expressly agreed and declared that any dispute or difference arising out of this agreement or any claim by either party against the other hereunder shall be adjudicated upon and decided by the court of competent jurisdiction in the City of Chennai to the exclusion of any other court.”

16. It is pertinent to mention that Section 20 of CPC recognises the territorial jurisdiction of Courts, inter-alia, wherever the cause of action wholly (or) in part arises.

17. The second plaintiff/United India Insurance Chennai has appointed a surveyor and filed a surveyor report in Ex.A9 dated



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24.05.2011. A perusal of Ex.A5 it is the invoices wherein condition No.17 reads as follows :- *the Courts in Chennai City alone shall have jurisdiction to try any suit or decide any dispute in respect of any matter arising out of the transaction under this invoice.*

18. It is relevant to refer Section 28 of the Indian Contract At, 1872 which reads as hereunder :-

“28.Agreements in restraint of legal proceedings, void.— [Every agreement,— (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.]”



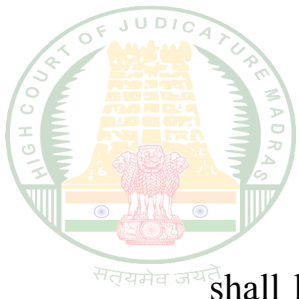
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19. It is also relevant to cite the judgment of the Hon'ble Supreme Court reported in (1971) 1 SCC 286 – Hakam Singh v. Gammon (India) Ltd, wherein it has been held that :

“It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act.”

20. As per the condition No.17 enumerated under Ex.A5 invoices and as per condition No.13 enumerated in Ex.A4 agreement reveals that any dispute in respect of any matter arising out of the transaction under the invoices and the agreement entered between the first plaintiff and the defendant under condition No.13 in Ex.A4 reveals that the Chennai City



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shall have territorial jurisdiction to try the suit or decide any dispute in respect of any matter arising out of the invoices under the agreement.

21. Furthermore under Ex.A4 - Clause 23 clearly enumerates that if any dispute arises between them, the City Civil Court Chennai is having jurisdiction try the issue. The trial Court based on the documents in Ex.A4 and Ex.A5 arrived at a right conclusion about the territorial jurisdiction of the Court to try the suit. The next point for consideration is that whether the suit is barred by limitation. The suit has been filed on 04.11.2013 claiming money for the goods damaged by fire when the goods were stored in the godown. The goods stored in the godown were destroyed by fire and it was informed by the first plaintiff to the defendant on 10.11.2010. The last invoice dated 04.11.2010 in Ex.A7.

22. Ex.A7/Notices of loss of acknowledgement card in series (15 nos.) dated 11.11.2010, wherein the defendant informed the first plaintiff about there was a fire in the godown and goods were burned. Therefore, the suit has been filed due to the loss suffered by the first plaintiff and the same has been compensated by the 2nd plaintiff by way of subrogation



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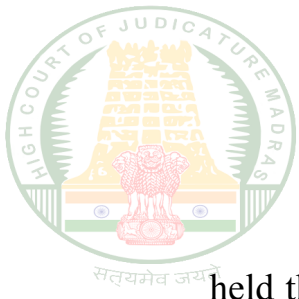
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and the plaintiff filed the suit for recovery of money for the damages caused to the goods. The suit has been filed within a period of three years and the same is not barred by limitation.

23. The another contention of the appellant/defendant is that there is no cause of action to entertain the suit. The plaintiff and the defendants entered into an agreement for deliver of goods by the defendant's transport. It was not denied by the defendants that the goods were transported by the defendant's carrier.

24. A suit is always on a cause of action. There can be no suit without a cause of action and such cause of action having accrued to the plaintiffs, the jurisdiction of the Court is a matter of contract, will depend on the situs of the contract and the cause of action arising through connecting factors.

25. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court reported in **AIR 2007 SC 1812 – Alchemist limited and another v. State Bank of Sikkim and others** wherein it is



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held that - *“From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a 'part of cause of action', nothing less than than.”*

26. Ex.A6 consignment note by the defendant that the goods were carried by the defendant and through Ex.A8 dated 11.11.2010, the defendants informed the plaintiff that there was a fire in the godown and goods were damaged. It was also informed to take up the matter with the insurance company for settlement of claim, since the goods were destroyed in fire as insurer, the second plaintiff paid the amount to the first plaintiff, as per the subrogation, the plaintiff has filed the suit for recovery of money.



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27. The burden of proof lies on the plaintiff was discharged that based on the survey report in Ex.A9 dated 24.05.2011, the loss caused to the first plaintiff was compensated, as per the terms and conditions of the policy for the loss incurred by the first plaintiff, the second plaintiff as insurer of the goods settled Rs.15,00,000/- to the first plaintiff.

28. In this regard, the first plaintiff executed a letter of subrogation and special power of attorney in favour of the 2nd plaintiff under Ex.A11. In order to ascertain the loss caused to the goods, the agreement of subrogation and special power of attorney was entered into between the first plaintiff and the second plaintiff under Ex.A11 dated 06.08.2012. As surveyor was appointed and inspected the spot investigation and took photographs and filed his report under Ex.A9 dated 24.05.2011. The first plaintiff was compensated by the second plaintiff and then for recovery of money, a legal notice came to be issued under Ex.A12 dated 09.08.2013 to the defendant and the same was acknowledged by the defendant. As per the terms of the agreement, the plaintiffs are entitled to recover the money from the defendant.



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29. It is also pertinent to mention that the carrier can disown his liability only if it is due to the act of God or but in the case on hand, there is no such defence has been taken. The defendants has failed to prove that due care and caution taken and the goods got damaged in fire. The doctrine of subrogation confers upon the insurer, the right to receive the benefit.

30. It is relevant to extract Section 79 of Marine Insurance Act, 1963 :-

79. Rights of subrogation

(1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all



the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

31. The plaintiffs established their case that the due to the negligence on the part of the defendant the goods were destroyed and the defendant is liable to pay the amount by virtue of letter of subrogation and the Special power of attorney under Section 79 of the Marine Insurance Act. The second plaintiff is entitled to recover the amount.

32. In view of the above, this Court is of the view that there is no



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reason to interfere with the impugned judgment and decree of the trial Court. The points are answered accordingly.

33. In the result, the first appeal is dismissed and the judgment and decree passed in OS.No.3102 of 2015 dated 21.11.2017 on the file of the XVI Additional Judge (FAC) XVII Additional Judge, City Civil Court, Chennai is hereby confirmed. No costs.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

To

The XVI Additional Judge (FAC) XVII Additional Judge, City Civil Court, Chennai.



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