

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.08.2021

PRONOUNCED ON : 07.09.2021

CORAM

**THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE**

**S.A.Nos.1245 to 1247 of 2007**

**and**

**M.P.Nos.1, 1 & 1 of 2007**

M/s.Genshipping Pacific Line Pte Ltd.,  
rep. by their steamer agents,  
M/s.A.S.Shipping Agencies Pvt. Ltd., No.56,  
Armenian street, Ist Floor, Chennai – 600 001.

... Appellant in all the three S.As.

..Vs..

1.M/s.Thangam Traders,  
No.66, Keelakadal Street,  
Virudhunagar – 626 001, rep by  
Subrogee @ Power agents,  
M/s.United India Insurance Company Limited,  
Divisional Office, Virudhunagar – 626001.

... 1<sup>st</sup> respondent in S.A.Nos.1245 & 1246 of 2007

1.M/s.S.P.G.C.Metal Industries P. Ltd.,  
T.S.No.30, Goods Shed Road,  
Virudhunagar – 626 001, rep. by  
Subrogee & Power Agents,  
M/s. United India Insurance Company Limited,  
Divisional Office, Virudhunagar – 626 001.

... 1<sup>st</sup> respondent in S.A.No.1247 of 2007

2.M/s. United India Insurance Company Limited,  
Divisional Office,  
No.74, Railway Peters road,  
Virudhunagar – 626 001.

3.Madras Port Trust, rep. by  
its chairman, Rajaji Salai,  
Chennai – 600 001.

...2<sup>nd</sup> & 3<sup>rd</sup> Respondents in all the three S.As.

**Prayer in S.A.No.1245 of 2017:** Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree of the Additional District Judge, Chennai, Fast Tract Court No.II, dated 23.03.2007 and passed in A.S.No.74 of 2006 confirming the decree and judgment passed by the II Assistant Judge, City Civil Court, Chennai dated 26.09.2005 passed in O.S.No.5189 of 2000.

**Prayer in S.A.No.1246 of 2017:** Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree of the Additional District Judge, Chennai, Fast Tract Court No.II, dated 23.03.2007 and passed in A.S.No.75 of 2006 confirming the decree and judgment passed by the II Assistant Judge, City Civil Court, Chennai dated 26.09.2005 passed in O.S.No.5188 of 2000.

**Prayer in S.A.No.1247 of 2017:** Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree of the Additional District Judge, Chennai, Fast Tract Court No.II, dated 23.03.2007 and passed in A.S.No.76 of 2006 confirming the decree and judgment passed by the II Assistant Judge, City Civil Court, Chennai dated 26.09.2005 passed in O.S.No.5170 of 2000.

For Appellant in  
all S.As. : Mr.K.Bijai Sundar

For Respondents 1 & 2 in  
all S.As. : Mr. C.K.Chandrasekar for  
Mr.S.Suriya Moorthy

For Respondent 3 : Mr.R.Karthikeyan

### COMMON JUDGMENT

(Heard through Video conferencing)

These second appeals raise an important question of law as to whether section 14 of Limitation Act applies to special enactments like Indian Carriage of Goods by Sea Act, 1925 or any other special law relating to carriage of goods by sea.

2. The Appellant in all the three second appeals is the first defendant in the suits O.S.Nos.5189, 5188 & 5170 of 2000 on the file of the learned II Assistant Judge, City Civil Court, Chennai. The first and second respondents are the plaintiffs and the third respondent is the second defendant in the respective suits and is a formal party.

3. For the sake of convenience, the parties are described as per their litigative status in the respective suits.

4. All the three suits were filed seeking damages for the damage to the cargo which arrived at the Port of Chennai on 09.06.1995 by the vessel KBANJ 0669. The respective first plaintiff in all the three suits are importers of Electrolytic tin plates and the second plaintiff is the insurance company which insured the cargo which were imported by the respective first plaintiff. According to the respective first plaintiff, they immediately informed the damage to their respective cargo to the steamer agents of the vessel and their insurance company who is the second plaintiff in all the three suits. On receipt of the complaints from the respective first plaintiff, the second plaintiff insurance company appointed M/s.Wilson & Company, the surveyors to survey the losses. After inspection of the respective consignments, M/s.Wilson and Company, the surveyors submitted their report on 25.10.1995 giving the details of the damages as well as the losses suffered by the respective first plaintiff as a result of the damage to their respective consignments.

