

SUPREME COURT OF INDIA

Virender Khullar

Vs.

American Consolidation Services Ltd. & ors.

C.A.No.4861 of 2012

(R.K.Agrawal and Prafulla C.Pant,JJ.,)

16.08.2016

JUDGMENT

Prafulla C.Pant,J.,

1. These appeals are directed against common judgment and order dated March 22, 2012, passed by National Consumer Disputes Redressal Commission, New Delhi (for short “NCDRC”) in Original Complaint Nos. 89 of 1995 and 90 of 1995, whereby the Commission has dismissed the complaints of the appellants, filed under Section 23 of the Consumer Protection Act, 1986, as against Respondent Nos. 1, 2 and 4. However, the complaints were partially allowed as against respondent No. 3 M/s. Zip Code, 2615, Elmhurst Lane, Portsmouth, VA 23701, USA, for an amount of Rs.20,82,902.40 in favour of appellant Virender Khullar, and Rs.15,27,461.76 in favour of appellant Girish Chander, with interest at the rate of 12% per annum with effect from April 1, 1995 till the date of payment.

2. Brief facts of the case are that the appellants-complainants entrusted consignments containing men’s wearing apparels in December 1994 to Respondent No. 1 American Consolidation Services Ltd., Akruiti Trade Centre, 402, 4th Floor, Andheri (East), Mumbai (hereinafter referred to as “ACS”), and cargo receipts were issued to them by Respondent No. 1. As per the cargo receipts so issued, the consignments were to the order of Respondent No. 2 Central Fidelity Bank, Richmond VA, USA. Respondent No. 1 on its part handed over the consignments to respondent No. 4 M/s. Hoeg Lines, Lief Hoegh & Co., A/S Oslo, Norway/M/s. American President Lines Limited, Tarde Plaza 2nd Floor, 414 Veer Savarkar Marg, Prabhadevi, Mumbai, for delivery of the consignments at the port of destination. It is alleged that in the Bill of Lading issued by the shipping carriers, name of consignee was changed from Central Fidelity Bank to Coronet Group Inc. besides there being several other changes in the name and description of the shipper as Cavalier Shipping Co. When payment was not received till March, 1995, the appellants/ complainants made enquiry about the consignments. After servicing legal notice, appellant Virender Khullar filed a complaint for an amount of Rs.35,31,601.15 in respect of 300 cartons containing men’s apparels through

cargo receipt Nos. 34307, 34308 and 34309, and appellant Girish Chander filed the complaint for an amount of Rs.29,17,844.76 for 220 cartons containing men's apparels sent through cargo receipt Nos. 34116, 34117 and 34118, before NCDRC, New Delhi. Initially complaints were filed only as against Respondent No. 1, i.e. American Consolidation Services Ltd. (ACS).

3. Respondent No. 1 contested the complaints and pleaded That Respondent No.1 received the complainants goods on behalf of the buyer/consignee, i.e. Zip Code Inc. which was part of Coronet Group Inc. as its agent. It is further pleaded That there was no payment made by the appellants/ complainants for the service provided by Respondent No. 1, nor there was any contract between the complainants and Respondent No. 1 for shipment of the goods. The receipt, custody and forwarding of the goods of the complainants were governed by the provisions of bailment agreement as mentioned in the cargo receipts. The bailment agreement provided that from and after the delivery by Respondent No. 1 to a carrier in accordance with the instructions of the consignee or other cargo owner, the sole responsibility and liability for the care, custody, carriage and delivery of goods was that of the concerned carrier. Respondent No. 1 was under no liability whatsoever in respect of any failure on the part of the consignee or any other party. According to Respondent No.1, complainants' claim, if any, can lie only as against the principal, i.e. buyer/consignee who appears to have not made payment to the complainants for the value of the cargo. Since Respondent No. 1 acted only as an agent of the consignee, i.e. Zip Code Inc., a subsidiary of Coronet Group Inc, and acted only as a consolidator and forwarder (not a carrier), it has no liability as provided in Section 230 of the Indian Contract Act, 1872, on behalf of the principal. The carrier of the goods in question was Respondent No. 4 Hoegh Lines/American President Line Limited, who issued the relevant Bills of Lading covering the goods. The appellants were duly informed by Respondent No. 1 about the delivery of consignment to Coronet Group Inc on surrendering of all the original Bills of Lading. Lastly, it is pleaded that it is not a case of negligent act or careless handling of the shipment by Respondent No. 1.

