M/s. Inter Asia Impex Vs M/s. Freightscan Global Logistics Pvt. Ltd.

Court: MADRAS HIGH COURT

Date of Decision: Aug. 23, 2016

Acts Referred: Contract Act, 1872 - Section 230

Citation: (2017) 173 AIC 400 : (2017) 2 BC 754 : (2016) 6 CTC 756 : (2016) 3 MadWN(Civil) 689

Hon'ble Judges: Mr. A. Selvam and Mr. P. Kalaiyarasan, JJ.

Bench: Division Bench

Advocate: Mr. V. Aravamudan, Advocate, for the Respondent; Mr. Srinath Sridevan, Advocate, for the Appellant

Final Decision: Dismissed

Judgement

P. Kalaiyarasan, J. - This Appeal Suit is directed against the Judgment and Decree, dated 31.01.2011 made in O.S.No. 11979 of 2011 of the

Additional District and Sessions Judge (Fast Track Court V), Chennai, dismissing the suit for recovery of money and compensation.

2. The averments of the plaint are as follows :

(i) The plaintiff availed the services of the defendant for shipping 433 bags of Indian red chillies from Chennai to Houston. The cargo was

consigned to Bank of America Trade Operations and the buyer was Maldonado Imports LLC. The bill of lading is an evidence of a contract of

Affreighment. The defendant is duty bound to deliver the goods only to the consignee mentioned in the bill of lading or any person to whom the title

is transferred by the consignee. The plaintiff forwarded the original bills of lading along with other commercial documents to HDFC Bank in India

and in turn they forwarded to the Bank of America to surrender the same to notify party, namely M/s. Maldonado Imports LLC, USA on receipt

of cost of the goods.

(ii) The buyer on arrival of the goods, who pay the bill value to the banker upon which the original documents are to be released to the buyer,

thereafter, upon receipt of the original documents, the agent of the defendant shall issue the delivery order. On receipt of the swift message from

the Bank of America to HDFC Bank about the non-collection of the amount for the bills, the plaintiff requested delivery agent of the defendant to

convey the delivery status of the goods. Neither the defendant nor the agent responded to the request. The Bank of America sent second suit

communication, dated 30.10.2008 from which the plaintiff understand that the defendant and his agent in USA in gross violation connived with the

buyer and issued delivery order for the goods, without getting the concurrence of the consignee bank.

(iii) The plaintiff issued legal notice to the defendant. Suddenly, the buyer informed the consignee bank that they could not pay payment to the bank

as they received the goods in damaged condition, which fact has been communicated by the consignee bank to the plaintiff bank through the

second swift mail, dated 30.10.2008. To the legal notice, the defendant had not replied. Therefore, the plaintiff claims Rs. 15,60,815/- towards the

loss suffered by the plaintiff and Rs. 1,39,711/- as compensation for the mental agony, suffering and loss of business.

3. The averments in the written statement are as follows :

(i) This Court has no jurisdiction to try the suit as the contract of carriage is governed by US Carriage of Goods by Sea Act and only the Courts in

USA has jurisdiction to try the dispute between the parties.

(ii) The defendant acted only as an agent for disclosed principal, namely Freightcan Global Inc, who have their registered office and carry on

business at USA and therefore, the suit is not maintainable.

(iii) As per Clause 3 of the bill of lading, the suit should have been filed only in the Court, having jurisdiction in the United States of America with

respect to this dispute of breach of contract of carriage.

(iv) The defendant had received a booking from one M/s. Time Scan Logistics Pvt., Ltd., and therefore, the booking was released to Time Scan

Logistics Pvt., Ltd., and the defendant had no contractual relationship with the plaintiff. In fact, the container with the cargo was booked up from

the port by Time Scan Logistics Pvt., Ltd., and was also delivered to the port and to the line (carrier) by Time Scan Logistics Pvt., Ltd. As Time

Scan Logistics Pvt., Ltd., does not have any FMC bill of lading, the defendant had issued House Bill of Lading to the actual shipper namely the

plaintiff, as per the instructions given by the Time Scan Logistics Pvt., Ltd. There is no privity of contract between the plaintiff and the defendant.

The plaintiff''s remedy if at all is only against Time Scan Logistics Pvt., Ltd and not against the defendant. The ocean freight was also paid only by

the defendant to the carrier namely Maersk, who alone would be held responsible for releasing the cargo without getting the clearance from the

defendant herein.