5. The Chennai Port Trust, the second defendant in all the three suits have also issued Cargo Landing Remarks Certificate on 26.09.1995. A claim letter dated 26.10.1995 was sent by the respective first plaintiff

to the first defendant. On 12.01.1996, another letter was sent by the respective first plaintiff to the first defendant claiming damages for the damage caused by the vessel to their respective consignments. On 08.02.1996, the second plaintiff insurance company settled the dues of the respective first plaintiff and the respective first plaintiff have also issued subrogation letters in favour of the second plaintiff insurance company. The respective plaintiffs in all the three suits filed three separate consumer complaints against the defendants on 03.05.1996 before the District Consumer Forum, Chennai in O.P.Nos.144, 143 & 142 of 1996. On 04.05.1998, the District Consumer Forum, Chennai allowed the complaints filed by the respective plaintiffs by awarding damages in their favour against the first defendant in all the three suits.

6. Aggrieved by the same, the first defendant filed three separate appeals before the State Consumer Disputes Redressal Commission, Chennai in A.P.Nos.812, 811 & 810 of 1998. The State Consumer Disputes Redressal Commission by its order dated 17.05.2000 allowed the appeals filed by the first defendant by following the decision of the

Hon'ble Supreme Court in the case of ***Oberai Forwarding Agency vs. New India Assurance Co. Ltd and another*** reported in ***2000 (1) CTC 556*** holding that the insurance company after assignment is not a consumer and therefore, they cannot maintain a consumer complaint. But however, the State Consumer Disputes Redressal Commission has granted liberty to the respective plaintiffs to pursue a civil remedy.

7. Thereafter, the respective plaintiffs filed civil suits O.S.Nos.5189, 5188 & 5170 of 2000 before the City Civil Court at Chennai seeking damages on account of the damage caused by the vessel to the cargo imported by the respective first plaintiff in all the three suits. In all the three suits, the respective plaintiffs have pleaded that they are entitled to claim the benefits under section 14 of the Limitation Act for the purpose of saving limitation as according to them, the prosecution before the Consumer Forum is a bonafide one as the consumer complaint filed at the time of institution of the proceedings was a right forum and only thereafter, by the pronouncement of the Judgment in the case of ***Oberai Forwarding Agency's case*** reported in ***2000 (1) CTC 556***, it was



held by the Hon'ble Supreme Court that the insurance company after subrogation in its favour is not a consumer under the Consumer Protection Act. In all the three suits, the first defendant has taken a plea that the suits are barred by limitation under Article III Rule 6 of the Indian Carriage of Goods by Sea Act, 1925. Under Article III Rule 6 of the Indian Carriage of Goods by Sea Act, 1925, any claim against the carrier for damage of cargo will have to be instituted within one year from the date of noticing the said damage. Apart from taking the plea of limitation, the first defendant has also denied its liability to pay damages to the respective plaintiffs and has raised defences on merits also.

8. The trial court framed issues and after trial, decreed all the three suits in favour of the respective plaintiffs by its separate judgment and decree dated 26.09.2005 passed in O.S.Nos.5189, 5188 & 5170 of 2000. Aggrieved by the same, the first defendant in all the three suits preferred three separate appeals before the Additional District Judge, Chennai, (FTC-II) in A.S.Nos.74 to 76 of 2006. The lower appellate court confirmed the findings of the trial court and dismissed the appeals filed by the first defendant by its separate judgment and decree dated

23.03.2007 passed in A.S.Nos.74 to 76 of 2006. Aggrieved by the same, the first defendant in all the three suits have preferred these second appeals.

9. At the time of admission of these second appeals on 24.07.2009, this court formulated the following substantial questions of law:

(a) Whether the filing of the suit was in accordance with law, as directed by the State Consumer Disputes Redressal Commission?

(b) Whether the courts below were correct in invoking section 14 of the Indian Limitation Act while interpreting the international Convention adopted in India governing the contract of carriage of goods by sea?

(c) Whether the courts below were correct in not following the judgments referred to in ground No.16, supra?

(d) Whether the courts below were correct in following the judgments relating to domestic law relied by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and referred to in ground No.19 supra?"



10. Since the substantial questions of law are common for all the three second appeals, all the three second appeals are disposed of by a common judgment.

