* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Reserved on: 18th February, 2026***
***Pronounced on: 29th May, 2026***

\+ **RFA 299/2021**

**MALABAR CARPET EXPORT**

Through its Partner Sh. Samrendra Singh
Office at: Mehboobpur, Bypass Road,
Bhadohi, U.P. .....Appellant

Through: Mr. Puneet Jaiswal and Mr. Sunil Kumar, Advocates.

versus

**1. TIGER LOGISTICS (INDIA) LTD.**

Registered Office at: 804A-807, Skylark Building,
60, Nehru Place, New Delhi.

**2. M/S ZIPPING COM. IMP. E EXP. LTDA**

R/O AV. Jeronimo Monteiro,
1000 S/1012, CEP 29010-935
Vitoria-ES, Brazil. ....Respondents

Through: Mr. Sanjeev Panda and Mr. SumitShukla, Advocates.

**CORAM:**
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. **Regular First Appeal** under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been preferred by the *Appellant/Plaintiff, Malabar Carpet Exports* against the Judgment dated **22.11.2018**, whereby the Suit for Recovery filed by the

Plaintiff, **was rejected under Order VII Rule 11 by the learned District Judge**.

**2.** The Plaintiff had filed Suit bearing *CS No. 1304/2017 for Recovery of Rs.61,73,290/- against the Defendants*.

**3. The facts in brief,** as narrated in the **Plaint** were that, *Defendant No.3, M/s Zipping Com. Imp. E Exp. LTDA,* had placed an Order with the Plaintiff Firm, for supply of 951 rolls of hand-woven carpets. Subsequently, the Plaintiff Firm entered into an Agreement with *Defendant No.1, M/s Tiger Logistics (India) Ltd.* and *Defendant No.2, M/s Century Cargo Forwarders* for dispatch of the said consignment, which was valued at $1,13,057.38/- (i.e. Rs.70,76,351.86/-), to the port of Vitoria, Brazil. Defendant No. 3, thereafter, made a payment for a sum of Rs.12,67,350/- towards the Order and it was agreed that the remaining amount of Rs.61,73,290/-, would be paid later.

**4.** The Plaintiff Firm *vide* Invoice No.MCE/2014-15/082 dated **09.02.2015**, entrusted the said consignment to Defendant No.1 as the *forwarding and clearing agent*, for the transshipment of the Order from Mumbai, India to Vitoria, Brazil. Thereafter, the Plaintiff firm transferred a sum of Rs.54,198/- to Defendant No.2, towards the cost of transportation, which amount, in turn, was paid to Defendant No.1 on behalf of Plaintiff Firm. Consequent, upon receiving the goods, Defendant No.1 prepared the relevant documents, i.e. three original copies of Bill of Lading dated **02.03.2015** and shipped the goods to the destined port of Vitoria, Brazil.

**5.** Subsequently, Defendant No. 3 failed to make the balance payment to the Plaintiff Firm, for the aforesaid goods shipped. Thereafter, the Plaintiff Firm *vide* e-mail dated **27.01.2016** proposed to Defendant No. 3 that it can send the Original Documents/Bill of Lading to it, so that it can get the Container released, consequent upon payment of $60,000/- to the Plaintiff.

**6.** The Plaintiff Firm was in dire need of money as it had already made huge investments against the said Order, whereafter, it approached Defendant Nos.1 and 2 regarding the status of goods, since the Plaintiff Firm wanted to deliver the goods to some other buyer, in Brazil.

**7.** As per the terms of the Agreement between the Plaintiff and Defendant No.1, the goods were not to be released to the buyer at the destined port, without presentation of the Original Bill of Ladings.

**8.** Initially, Defendant No.1 tried to avoid giving any Reply to the Plaintiff Firm regarding the status of the goods, however, it later admitted that the goods had been delivered to Defendant No. 3, on **16.04.2015**. It was claimed by the Plaintiff that Defendant No. 1 had delivered the goods to the buyer, without presentation of the Original Bill of Ladings dated 02.03.2015. Further, Defendant No.1 neither took the permission from the Plaintiff Firm before releasing the goods to Defendant No. 3 nor informed the Plaintiff Firm about the same, thereby breaching the terms of the Agreement.

**9.** Subsequently, the Plaintiff issued a Letter dated **10.02.2016** to Defendant No.1, wherein the Plaintiff claimed that the fraud was played by Defendant No.1 in discharging the goods to Defendant No. 3, without presentation of the Original Bill of Lading dated 02.03.2015, as well as without demanding payment for the same.