(v) The defendant acted only as an agent for its principal Freightcan Global Inc and the booking was made only by Time Scan Logistict Pvt., Ltd.

with whom the transaction was completed for shipping the cargo to ultimate destination.

(vi) As per the Custom and Law of USA, the consignee would be entitled to take delivery without surrender of the original bill of lading and neither

the forwarder nor carrier could prevent delivery, as the same would amount to a serious offence under USA Laws. The defendant understands that

the consignee on arrival of the cargo had arranged inspection of the cargo, which disclosed the cargo in a damaged condition. The non-payment of

the value of the cargo by the consignee, should have been due to damage to the cargo and for which, the plaintiff should settle its dispute with the

consignee and cannot blame the defendant or its principal for the alleged non-payment of the value of the cargo. It is further understood that the

consignee would not have come forward to take delivery of the cargo within free period because of the bad condition of the cargo and the plaintiff

was aware of the same. Therefore, the suit is to be dismissed.

4. The learned trial Judge, framed necessary issues and after analysing both the oral and documentary evidence on either side, dismissed the suit.

Aggrieved by the said order, this Appeal Suit has been filed by the appellant/plaintiff.

5. The learned counsel appearing for the appellant/plaintiff contends that as per the bill of lading, Ex.A.7, the defendant being carrier is bound to

deliver the cargo to the buyer on production of the original documents, only after full payment to the Bank of America, who is shown as consignee.

It is further contended that having delivered the goods to the buyer without any payment to the Bank of America, the respondent/defendant is liable

to pay.

6. The learned counsel appearing for the respondent per contra contends that the appellant/plaintiff acted only as an agent of Freightcan Global

Inc, whose principal office is at United States and the respondent/defendant is not liable, as per Section 230 of the Indian Contract Act, 1872 and

the suit should have been filed only in the jurisdictional court of United States of America.

7. Ex.A.1 is the invoice and Ex.A.2 is the packing list. In these documents, plaintiff is shown as exporter, consignee is mentioned as Bank of

America Trade operations and the buyer is noted as Maldonado Imports LLC.

8. The Bill of Lading is marked as Ex.A.7. In this the particulars are given as follows :

consigned from - M/s. Inter Asia Impel (Plaintiff)

consigned to - Bank of America Trade operations

Notify party/intermediate

consignee - Maldonado Imports LLC

Destination Agent - Freightcan Global Inc NJ 08837

Freight prepaid.

9. Though in Ex.A.1 and Ex.A.2, the terms of the delivery and payment is shown as 100% cash against documents, whereas in Ex.A.7, no such

condition is mentioned. However, in all the three documents, the respondent/defendant Freightcan Global Logistics Pvt., Ltd., signed only as agent.

P.W.1 also during cross-examination admits that the defendant signed in Ex.A.7 in the capacity as an agent. Therefore, the respondent/defendant

acted only as an agent to its principal Freightcan Global Inc, whose principal office is in United States of America.

10. Section 230 of the Indian Contract Act, 1872 reads thus :

230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal - In the absence of any contract to that effect, an agent

cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Presumption of contract to

contrary - Such a contract shall be presumed to exist in the following cases :

(1) where the contract is made by an agent for the sale be presumed to goods for a merchant resident abroad ;

(2) where the agent does not disclose the name of his principal;

(3) where the principal, though disclosed, cannot be used.

11. The learned counsel appearing for the appellant/plaintiff cited a Supreme Court Judgment in Radhakrishna Sivadutta Rai and Ors. v.

Tayeballi Dawoodbhai, reported in AIR 1962 SC 538, for the proposition that in the absence of any contract between the parties, an agent

who acts on behalf of a principal is not personally liable.

12. As per the three presumptions listed under Section 230 to the exception to the rule that an agent, who acts on behalf of the principal is not

personally liable, the presumption to support a contract to the contrary would be whether contract is made by a agent for the sale or purchase of

goods for a merchant residing abroad or whether the agent does not disclose the name of the principal and lastly when the principal though

discloses cannot be sued.

13. Here in this case, the respondent/defendant signed the document in the capacity as an agent and also disclosed the principal by mentioning in

the document itself as a destination agent. Thus, the respondent/defendant disclosed its principal as freightcan Global Inc NJ 00837.

14. The learned counsel appearing for the appellant cited a Division Bench Judgment of this Court in Gnanasundara v. Berton Export Co.,

reported in AIR 1964 Madras 113 and contended that an agent representing a foreign principal will be personally liable. In this Judgment, it has

been held as follows :

What then is the correct position on the facts of this case ? We do not have the slightest doubt that the second defendant acted as the agent of the

first defendant. The terms of the contract and the surrounding circumstances establish this quite clearly. The name of the principal is also disclosed.