**Submissions of the learned counsels:**

11. Learned counsel for the Appellant/first defendant would submit that in all the three suits, the first defendant has made a reference in their written statements to Article III Rule 6 of the Indian Carriage of Goods by Sea Act, 1925 which apply to the consignments imported by the respective first plaintiff in all the three suits. According to him, reference has been made to the Indian Carriage of Goods by Sea Act, in the written statement, only for the purpose of highlighting the fact that the Indian Carriage of Goods by Sea Act is also based on International Convention of Carriage of Goods by Sea Act held in Brussels i.e., Hague Rules as would be seen from the preamble of the said Act and the terms and conditions of the bills of lading issued in all the three suits. According to him, Indian Courts have consistently applied that Article III Rule 6 of the Hague Rules which relates to “Extinguishment of liability”

of the carrier is one year from the date of discharge of the goods at the discharge port.

12. Learned counsel for the Appellant/first defendant also drew the attention of this Court to Ex.A3, (bill of lading) evidencing the contract of carriage in respect of all the three consignments. According to him, Clause 6(1)(A) and Clause 6(4)(G) make it clear that the Hague rules are the applicable legislation for the subject consignments. He would further submit that Clause 6(4) refers to “General Provisions” and Clause 6(4)(G) refers to “Time Bar” which makes it clear that the carrier shall be discharged of all liabilities unless the suit is brought in the Proper Forum and written notice thereof is received by the carrier, within nine months, after delivery of the goods or the date when the goods should have been delivered.

13. Learned counsel for the Appellant/first defendant would further submit that in all the bills of lading issued for the subject consignments by the first defendant, it has been clearly incorporated on the face of the respective bills of lading that the provisions of Hague

Rules or Hague – Visby Rules as incorporated therein shall be applicable. According to him, under the Hague Rules, or Hague Visby Rules, the right of cargo interests to sue is extinguished after one year from the date of delivery of consignments at the discharge port.

14. Learned counsel for the Appellant/first defendant would submit that Hague rules being a special law, it will override the Limitation Act, 1963. According to him, whether the load port is Busan, Korea or Osaka, Japan, the bills of lading evidencing the Carriage of Goods by Sea applies the Hague rules and hence, the right of the respective plaintiffs to sue the defendants for the alleged damages to the cargo gets extinguished after the lapse of one year from the date of delivery of the said cargo. Learned counsel for the Appellant/first defendant would then submit that the complaints in terms of the Consumer Protection Act, 1986 filed by the respective plaintiffs in all three suits under section 2(c) of the Consumer Protection Act cannot be considered as a suit in terms of the provisions of the Code of Civil Procedure for the purpose of invoking section 14 of the Indian Limitation Act, 1963. He would further submit that the consumer complaints filed

by the respective plaintiffs before the District Consumer Disputes Redressal Forum cannot be treated to be a “Court” as envisaged under section 14 of the Indian Limitation Act.

15. Learned counsel for the Appellant/first defendant would also submit that in a civil suit, all parties to the said suit can agitate the issues arising under the same cause of action by filing their respective claims and counter claims and seek appropriate reliefs thereof. However according to him, in a consumer complaint before the District Consumer Disputes Redressal Forum, only a consumer can raise a dispute and seek redressal for the said cause of action and not the opposite parties who can only defend but not file their counter claim and seek reliefs if any. According to him, the cause of action for the claims of the respective plaintiffs arose on 09.06.1995, but the subject suits were filed only in the year 2000 and therefore, all the three suits have to be dismissed on the ground of limitation as they have not been filed as per the Hague Rules or Hague Visby Rules within one year from the date of discharge of the cargo at Chennai Port.

16. Learned counsel for the Appellant/first defendant in support of his submissions relied upon the following authorities:

(a) A single bench judgment of the Madras High Court in the case of *M/s.M.R.F. Limited and another vs. M/s. Singapore Airlines Limited and another* reported in *2014-1-L.W.921*;

(b) A Single Bench Judgment of the Bombay High Court dated 02.02.2018 in the case of *British Airways vs. M/s.Bhagwandas B.Ramchandani*;

(c) A Division Bench Judgment of the Kerala High Court in the case of *Union of India vs. Scindia Steam Navigation Company Limited* reported in *AIR 1974 KERALA 136*;

(d) A Single Bench Judgment of the Madras High Court in the case of *E.I.D. Parry (India) Limited vs. Far Eastern Marine Transport Co. Ltd. and another*, reported in *1998-1-L.W. 320*.