4. After hearing the parties, the NCDRC, vide its separate orders dated January 20, 2004, accepted both the claims (to the extent of Rs.20,82,908.40 of appellant Virender Khullar and claim to the extent of Rs.15,27,461.76 of appellant Girish Chander) and directed the amount to be paid by Respondent No. 1 with interest.

5. However, above orders dated January 20,2004, passed by NCDRC, were challenged by Respondent No. 1 in Civil Appeal Nos. 2079 of 2004 and 2080 of 2004, before this Court and the same were disposed of vide order dated September 10, 2009, as under: -

“Heard learned counsel for the parties. These appeals have been filed against the impugned Judgment of the National Consumer Disputes Redressal Commission, dated 20th January, 2004. By that judgment, certain amount has been decreed against the appellant. Mr. R.F.Nariman and Mr. P.H.Parekh, learned senior counsel appearing for the appellant, contended that the appellant was only an agent of the consignee, Zip

Code Inc, which is part of the Coronet Group. It appears that the grievance of the claimants (respondents in this case) is that certain cartons, which were to be shipped to a party in USA, were allegedly not delivered there. A claim was made for damages in that respect. Mr. Nariman has contended that the appellant is only an agent of the consignee and not the consignee himself. We agree with the contention. In our opinion, the claimants should have impleaded the consignee as well as the carrier as parties in the claim petitions apart from impleading the appellant. The rules of natural justice require that necessary parties have to be impleaded, which appears not to have been done in this case before the National Commission. For the reason given above, we set aside the impugned judgment of the National Commission and remand the matters to the National Commission with liberty to the respondents-claimants to implead the consignee as well as the carrier in their claim petitions. Notice will be issued to the newly impleaded parties and case will be decided by the National Commission preferably within six months from the production of a copy of this order. We make it clear that we have not expressed any opinion on the merits of the case. All points of law and fact are expressly left open to the parties. The amount deposited here by the appellants will be refunded to them with accrued interest. The appeals are accordingly disposed of. No order as to costs. ”

6. In the light of above order, Respondent No. 2 Central Fidelity Bank, Respondent No. 3 Zip Code and Respondent No.4 Hoegh Lines/American President Lines Limited) were impleaded and the case proceeded and decided afresh by the NCDRC. The case against Respondent No. 3 M/s. Zip Code and Respondent No. 4 Hoeg Lines/American President Lines Limited appears to have proceeded ex parte as they failed to turn up in response to the notices sent to them. There was no relief sought as against Respondent No. 2 Central Fidelity Bank. In the impugned order dated March 22, 2012, it has been held by NCDRC that it is only Respondent No. 3 Zip Code, the intermediary consignee of the cartons in question mentioned in cargo slips, who received the delivery of the consignments without making payment to the bank or the complainants, and, as such, liable to pay the compensation to the appellants, and accordingly directed Respondent No. 3 to make the payment of Rs.20,82,902.40 in favour of appellant Virender Khullar and Rs.15,25,461.76 in favour of appellant Girish Chander, with interest at the rate of 12% per annum with effect from April 01, 1995.

7. Respondent No. 3 has not challenged the above order. Rather, the complainants have challenged the fresh decision of NCDRC as other respondents are held not liable to make the payment. Respondent Nos. 3 and 4, even after service of notice, have not turned up to contest the appeals.

8. Learned counsel for the appellants argued before us that it is Respondent No. 1 who changed the name of consignee and the name of Coronet Group Inc. was inserted in the Bill of Lading depriving realization of damages by the complainants. It is further contended that Respondent No. 1 accepted the goods from the complainants to be delivered to the order of Respondent No. 2 by engaging a carrier, but it caused the goods to be delivered to Coronet Group without getting payment realized through the bank. It is further submitted that in the

cases other than Letter of Credit when the goods are sent on collection basis, the same are consigned to bank, and foreign buyer is named as party to be notified. As such, the delivery of goods should not have been allowed to be made without getting realized payment of goods through Respondent No. 2 Bank. It is also contended that Section 2(d) of the Consumer Protection Act, 1986, came into force with effect from 15.3.2003, and prior to that there was no exclusion regarding service of commercial purposes under the Act. Lastly, it is submitted that the appellants have nothing to do with the consolidation procedure said to have been agreed between Respondent No. 1 and Coronet Group Inc.