The second co-tenant cannot, therefore, be made personally liable under the contract. But being an agent of a foreign principal who sold the goods

to the plaintiff he falls squarely within the exception under Section 230. In order to avoid personal liability, the second defendant must show that by

express words or by necessary implication he contracted out of such liability. In regard to the liability of damages clause 26 referred to by my

learned brother in his judgment quite clearly exempts him from liability of any kind. But in regard to the refund of the advance amount, there is no

specific provision in the contract excluding his liability.

15. In the above ruling, the dispute arose against the contract entered into between the plaintiff and the first defendant wherein there was no

specific provision in the contract excluding the liability of the agent/second defendant in that suit, as far as refund of the advance amount is

concerned, when there is a clause of exclusion with regard to the liability of damages.

16. In this case on hand, as already pointed out, there is no privity of contract between the plaintiff and the defendant, as the defendant signed in

the bill of lading only as an agent of the Freightcan Global Inc. In Ex.A.7, the defendant is not shown in any capacity, except signing the bill on

behalf of Freightcan Global Inc and Freightcan Global Inc alone is shown as destination agent. Therefore, existence of any contract between the

plaintiff and the defendant does not arise at all.

17. In the absence of any contract, as per Section 230 of the Indian Contract Act, the defendant having disclosed the foreign principal to the

plaintiff even in the bill of lading cannot be personally bound by Ex.A.7 entered into between the plaintiff and the Freightcan Global Inc.

18. The learned counsel appearing for the appellant cited the Calcutta High Court Judgment, in Jaytee Exports v. Natvar Parekh Industries

Limited and Ors., reported in 2006 SCC Online Cal 188 and contends that this Court has got jurisdiction as part of cause of action arose at

Chennai. He contends that place of acceptance of goods of carriage and place of issuance of bill of lading are at Chennai. But the learned counsel

for the respondent inter alia contends that only the jurisdictional Court in USA alone has got jurisdiction as per the terms in the bill of lading. He

pointed out Clause 3 of the bill of lading, which reads thus :

3. (Law and Jurisdiction) - Whenever the Carriage of Goods by Sea Act, 1936 (COGSA) of the United State of America applies, this contract is

to be governed by United States Law. In all other cases actions against the Carrier may be instituted only in the country where the Carrier has its

principal place of business and shall be decided according to the law of such country.

19. The defendant in its pleading stated that bill of lading issued by the Carrier being a Sea Way Bill, as per the Custom and Law of USA,

consignee would be entitled to take delivery without surrender of the original bill of lading and neither the forwarder nor carrier could prevent the

delivery, as the same would amount to a serious offence under the USA Laws.

20. D.W.1 has deposed during cross-examination that practise of delivering goods on production of original documents is only in India. When the

plaintiff accepts the bill of lading as contract all the clauses, including the above said clause No. 3 binds the appellant/plaintiff.

21. As per Clause 3 of the bill of lading, the parties accepted United States Law to be followed for the contract and also agreed to lay the case

against the carrier in the place where it has its principal place of business. The present suit is filed in Chennai, that too against the defendant, who is

the agent of the carrier is not maintainable.

22. In the light of the above findings, the issue about the claim of insurance by the plaintiff need not be gone into. Though document, Ex.P.1 has

been marked subject to objection, it has not been proved as per Section 65 (B) of the Indian Evidence Act. However, it is pertinent to note that

there is no denial of insurance claim by the plaintiff by making any suggestion to D.W.1 who deposed about the insurance claim.

23. As far as maintainability of the suit in the name of proprietary concern, it is permissible under law. Learned counsel for the appellant cited

Ashok Transport Agench v. Awadhesh Kumar, reported in (1998) 5 SCC 567, for the proposition that a suit by or against proprietary

concern as well as by or against the proprietor is maintainable as per the provisions of Order 30, Rule 10 CPC.

24. For the aforementioned reasons, this appeal is liable to be dismissed. The learned trial Judge has rightly dismissed the suit and this Court do not

find any reason to interfere with the Judgment and Decree of the trial Court.

In fine, this Appeal Suit is dismissed, confirming the Judgment and Decree of the trial Court, dated 31.01.2011 made in O.S. No. 11979 of 2011.

No costs.