Relying upon the aforesaid decisions, the learned counsel for the Appellant/first defendant would submit that the suits filed by the respective plaintiffs are barred by limitation, since they have not been filed within one year from the date of delivery of the respective consignments.

17. Per contra, learned counsel for the respondents 1 & 2/plaintiffs

at the outset would submit that these second appeals are not maintainable as the first defendant has not chosen to dispute the factual liability for the alleged losses caused to the goods imported by the respective first plaintiff in all the three suits. At the outset, he would submit that Indian Carriage of Goods by Sea Act, 1925 is not applicable to the facts of the instant case.

18. Learned counsel for the respondents 1 & 2/plaintiffs drew the attention of this Court to section 2 of the Indian Carriage of Goods by Sea Act, 1925 and would submit that the said Act is applicable only in connection with the carriage of goods by Sea in ships carrying goods from any Port in India to any other Port whether in or outside India. According to him, since the subject consignments have been delivered from Ports outside India, the Indian Carriage of Goods by Sea Act, 1925 is not applicable to the facts of the instant case. According to him, the courts below have rightly rejected the stand of the defendants and have rightly decreed the suit in favour of the respective plaintiffs.



19. In support of his aforementioned submissions, learned counsel for the respondents 1 & 2 / plaintiffs drew the attention of this Court to the following authorities:

(a) A Division Bench Judgment of the Hon'ble Supreme Court in the case of *Shipping Corporation of India Ltd. vs. M/s.Bharat Earth Movers Ltd & Another* reported in *AIR 2008 SC 728*;

(b) A Division Bench Judgment of the Madras High Court dated 11.03.2011 passed in *O.S.A.No.349 of 2000* in the case of *Board of Trustees of Madras vs. M/s.National Engineering Industries Ltd and others*

(c) A single bench decision of the Kerala High Court dated 02.04.2013 passed in *CRP.No.1288 of 2003* in the case of *M/s.Matheson Keells Enterprises (Pvt) Ltd., and another vs National Insurance Company Limited and another;*

20. Hence, according to the learned counsel for the respondents 1 & 2 / plaintiffs, the plea of *generalia Specialibus non derogat* cannot be invoked by the first defendant as in the case on hand, the cargo was entrusted outside India, meant for delivery at the Port of Chennai in

India. According to him, since Indian Carriage of Goods by Sea Act, 1925 is not applicable for the case on hand, section 14 of the Limitation Act gets attracted.

21. Learned counsel for the respondents 1 & 2/plaintiffs then submitted that at the time of institution of the complaints before the District Consumer Disputes Redressal Forum by the respective plaintiffs against the defendants for the damage claim, the said complaints were validly instituted and only during the pendency of the appeals filed by the first defendant before the State Consumer Disputes Redressal Commission, the Judgment of the Hon'ble Supreme Court in ***Oberai's Forwarding Agency's*** case reported in ***2000 (1) CTC 556*** came into existence which barred the Insurance company to approach Consumer Forums. According to him, the decisions of the Apex Court prior to the enactment of the Consumer Protection Act, 1985 cannot be of any avail to the first defendant as they did not envisage the situation of Doctrine of Election to the litigant while seeking remedy either by way of civil suit or Consumer O.P. which is enacted based on the subsequent UN

Convention to which India is a signatory.

22. Learned counsel for the respondents 1 & 2/plaintiffs would submit that when O.Ps. were filed by the respective plaintiffs before the District Consumer Disputes Redressal Forum, they were very much maintainable in law as the said O.Ps. were filed within one year from the date of cause of action. According to him, the first defendant filed appeals as against the awards passed by the District Consumer Disputes Redressal Forum before the State Consumer Disputes Redressal Commission which directed the respective plaintiffs to approach the civil court to redress their grievance in view of the decision rendered by the Hon'ble Supreme Court during the pendency of the appeals before the State Consumer Disputes Redressal Commission in the case of ***Oberai's Forwarding Agency vs. New India Assurance Co. Ltd and another*** reported in ***2000 (1) CTC 556*** holding that the insurance company is not a consumer.