**10.** Defendant No.1, thereafter, replied through Letter dated **25.02.2016** stating that as per the destination Agent, the shipment had been delivered without presentation ofthe Original Bill of Ladings, because as per Brazil custom clearance rules and regulations, there are four channels of clearing the shipment and in case of green channel, the automatic custom clearance of the good is authorized, a proof of import is then emitted and the goods are sent to be imported.

**11.** The Plaintiff Firm claimed that two contradictory stands were being taken by Defendant No.1; *on one hand* it claimed that the goods were deemed to be delivered; and on the other hand has taken recourse of automatic custom clearance of the goods. Moreover, in the aforesaid Letter, Defendant No.1 admitted that the goods were delivered on the basis of "UNTO Order".

**12.** It was further claimed that, the Plaintiff Firm *vide* e-mail dated **29.02.2016**, asked Defendant No. 1 to furnish proof of delivery of goods, however, it failed to provide the same. Subsequently, Defendant No. 3 *vide* e-mail dated **13.06.2016** gave a proposal to the Plaintiff Firm that it should sell the goods to some other customer in Brazil, as they were unable to make the balance payment or take back the container of the goods.

**13.** The Plaintiff Firm further asserted that it had dealt with Defendant No. 3, earlier as well, on the same terms and conditions, as mentioned in the Original Bill of Lading and that the goods were not be released to the buyer without presentation of the same to the shipper.

**14.** There was clear breach of the terms by Defendant No. 1, as the goods that had been entrusted by the Plaintiff Firm for transshipment from Mumbai to Brazil, with a specific condition that the goods should not be released to the buyer, without presentation of the Original Bill of Ladings at the destined Port.

**15.** Despite all the three copies of the Original Bill of Ladings being in possession of the Plaintiff Firm, the goods have been discharged to Defendant No. 3, which caused wrongful loss to the Plaintiff Firm.

**16.** Thereafter, the Plaintiff Firm filed the present Suit for Recovery of Rs.61,73,290/-, against the Defendants.

**17.** **Defendant No.1** in its **Written Statement** took the *preliminary objection* that the Plaintiff's Suit was based on deliberate *suggestion falsi* and *suppression veri* and has been filed with an ulterior motive to harass Defendant No.1. It was claimed that it was a Company engaged in the business of International Freight Forwarders and has been carrying out its business for last few years.

**18.** It was asserted that, in March 2015, Defendant No.1 was *appointed by Defendant No.2*, for coordinating and connecting the consignment as per the planned vessel as well as to notify Defendant No.3 about the arrival of goods at the said destination through its agent namely, *Genko Logistica DO Brazil LTDA.* Defendant No.1 claimed that its role ceased, as soon as the goods reached the destination and the party as mentioned in the Modal Transport Document (*hereinafter referred to as "MTD"*), was notified about the arrival of the goods.

**19.** As per Brazilian Law, goods can be released only after fulfillment of formalities of release and relevant clearances. It was claimed that Defendant No.1 had no further contact or relation with the Plaintiff Firm nor with any other Defendants. Defendant No.1 was charged a sum of Rs.15,444/- for terminal handling charges and other charges, including the movement of the container through the shipping vessel. The liability of Defendant No.1 cannot be extended beyond shipping of the consignment and as notifying the party mentioned in MTD. Defendant No.1 cannot deny the goods to the buyer, if it makes a clearance from the customs, after showing them the actual Invoices and paying the freight charges, etc.

**20.** The Plaintiff Firm had entered into an Agreement with Defendant Nos. 1 and 2 for dispatch of the consignment valued at Rs.70,76,351/- to the Port Vitoria, Brazil. All the alleged recoveries, as per the case of the Plaintiff Firm itself, has to be made from Defendant No.3 and nothing is due and payable from Defendant No.1.

**21.** It was contended that since there was no cause of action disclosed against Defendant No. 1 in the Plaint, the Suit is liable to be rejected under Order VII Rule 11(d) of the CPC.

**22.** Further, the Suit filed by the Plaintiff Firm is **barred by limitation** under Section 24 of the Multimodal Transportation of Goods Act, 1993.