9. On behalf of Respondent No. 2 Central Fidelity Bank, now known as Wells Fargo Bank, it is submitted that there is no relief sought against it by the appellants/complainants in their complaints. It is further submitted that Respondent No. 2 was only a consignee as per the records of the case, i.e. it was the consignee as set out in the cargo receipts and the notify party/intermediate consignee was Zip Code Inc. (respondent No. 3). As such, it was Respondent No. 3 who was the actual buyer and who was to be notified by Respondent No. 1 once the consignment arrived in Norfolk, USA. In turn, Respondent No. 3 was to inform Respondent No. 2, subsequent to which Respondent No. 3 was to pay for the goods and obtain a certificate from Respondent No. 2 to show that such payment has been made. It was subsequent to this process that Respondent No. 2 was to release the goods to Respondent No. 3. It is further submitted that it is also an admitted fact that no shipment was ever delivered to Respondent No. 2. The appellant himself submits that the “shipment was not delivered to the consignee name in the cargo receipts” . As such, there was no obligation whatsoever upon Respondent No. 2, that it had to discharge.

10. We have considered the arguments advanced on behalf of the appellants and that of Respondent No. 2 and perused the record. Copies of cargo slips, which are on record, disclose that notified party/intermediary consignee was Respondent No. 3 Zip Code, 2615 Elmhurst Lane, Portsmouth, VA 23701, USA. In the column of name of consignee “To order of Central Fidelity Bank Richmond VA” is mentioned. Cargo slips further disclose that (Vessel, Voyage) Hoegh Clipper/Eagle Prestige was export carrier.

11. Admittedly, the goods in question were handed over by the appellants to Respondent No. 1 as pleaded. But there is neither any pleading nor proof that the appellants paid any sum for transportation or any other service to Respondent No. 1 at the time the goods were handed over to it or subsequent there to. It has been shown on behalf of Respondent No. 1 that Respondent No. 1 was simply an agent of the buyer with whom the appellants had entered into contract. It is nobody’s case that the goods were lost in transit. Rather it is a case where it has come on record that the consignment was received by Respondent No. 3 Zip Code Inc, a part of Coronet Group Inc.

12. At this stage, we think it just and proper to reproduce relevant additional terms and conditions attached with the cargo slips, which read as under: -

“ACS undertakes to receive the goods on behalf of the consignee, hold the same as an agent and deliver or forward them to carriers or transporters in accordance with the instructions of the consignee or other cargo owners for subsequent transportation by water or air carrier and for distribution and ultimate delivery to the consignee.

XXX XXX XXX

In receiving the goods and pending the consolidation services covered by this agreement, ACS is acting as agent only for the consignee named on the face hereof and not a.s carrier, transporter or distributor of the goods.

XXX XXX XXX

The shipper hereby acknowledges that ACS acts solely as agent on behalf of the consignee and shall be under no liability whatsoever in respect of any failure by the consignee or any other party to do any a.ct or pay any amounts due in respect of the cargo received hereunder including but not limited, to the purchase price of such cargo, freight, storage charges insurance premium, lighterage changes, demurrage salvage charges or general average contribution. ”

13. Since Respondent No. 1 was simply acting as an agent of Coronet Group Inc, as such, in view of Section 230 of the Indian Contract Act, 1872 it cannot be held personally liable to enforce the contract entered between its principal and the appellants. This Court, in its order dated September 10, 2009, has accepted the plea of Respondent No. 1 that Respondent No. 1 is not a consignee, but only an agent of the intermediate consignee. That being so, Respondent No. 1 cannot be held to be liable in respect of claim made by the appellants. We think it relevant to mention here that in *Marine Container Services South Pvt. Ltd. v. Go Go Garments*¹, this Court has already made clear that defence under Section 230 of Indian Contract Act, 1872 is available in the cases under Consumer Protection Act, 1986 by the agents of the principal with whom the complainant had the agreement.

14. As far as liability of Respondent No. 2 Central Fidelity Bank and that of Respondent No. 4 is concerned, we agree with the NCDRC that Respondent No. 4 had carried the consignment and delivered the same as per Bill of Lading and there is no contract between the appellants and Respondent No. 4. Also Respondent No. 2 Bank cannot be held liable for the deficiency of service, as the amount was not collected from the consignee, as such there was no question of remitting it to the appellants/complainants by the Bank. In the circumstances, respondent No, 3 Zip Code Inc, which is subsidiary to Coronet Group Inc, the consignee named in the cargo slips, is the only party which can be held liable for taking delivery without depositing the price of the goods with the Bank.

15. For the reasons discussed above, we find no infirmity in the impugned order passed by the NCDRC and, as such, these appeals are liable to be dismissed. Accordingly, both the appeals are dismissed. There shall be no order as to costs.

¹(1998) 3 SCC 0247