23. Learned counsel for the respondents 1 & 2/ plaintiffs drew the

attention of this Court to the decision rendered by the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case reported in ***2000 (1) CTC 556*** referred to supra and would submit that only thereafter, the respective plaintiffs were constrained to file suits in O.S.Nos.5189, 5188 & 5170 of 2000 before the City Civil Court at Chennai.

24. Learned counsel also drew the attention of this Court to the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***Economic Transport Corporation vs. M/s. Charan Spinning Mills (P) Ltd & Another*** reported in ***(2010) 4 SCC 114*** and would submit that as per the said Constitution Bench Judgment, the decision rendered in ***Oberai Forwarding Agency's*** case referred to supra was partially reversed by the Hon'ble Supreme Court by holding that the consumer complaint was maintainable at the instance of the Insurance Company applying the principles of subrogation and also complaint filed by the consumer for commercial activity prior to the amendment of the Consumer Protection Act, in 2002 was held to be maintainable before the Consumer Forums. Relying upon the aforesaid Constitution Bench

Judgment, learned counsel for the respondents 1 & 2 / plaintiffs would submit that since the consumer complaints were filed by the respective plaintiffs on 03.05.1996 much prior to the amendment of the Consumer Protection Act, in the year 2002, the complaints have been validly filed as per the decision of the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***Economic Transport Organization vs. M/s.Charan Spinning Mills (P) Ltd & Another*** reported in **(2010) 4 SCC 114** referred to supra. According to him, in view of the said judgment, the consumer complaints have been filed before the competent forum within the period of limitation.

25. Learned counsel for the respondents 1 & 2 / plaintiffs also drew the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of ***Ethiopian Airlines vs. Ganesh Narain Saboo*** reported in **(2011) 8 SCC 539** and would submit that the suit would include the proceedings filed before the Consumer Forum and also liability of carriers cannot be denied, as it is a commercial activity. According to him, the UN Convention about Consumer Protection Laws

was extracted in the aforementioned judgment and the Hon'ble Supreme Court has also followed the decision in the case of *Patel Roadways Limited vs. Birla Yamaha Limited* reported in (2000) 4 SCC 91. According to him, the Hon'ble Supreme Court had noted that the framework for the Consumer Protection Act, 1996 was provided by a resolution dated 09.04.1985 (of the General Assembly of the United Nations Organisation) which is commonly known as "Consumer Protection Resolution No.39/248". According to him, the Consumer Protection Act, 1996 was enacted in view of the aforementioned resolution of General Assembly of the United Nation.

26. Learned counsel for the respondents 1 & 2 / plaintiffs then drew the attention of this Court to Article III Rule 6 of the Indian Carriage of Goods by Sea Act, 1925 and would submit that the said clause nowhere stipulates that it should be a civil suit in a civil court. According to him, if the clause is read literally, it does not exclude even the presentation in wrong forum and approaching the correct forum later, in which case, section 14 of the Limitation Act can be invoked.



According to him, the case of the plaintiffs is protected by the Constitution Bench Judgment of the Hon'ble Supreme Court in ***Economic Transport Organisation's*** case reported in (2010) 4 SCC 114 referred to supra. According to him, when the Hon'ble Supreme Court had held that filing complaint before the Consumer Forum is also to be treated as a suit for the purpose of Carriers Act, the submissions made by the learned counsel for the Appellant/first defendant for the purpose of applicability of section 14 of the Indian Limitation Act, the earlier proceedings must be a suit is without basis. According to him, when the State has not chosen to insert words as contended by the first defendant, it is a matter of *causis ommissus* and it cannot be read into, to prevent the rights of the persons affected due to poor performance of the carrier of the goods.

27. Further it is contended by the learned counsel for the respondents 1 & 2/plaintiffs that the Doctrine of Eclipse will be applicable to any law which seeks to deny or defeat the rights of citizens. According to him, the said Doctrine is applicable to the facts of the

instant case also.

28. Learned counsel for the respondents 1 & 2 / plaintiffs would submit that the decisions relied upon by the first defendant pertain to Air Carriers Act are inapplicable to the facts of the instant case as the instant case deals with the carriage of goods by sea. Further he would submit that the decisions relied upon by the learned counsel for the Appellant/ first defendant are per incuriam, since the binding decision of the Hon'ble Supreme Court in *Economic Transport Organisation's case* reported in (2010) 4 SCC 114 referred to supra was not cited in those cases. According to him, the courts below have rightly rejected the contention of the defendants and have rightly decreed the suits in favour of the respective plaintiffs.