**23.** **On merits**, all the averments made in the Plaint were denied.

**24.** Separate **Written Statements** were filed by **Defendant Nos.2 &3**.

**25.** Thereafter, *Defendant No. 1 preferred an* ***Application under Order VII Rule 11 of the CPC*** *seeking rejection of the Plaintas well as an* ***Application under Order I Rule 10*** *for deletion of its name on the ground that it was not a necessary party in the present Suit.*

**26.** The Learned District Judge *vide* impugned Order dated 22.11.2018 observed that as per Section 24 of the Multimodal Transportation of Goods Act, 1993, the Suit could have been filed only within a period of nine months. Furthermore, Section 29 of Multimodal Transportation of Goods Act provided that the limitation, as provided in this Act, would prevail over any other law. Likewise, Section 28(2) of the Limitation Act, 1963, also states that notwithstanding anything contained in the Limitation Act, any limitation prescribed under the Special Law, shall prevail over it. It was observed that the goods were delivered by Defendant No.1 at the destinated port on **23.04.2015** and no issue of delivery was raised by the Plaintiff for nine months, as well as no Notice was issued.

**27.** It was further observed that the present Suit was filed against Defendant No.1 on **26.08.2017**, i.e. after two years and two months, from the date of delivery.

**28.** It was also held that in terms of Rule 6 Article III of the Indian Carriage of Goods by Sea Act, 1985, a Suit is to be brought within one year of delivery of goods or date of delivery or within an additional three months if allowed by the Court, unless parties agree to a longer period. The effect of Rule 6 Article III is not that the remedies are barred, but the effect of it is the total extinction of the right. Where a suit for non-delivery of goods or for that matter non-compliance of the terms, is filed beyond the period of one year either from date of delivery or date of departure of vessel, the carrier and the ship are discharged from their liability and no Suit can be filed against them. **It was further observed that the claim of the Plaintiff Firm *vis.-a-vis.* Defendant No.1 is miserably barred by time.**

**29.** In regard to the contention of Defendant No.1 that there was no privity of contract between it and the Plaintiff Firm as it had been approached by Defendant No.2 and was acting only in the capacity of an agent of Defendant No.2, it was held that the Plaintiff itself has admitted in Paragraph 7 of the Plaint, that the goods were entrusted to Defendant No.1 through Defendant No.2 for shipment from Mumbai, India to Vitoria, Brazil, for which the Plaintiff Firm had paid a sum of Rs.54,198/- to Defendant

No.2, who in turn paid the said sum to Defendant No. 1. ***There was no direct dealing between the Plaintiff Firm and Defendant No.1.***

**30.** It was also observed that, the Plaintiff Firm in its reply to the Application of Defendant No. 1 had asserted that, Defendant No.1 was appointed by Defendant No. 3 through its agent i.e Genko Logistics, implying thereby that Defendant No.1 was a sub-agent for and on behalf of Defendant No.3. Thus, the Plaintiff Firm itself was not sure whether Defendant No.1 had been appointed by Defendant No.2 or Defendant No.3.It was thus, concluded that Defendant No.1 was not acting on the instructions of the Plaintiff Firm.

**31.** In terms of *Section 230 of the Indian Contract Act, 1872,* an agent cannot personally enforce, nor be bound by, contracts on behalf of the principal. *Section 232 of the Indian Contract Act, 1872 provides that* the performance of the contract with an agent, is supposed to be with the principal**. It was held that in the facts of the case, Defendant No.1 cannot be fastened with the liability of Defendant No.3, i.e. the principal and Defendant No.2, in any way.**

**32.** Moreover, the goods were delivered at the destined port of Victoria, Brazil were as per local Laws and Practice. Therefore, the liability of Defendant No.1 ceased once the goods were put into transportation and delivered; no liability can be fastenedon to Defendant No.1. It was held that it was Defendant No.3, which had admitted its liability to pay for the goods supplied by the Plaintiff Firm, but failed due to financial crises.

**33.** It was therefore, concluded that Suit of the Plaintiff Firm against Defendant No.1 was barred by limitation; there was no privity of contract and there was no cause of action. Thus, the *Application under Order VII*

*Rule 11 read with Order 1 Rule 10* CPC filed by Defendant No. 1 was accordingly, *allowed and the name of Defendant No.1 was directed to be deleted from the array of parties.*

**34.** *Aggrieved by the aforesaid Judgment dated 22.11.2018, the Plaintiff Firm has preferred the present Regular First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.*

**35.** **The Grounds of Challenge** are that Section 24 of the MTG Act, 1993, is not applicable to the facts of the present case, since the Bill of Ladings specifically provided for only one mode of transportation. Section 2(k) and (l) of MTGAct, states that at least two different modes of transport are required for the purpose, for which reliance is placed on *Shipping Corporation of India Limited vs. Bharat Earth Movers Limited and Another*,(2008) 2 SCC 79.

