

(2011) 02 MAD CK 0328

In the Madras High Court

Case No : O.S.A. No. 31 of 2011 and M.P. No. 1 of 2011

A.S. Shipping Agencies Pvt. Ltd. and A.S. Shipping Agencies
Pvt. Ltd. Container Freight Station APPELLANT

Vs

Bennett Coleman and Co. Ltd., The Oriental Insurance Co.
Ltd. and CMA CGM S.A. RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (2011) 02 MAD CK 0328

Hon'ble Judges : R. Banumathi, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : P. Giridharan, for the Appellant; G. Guruswaminathan, for Nageswaran and Narichania for Respondents-1 and 2 and K. Bijai Sundar, for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—This Appeal has been preferred by the Appellants/Defendants 2 and 3 in the Suit being aggrieved against the order passed in Application No. 4937 of 2010 in C.S. No. 176 of 2010 by the learned single Judge.

2.A Suit has been filed in C.S. No. 176 of 2010 by Respondents 1 and 2 herein, seeking recovery of a sum of Rs. 25,61,569/-with interest at 18% per annum, against the Appellants and the third Respondent herein. The said Suit has been filed on the ground that due to the damage caused to the consignment of Standard Newsprint and on account of breach of contract of affreightment committed by the Appellants and the third Respondent, there is a loss of Rs. 25,61,569/-

3. The first Respondent/first Plaintiff bought a consignment of Standard Newsprint and the said consignment was imported from Trieste to Chennai by sea carrier by name MV.CMA.CGM Camellia. The consignment was entrusted to the sea carrier at the port of shipment in an apparent good order and condition

as acknowledged by the bill of lading bearing No. IT1366041 dated 13.10.2008 issued by the third Respondent/first Defendant. The consignment was discharged at Chennai and was transferred to the Container Freight Station of the second Appellant by the third Respondent/first Defendant and the first Appellant as per local Port practice.

4. It is the further case of the Respondents 1 and 2 that on inspection it was found that out of six containers, three were found damaged and the cargo Standard Newsprint was fully wet. Thereafter a demand was made for a Certificate from the first Appellant by the letter dated 17.01.2009 followed by earlier letter dated 13.01.2009 to the third Respondent recording the fact of collecting the delivery order on 13.01.2009 and the damages caused to the three containers. A survey was conducted and a report was filed by the licensed surveyors on 02.02.2009. Therefore, since the Appellants and the third Respondent being jointly and severally liable for the loss caused, the Suit was laid by the Respondents 1 and 2 against them.

5. Applications were filed in Application Nos. 4936 and 4937 of 2010 by the Appellants being the Defendants 2 and 3 on the ground that the description of the first Defendant namely the third Respondent herein has been wrongly notified by stating that it has been represented by their Steamer Agent who is none other than the second Defendant who acted as a delivery agent and also being in charge of the container freight station. Therefore, it was prayed in those applications to remove the above said description by deleting the representation shows as local steamer agent being M/s.A.S. Shipping Agencies Limited, New No. 113, (Old No. 55), Armenian Street, Chennai - 600 001. Consequently, A. No. 4937 of 2010 was also prayed that the first Appellant arrayed as 2nd Defendant will have to be deleted.

6. It is the case of the Appellants in those applications that the first Appellant was never been a local steamer agent of the third Respondent/first Defendant. The learned single Judge allowed the application filed in Application No. 4936 of 2010, but dismissed the application filed in Application No. 4937 of 2010. Challenging the dismissal of the application filed in Application No. 4937 of 2010 under order 1 Rule 10(2) of the Code of Civil Procedure, 1908 the present Appeal has been filed.

7. The learned Counsel appearing for the Appellants submitted that in view of the order passed in allowing the petition filed in Application No. 4936 of 2010, the other application filed in Application No. 4937 of 2010 also ought to have been allowed. The first Appellant has been shown in the address of service as the steamer agent of the first Respondent/Plaintiff. It is nobody's case that the first Appellant was a steamer agent of the first Respondent/Plaintiff. When that is a factual position, the learned single Judge has committed error in dismissing the application filed in Application No. 4937 of 2010 by holding that the first Appellant is a proper necessary party for deciding the issues involved in the Suit. Hence, the learned Counsel submitted that the appeal will have to be allowed.

8. Per contra, the learned Counsel appearing for the Respondents submitted that the first Appellant is a proper necessary party to decide the Suit. It is also submitted by the learned Counsel for the third Respondent that considering the agreement between the first Respondent and the Appellants a Suit cannot be maintained against the 3rd Respondent alone. It is further contended by the learned Counsel appearing for the Respondents that the agreement was entered into between the first Appellant and the first Respondent. Even though it is admitted that the first Appellant was not a steamer agent, the goods have been transferred by the first Appellant to the container freight station of the second Appellant. Therefore, inasmuch as the first Appellant acted as a delivery agent and being in charge of the container freight station, it is a proper necessary party in the Suit. The question regarding the liability of the first Appellant will have to be decided in the Suit and not in the application. When the learned single Judge has thought fit to hold that the presence of the Appellants are necessary for deciding the issues involved in the Suit, no interference is required. Therefore, it is submitted by the learned Counsel for the Respondents that the Appeal will have to be dismissed.

9. A specific averment has been made in the plaint by the Respondents 1 and 2 being the Plaintiffs that the first Appellant has acted as a delivery agent. The learned single Judge has allowed the application filed in Application No. 4936 of 2010 only on the ground that the first Appellant was not a local steamer agent of the third Respondent. The said fact is also accepted by all the parties. A perusal of the averments made in the plaint would clearly exemplify the fact that the first Appellant has been arrayed as a party Defendant only on the ground that it acted as a delivery agent and transferred the consignment which was discharged at Chennai to the container freight station of the second Appellant. Therefore, as contended by the learned Counsel appearing for the Respondents, the question as to whether the first Appellant is liable or not, will have to be decided in the Suit.

10. It is further to be seen that the first Appellant has not been properly arrayed in view of the fact that in the damage certificate issued by the first Appellant dated 04.12.2008 to the first Respondent, it has been shown as M/s.A.S. Shipping Agencies Pvt. Ltd., New No. 113, (Old No. 55), Armenian Street, Chennai - 600 001 and that is the reason why the mistake has crept in the description of the parties. Therefore, considering the specific averment made in the plaint fixing the liability also on the first Appellant, we are of the considered view that the order of the learned single Judge is perfectly in order and not warranting any interference.

11. However, as rightly contended, the first Appellant has been shown as a steamer agent, which is factually incorrect. The said position has also been accepted by the learned Counsel appearing for the Respondents 1 and 2 as well as the third Respondent. In fact, that is the reason why the application filed by the Appellants in Application No. 4936 of 2010 has been allowed and the same

has become final between the parties. Therefore, while dismissing this appeal, it is made clear that the first Appellant cannot be proceeded in the capacity as a steamer agent, but can be proceeded with as a delivery agent or otherwise.

12. This appeal is dismissed with the above observations. However, considering the facts and circumstances of the case, there is no order as to costs. It is made clear that we have not expressed any opinion on the merits of the matter. Consequently, connected miscellaneous petition is closed.