**Discussion:**

29. The sole ground on which these second appeals have been filed against the concurrent findings of the Courts below is that whether the liability of a sea carrier is extinguished after one year from the date of

delivery of the goods.

30. Article III Rule 6 of the Indian Carriage of Goods by Sea Act, 1925 reads as follows:

*“6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.*

*The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.*

*In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. [This period may, however, be extended if the parties so agree after the cause of action has arisen; Provided that a suit may be brought after the expiry of*

*the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court.]*

*In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods”*

31. The case of the first defendant is that the suits filed by the respective plaintiffs is barred by limitation, since the said suits have been filed beyond the period of one year as according to them, being a claim made under a special enactment, section 14 of the Limitation Act excluding the period of the proceedings initiated before the consumer forum which has been held to be not maintainable in view of the decision rendered by the Hon'ble Supreme Court in ***Oberai's Forwarding Agency's case*** reported in ***2000 (1) CTC 556*** holding that the insurance company is not a consumer will not apply.

32. However it is the case of the respective plaintiffs that the suits

filed by them are well within the period of limitation as only after filing of the consumer complains against the defendants, the Hon'ble Supreme Court in ***Oberai's Forwarding Agency's case*** reported in **2000 (1) CTC 556** referred to supra, held that the insurance company is not a consumer which decision has been followed by the State Consumer Disputes Redressal Commission in its order dated 17.05.2000 which has held that the consumer complaints filed by the respective plaintiffs is not maintainable, but however, granted liberty to the respective plaintiffs to pursue a civil remedy. Hence according to the respective plaintiffs, by applying section 14 of the Limitation Act, the period of prosecution before the Consumer forum between 03.05.1996 to 17.05.2000 has to be excluded for the purpose of calculating the period of limitation. According to the respective plaintiffs, the consumer complaints in O.P.Nos.144, 143 & 142 of 1996 which were filed on 03.05.1996 are well within the period of one year from the date of arrival of the vessel on 09.06.1995 and the State Consumer Disputes Redressal Commission reversed the findings of the District Consumer Disputes Redressal Commission in its order dated 17.05.2000 passed in A.P.Nos.812, 811 &

810 of 1998, only on the ground of maintainability following the judgment of the Hon'ble Supreme Court in ***Oberai's Forwarding Agency's case*** reported in ***2000 (1) CTC 556***. Hence, according to the respective plaintiffs, the consumer complaints having been filed on time and the respective suits after the order dated 17.05.2000 passed by the State Consumer Disputes Redressal Commission in A.P.Nos.812, 811 & 810 of 1998 having been filed on 16.06.2000, the suits filed by the respective plaintiffs are well within the period of limitation, by applying section 14 of the Limitation Act.

33. The undisputed dates and events of the subject litigations between the parties are as follows:

<i>Date</i>	<i>Events</i>
04.05.1995	Electrolytic tin plates of korean origin entrusted with appellant at Korea for delivery at Madras Port
	Vessel KBANJ 0669 – at Port Busan, Korea
09.06.1995	Vessel arrived at Madras Port Trust
	Portion of the Consignment was damaged
	Immediately informed the Steamers and Insurance Company about the damage to goods
	Wilson & Co Surveyors appointed by Insurance company to survey the loss
12.06.1995	Surveyors assessed the loss after inspection at Port