**36.** Rule 6 Article III of Indian Carriage of Goods by Sea Act, 1985, is also not applicable to the present case, as the claim of the Plaintiff Firm, was not for damages or loss.

**37.** It was further asserted that the learned District Judge erred in holding that *there was no privity of contract between the parties*, which is contrary to the written contract between the parties i.e. Bill of Lading dated 02.03.2015, which specifically mentioned the Appellant's name as consignor. Further, the Invoice dated 09.03.2015 for a sum of Rs.15,444/- which was raised by Defendant No. 1 on the Plaintiff Firm, was admittedly paid through the Plaintiff Firm's agent.

**38.** The learned District Judge had committed an illegality in holding that the there was no cause of action against the Defendant No.1. Further, the Supreme Court in the case of *Sejal Glass Limited vs. Navilan Merchants*

*Private Limited*, 2017 (11) SCALE, has held that the Plaint cannot be rejected in part. The Judgment of *National Insurance Company Limited vs. Navrom Constantza and Others*, AIR 1988 Cal 155, is not applicable to the facts of the present case.

**39.** It was asserted that the period of limitation to institute the Suit shall not commence from the date of discharge of goods at the port of delivery; rather it runs from the date of knowledge of breach of contract committed by the Respondent, if any.

**40.** It is thus, asserted that the impugned Judgment dated 22.11.2018 is against justice, equity and good conscience. *A Prayer was therefore made that impugned common Judgment dated 22.11.2018, whereby Application under Order VII Rule 11 CPC and Application under Order 1 Rule 10 of CPC were allowed.*

**41.** **Written Submissions** have been filed on behalf of the respective parties, which are on similar lines as the rival contentions already noted above.

**Submissions heard and record perused.**

**42.** In the present case, admittedly, the Plaintiff Firm had entered into a contract with Defendant No.3, whereby the Plaintiff Firm had undertaken to supply 951 rolls of hand-woven carpet, *vide* Invoice dated 09.02.2015. The goods were stated to be delivered at port of Vitória, Brazil.

**43.** What emerges from the pleadings is that the Plaintiff Firm had entered into an Agreement with Defendant No.2 for arranging transportation of goods from India to Brazil, who in turn engaged Defendant No.1, as the Forwarding Agent for the transport of the said goods to Port Vitória, Brazil. From the averments made in the Plaint itself, it is evident that there was no contract between Defendant Nos. 1 and 2 and the Plaintiff Firm. The entire contract between the Plaintiff was against Defendant No.3. In case, there was no delivery of goods or payments against the delivery had not been made, the cause of action was against Defendant No. 3.

**44.** ***Further, Defendant No.2 had filed an Application under Order I Rule 10 of the CPC and was deleted from the array of parties, vide Order dated 12.01.2018, by observing*** that it was not a necessary party to the present Suit. Once Defendant No.2, itself got deleted from the array of parties, nothing more survived against Defendant No.1, who was the agent of Defendant No.2 for transportation of the said goods.

**45.** Therefore, the learner District Judge *vide* impugned Judgment dated 22.11.2018 correctly directed the deletion of the name of Defendant No.1 in the Application under Order I Rule 10 of the CPC.

**46.** Insofar as the Application under Order VII Rule 11 of the CPC is concerned, while it is correct that the Suit cannot be rejected piece meal, but it is not a case of rejection, but deletion of name of Defendant No.1 under Order I Rule 10(2) of the CPC on the ground of not being a necessary and a proper party.

**47.** In these circumstances, the discussion of limitation and cause of action was not required nor was any Order required under Order VII Rule 11 CPC. In the present case, the learned District Judge has erroneously proceeded with the Application under Order VII Rule 11 of the CPCfiled by Defendant No. 1 for rejection of the Suit,which in effect, is for deletion of the name of Defendant No.1, on account of not being a necessary and proper party.

**48.** Therefore, in the light of aforesaid discussion, it is held that the name of defendant No.1 has been rightly deleted, and there is no merit in the present Appeal, which is hereby,**dismissed** along with pending Applications.

**(NEENA BANSAL KRISHNA)**
**JUDGE**

**MAY 29, 2026/***R*