
(1981) 11 CAL CK 0011

In the Calcutta High Court

Case No : Commercial Cause Suit No. 730 of 1980

Steel Authority of India Ltd.

APPELLANT

Vs

Transworld Marine Ltd. and Another

RESPONDENT

Date of Decision : 04-11-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Contract Act, 1872 — Section 230

Citation : AIR 1982 Cal 161

Hon'ble Judges : Dipak Kumar Sen, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dipak Kumar Sen, J.—Steel Authority of India Limited, the plaintiff, has instituted this suit against Transworld Marine Limited and Messrs. Chowgule Brothers, the defendants Nos. 1 and 2 respectively, claiming, inter alia, decree for Rs. 50,59,365.48; interests and costs.

2. The plaintiff's cause of action in the plaint appears to be that on or about the 13th June 1979 the plaintiff shipped a consignment of 434 pieces of mild steel plates on board the vessel "M. V. Chaofong" owned by the defendant No. 1, a company incorporated under the laws of Taiwan and (hereinafter referred to as the said vessel) for being carried from the port of Kachsiung, Taiwan to Calcutta.

3. On the 8th August 1979, the said vessel while proceeding towards the Port of Calcutta sank near the Sandheads at Diamond Harbour and the entire consignment of steel plates were lost. It is alleged that the vessel was unseaworthy and that there was lack of care for the cargo.

4. The plaintiff alleges that the defendant No. 2 is the agent of the defendant No. 1 at Calcutta and gave out by conduct and implication to be liable and responsible for the acts of the defendant No. 1.

5. The present application is by the defendant No. 2 on notice dated the nth

August 1981. In this application it is prayed that the suit be dismissed as against the defendant No. 2 and/or the name of the defendant No. 2 be struck out from the plaint.

6. The case of the defendant No. 2 is that the plaint filed discloses no cause of action against the defendant No. 2 and that the defendant No. 2 is not a necessary party to these proceedings. It is alleged further that the defendant No. 1 does not carry on business in India through the defendant No. 2 and that the latter is only the protecting agent of the defendant No. 1 at Calcutta. It is also alleged that there is no privity of contract or any legal relationship between the plaintiff and the defendant No. 2. It is contended further that the defendant No. 2 is not a party to the contract of carriage between the plaintiff and the defendant No. 1 and that it did not sign the bill of lading. The defendant No. 2 was also not responsible for the navigation of the said vessel or taking care of the cargo.

7. This application is opposed. It is contended on behalf of the plaintiff that the defendant No. 1 is a foreign shipping company and carries on business of shipping through its recognised and notified agent the defendant No. 2. It is contended further that in law as well as by usage and custom of trade the defendant No. 2, as the agent of the defendant No. 1, is bound by the contract of carriage between the plaintiff and the defendant No. 1 and is also privy to the contract. The other allegations in the petition have been denied and the contentions disputed.

8. At the hearing, learned Advocates appearing for the parties reiterated their respective contentions in the pleading. The learned Advocate for the defendant No. 2 referred to Section 230 of the Contract Act and submitted that under the terms thereof the principal having been sued the plaintiff was not entitled to sue the agent at the same time. He submitted that it was nobody's case that there was a contract by which the defendant No. 2 as the agent of the defendant No. 1 made itself liable to be sued in respect of the said contract of carriage.

9. Learned Advocate for the plaintiff contended to the contrary. In the facts and circumstances of and on the pleadings the plaintiff in my view cannot get over the mischief of Section 230 and sue both the principal and the agent. It is not the case of the plaintiff that by an express contract the defendant No. 2 made itself liable for the contract of carriage. The plaintiff's cause of action is founded on certain representations which, according to the plaintiff, create some sort of estoppel in his favour. Nothing further has been disclosed in the affidavit filed in opposition on behalf of the plaintiff on which the plaintiff can be given a chance to amend its plaint and make out a cause of action against the defendant No. 2.

10. For the reasons stated above, the defendant No. 2 succeeds in its application. The plaint however cannot be struck out in its entirety. Following the decision of the Division Bench in P.B. Shah and Co. and Others Vs. Chief Executive Officer and Others, . It is directed that the name of the defendant No.

2 be struck out and deleted from the cause title of the plaint in this suit.

11. The defendant No. 2 is entitled to the costs of this application.