<i>Date</i>	<i>Events</i>
20.06.1995	Consignment bound for CWC Godown at Chitlapakkam
	Goods Received by Plaintiff, Surveyors visited again and inspected
25.10.1995	Insurance surveyors submitted the valuation and loss details
26.09.1995	Madras Port issued Cargo Landing Remarks Certificate
26.10.1995	Claim letter sent by Plaintiffs to the Appellant/defendant
12.01.1996	Once again letter sent claiming damages
08.02.1996	Insurer paid the amount and subrogation letter issued to United India Insurance
03.05.1996	Complaint filed in consumer Forum O.P.No.144/2006 batch., by both the Consumer and the Insurer as Complainants
04.05.1998	O.P.No.144/2006 batch – Ordered by a Consumer Forum
1998	AP filed by the Appellant herein in A.P.No.812, 811 & 810 of 1998 before the State Commission (No ground taken about limitation)
2000	Judgment of the Apex Court in 2000 (1) CTC 556 holding that Insurance Company after assignment is not a consumer and they cannot maintain consumer complaint, (Factually both claimant and insurer were parties)
17.05.2000	AP allowed by giving liberty to the plaintiffs to pursue civil remedy
16.06.2000	O.S. filed in City Civil Court seeking exemption of limitation by virtue of section 14 of the Consumer Protection Act as it was prosecuted bonafides and the appeals in State Commission did not take the plea as it was within the right forum at the time of institution of proceedings
	Written statement filed by the first defendant/Appellant taking the plea of suit being barred by limitation under Article III Rule 6 of the Carriage of Goods by Sea Act. The claim that it was pursued in different forum will not be a ground was taken. Note: The Grounds of Appeal in State Consumer Commission did not have the said ground since the law as it stood then, permitted the filing.
	Evidence let in by parties
26.09.2005	Suits O.S.Nos.5170, 5188 & 5189 of 2000 decreed by the Civil Court
	A.S.Nos. 74, 75 & 76 of 2006 filed by the Appellant herein

<b>Date</b>	<b>Events</b>
23.03.2007	Appeal suits dismissed by the Fast Track Court II, ADJ, confirming the Judgment of the trial court
02.10.2007	These second appeals preferred by the Appellant

34. Section 14 of the Limitation Act, reads as follows:

**14. Exclusion of time of proceeding bona fide in Court without jurisdiction.**(1) *In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

(2) *In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is*

*prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

*(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.*

*Explanation.—For the purposes of this section,—*

*(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;*

*(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;*

*(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.*

35. As seen from the aforesaid section, it comprises of the following cumulative ingredients:

(a) Prosecuting civil proceedings with due diligence;

(b) The former proceeding was being prosecuted in good faith in a court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it;

(c) Earlier proceedings relate to the same matter in issue are for the same relief.

36. In the instant case, the consumer complaints filed by the respective plaintiffs before the District Consumer Disputes Redressal Forum in O.P.Nos.144, 143 & 142 of 1996 were validly filed as on the date of filing of those complaints, the consumer complaints were maintainable against the carrier, the first defendant. Only after the pronouncement of the Judgment of the Hon'ble Supreme Court in the ***Oberai Forwarding Agency's case*** reported in ***2000 (1) CTC 556*** referred to supra, the Hon'ble Supreme Court has held that a consumer complaint is not maintainable by an insurer after assignment in their favour as the assignment did not make the insurance company, a beneficiary of service rendered by the carrier.

37. Infact, in the instant case, the respective plaintiffs succeeded before the District Consumer Disputes Redressal Forum in O.P.Nos.144, 143 & 142 of 1996 and only in the appeals filed by the first defendant, the carrier in A.P.No.812, 811 & 810 of 1998, the findings of the District Consumer Disputes Redressal Forum on jurisdiction was reversed by following the decision rendered by the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case referred to supra and the State Consumer Disputes Redressal Commission has however granted liberty to the respective plaintiffs to pursue the civil remedy in respect of their claims. The State Consumer Disputes Redressal Commission passed an order dated 17.05.2000 and the respective plaintiffs have also immediately filed civil suits on 16.06.2000. Since the consumer complaints were validly filed and the suits were also filed immediately on receipt of the order dated 17.05.2000 passed by the State Consumer Disputes Redressal Commission in A.P.Nos.812, 811 & 810 of 1998 permitting the respective plaintiffs to approach the civil court, it cannot be said that the respective plaintiffs have not been diligent in initiating legal proceedings for recovery of money on account of damage to the cargo.



38. At the time when the cause of action arose for the respective plaintiffs to seek damages for the damage to the cargo, there were two legal options available for recovery of the losses suffered by them namely, (a) To approach the consumer forum or (b) To approach the civil court. The respective plaintiffs chose the consumer forum option and they instituted valid consumer complaints against the defendants in O.P.Nos.144, 143 & 142 of 1996 before the District Consumer Disputes Redressal Forum. They also succeeded before the District Consumer Disputes Redressal Forum and only during the pendency of the appeals filed by the defendants before the State Consumer Disputes Redressal Commission, the Judgment of the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case reported in ***2000 (1) CTC 556*** referred to supra came into existence which made the State Consumer Disputes Redressal Commission to reverse the findings of the District Consumer Disputes Redressal Forum only on the ground that the consumer complaints are not maintainable, since the insurance company, the second plaintiff in all the three suits in whose favour assignment was made, cannot be treated as a consumer.



