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KAVERI ENGINEERING INDUSTRIES LTD.

v.

UNITED SHIPPING CORPORATION LTD. AND ANR.

DECEMBER 15, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Indian Contract Act, 1872—Valid contract—Transhipment of goods for a fixed freight charge—Irrespective of volume of cargo—Demand for freight charges based on the volume of the freight—Suit for specific performance—Interim order obtained—Bill of lading released—Shipment was effected—Contractual obligations fulfilled—Suit becomes infructuous.*

*Arbitration Act, 1940—Section 34—Dispute arbitrable under the arbitration clause of the contract—Civil suit not maintainable.*

D

Appellant and the second respondent, a shipping agent entered into a contract in respect of a transhipment of 400 MT of fabricated steel structures for a freight Charge of Rs. 2 lakhs (irrespective of volume of cargo). Second respondent demanded Rs. 10,70,000 as freight charges based on the volume of the freight. Appellant refused and paid only Rs.2 lakhs.

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When the second respondent refused to release the bill of lading, the appellant filed a Civil Suit for specific performance in the High Court, and obtained an ad-interim order pursuant to which the bill of lading was cleared. The High Court dismissed the suit as infructuous. The first respondent filed an application to reopen the suit. The Division Bench declared that the suit was still deemed to be pending and directed the disposal of the suit. Hence this appeal.

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Allowing the appeal and setting aside the Division Bench's order and restoring the order of the Single Judge, this Court

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**HELD :** Since the bill of lading was already released to the appellant for transhipment of the goods to Chittagong in terms of the contract, the appellant had contracted with the second respondent and the shipment was effected, nothing more needs to be done in this case. As admitted by the second respondent the suit has become infructuous. If any rights arise in the transaction it would be open to the parties to work out the same

H according to law. [798-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12080 of A  
1995.

From the Judgment and Order dated 26.7.93 of the Madras High Court in O.S.A. S.R. No. 28783 of 1991.

Raju Ramachandran, Braj K. Mishra, Josph Pookkatt and Ezaj Maqbool for the Appellant. B

The following Order of the Court was delivered :

Pursuant to the order passed by this Court on November 16, 1995, C the counsel for the petitioner communicated to the respondent 30th November, 1995 indicating that the respondent is at liberty to engage a counsel. This is stated in the affidavit and the enclosed letter dated December 11, 1995 filed by Mr. Ejaz Maqbool, counsel for the appellant. In view of the fact that the first respondent has been duly communicated D the order and no arrangement to engage a counsel is made, the matter is being disposed of on merits.

Leave granted.

Though notice has been served on the respondents as ordered earlier E none appears through counsel, on representation has also been made. From the narration of the facts, it is clear that the appellant offered 350 MT 400 to MT of fabricated steel structures for carriage by the shipping agent, the second respondent, from Madras Port Trust to Chittagong (Bangladesh) by vessel M.V. Siuli, irrespecitve of the volume of the cargo. On negotiation, the second respondent accepted the offer to lift 400 MT F of the appellant's cargo for a freight charge of RS. 2 lakhs and thus the appellant and the second respondent entered into a concluded contract for shipment of 400 MT of fabricated steel structures to Chittagong through the aforesaid vessel.

Later, the second respondent issued a telex message on July 12, 1980 G calling upon the appellant to pay Rs. 10, 70,000 as freight charges based on the volume of the freight against the contracted freight charge of Rs. 2 lakh on weightage basis. Thereupon the appellant gave a reply that under the concluded contract the second respondent was entitled only for Rs. 2 H

- A lakhs and that, therefore, the cheque in that behalf was issued on July 14, 1980. Since the second respondent refused to release the bill of lading, the appellant filed Civil Suit No. 409/80 on July 21, 1980 on the original side of the Madras High Court seeking the specific performance of the contract, mandatory injunction to deliver the cargo at Chittagong and to fulfil the
- B terms of the agreement as entered into with the appellant etc. He also filed an application No. 3175/80 for ad interim injunction to clear the bill of lading in respect of the cargo shipped on the aforesaid vessel. The second respondent filed an Application No. 3226/80 on July 24 1980 seeking stay of the suit under Section 34 of the Arbitration Act stating that the dispute is arbitrable under the arbitration clause in the contract. The learned single
- C Judge on the Original Side, on July 28, 1980 in Application No. 3175/80 had issued interim mandatory injunction to the second respondents for release of Bill of Lading subject to certain conditions mentioned in the order. On July 30, 1980 the appellant had complied with those conditions and the bill of lading was released to the appellant as per the interim mandatory injunction issued by the learned Judge.
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- E On August 4, 1980 the appellant had filed a counter affidavit in Application No. 3226/80 and denied the knowledge of the alleged shipment order not being privy to the contract. On March 18, 1981 the second
- F respondent filed a written statement stating that in view of the order passed by the learned trial Judge in application No. 3175/80, the suit has become infructuous. Accordingly the suit was dismissed as having become infructuous on July 11, 1984. Thereafter, the first respondent filed an application on May 5, 1986 to reopen the suit and other reliefs in six applications filed by it simultaneously. By the impugned order dated July 26, 1983, the Division Bench allowed the application and declared that the suit was still deemed to be pending and directed the disposal of the suit. Thus this appeal by special leave.

- G In view of the above narration of the facts, since the bill of lading was already released to the appellant for trans-shipment of the goods to Chittagong in terms of the contract the appellant had contracted with the second respondent and the shipment was effected, nothing more is needed to be done in this case. As admitted by the second respondent, the suit has become infructuous. If any rights arise in the transaction, it would be open
- H to the parties to work out the same according to law. Since the bill of lading

was already released to the appellant nothing further need to be done in A  
the suit, as the second respondent and the appellant are not interested to  
pursue the remedy.

Under these circumstances, we allow the appeal, set aside the order B  
of the Division Bench and restore the order of the learned single Judge  
dismissing the suit as having become infructuous. No costs.

M.K.

Appeal allowed.