39. Having validly exercised the Doctrine of election by filing consumer complaints instead of civil suits when both were legally maintainable, the respective plaintiffs have exercised due diligence and only in good faith, they have filed the valid consumer complaints before the District Consumer Disputes Redressal Forum. The Judgment in ***Oberai Forwarding Agency's*** case was rendered by the Hon'ble Supreme Court only in the year 2000 which led the State Consumer Disputes Redressal Forum to allow the Appeals filed by the defendants as the second plaintiff in all the three suits is not a consumer as held by the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case reported in ***(2000) 1 CTC 556*** referred to supra. The respective plaintiffs have also filed respective suits immediately after the receipt of the order dated 17.05.2000 passed by the State Consumer Disputes Redressal Commission permitting them to pursue the civil remedy. The suits were filed on 16.06.2000 before the City Civil Court, Chennai.

40. In the considered view of this Court,

(a) The respective plaintiffs have prosecuted the consumer complaints with due diligence, as on the date of filing of those complaints, the decision of the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case referred to supra was not applicable;

(b) The consumer complaints initiated by the respective plaintiffs were in good faith as on the date of initiating those proceedings, there was no legal bar. When two legal options are available, the respective plaintiffs having chosen the consumer complaint option, they cannot be found fault with in view of the subsequent decision of the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case referred to supra which was pronounced only in the year 2000. The consumer complaints were filed by the respective plaintiffs before the District Consumer Disputes Redressal Forum in O.P.Nos.144, 143 & 142 of 1996 on 03.05.1996 and as on that date, all the three consumer complaints were validly instituted and only in the year 2000, the Judgment was rendered by the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case holding that an insurer holding an assignment in its favour is not a consumer;

(c) The subject matter of the consumer complaints initiated by the respective plaintiffs and the subject matter of the suits relate to the same matter and issue. Both the claims arose on account of damage to the cargo imported by the respective first plaintiff.

41. Learned counsel for the Appellant/first defendant would submit that the proceedings initiated by the respective plaintiffs before the consumer forum is not a civil proceeding and is also not a suit and hence, section 14 of the Indian Limitation Act does not get attracted. The said arguments does not hold water for the following reasons:

(a) Indian Carriage of Goods by Sea Act does not exclude the applicability of section 14 of the Indian Limitation Act.

(b) It is a recognised rule of interpretation of statutes that expression used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature.

(c) The respective plaintiffs having validly instituted, the consumer complaints should not be left in lurch in view of the subsequent decision

rendered by the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case reported in ***(2000) 1 CTC 556*** referred to supra which held that the consumer complaint filed by the insurer after assignment in its favour not to be maintainable as the insurer is not a beneficiary. Having exercised one of the two valid legal remedies, the respective plaintiffs cannot be made to suffer in view of the subsequent decision of the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case referred to supra holding that the consumer complaint filed by an insurer, acting on letter of subrogation is not maintainable.

(d) The Court should adopt an object oriented approach keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits.

(e) Section 14 of the Limitation Act cannot be interpreted with rigid and pedantic adherence to its literal meaning, to hold that only civil proceedings in Court would enjoy exclusion. If such a rigid and pedantic interpretation is given, an applicant would not even be entitled to exclusion of the period of time spent in bonafide manner invoking and diligently pursuing an earlier proceeding before another appropriate legal

forum.

(f) The Hon'ble Supreme Court in the case of ***S.A.L.Narayan Row and Another vs. Ishwarlal Bhagwandas and Another*** reported in ***AIR 1965 SC 1818*** has held as follows:

*“... The expression “civil proceedings” is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof.”*

42. In the case on hand, a civil right is conferred on the respective plaintiffs to initiate legal proceedings for the recovery of the losses suffered by them on account of damage to the cargo under the contract of carriage i.e., bills of lading. Hence, it cannot be said that the consumer complaints filed by the respective plaintiffs are not civil proceedings for the purpose of section 14 of the Limitation Act.

43. A purposive interpretation of section 14 of the Limitation Act was also given by the Hon'ble Supreme Court in the case of ***Sesh Nath***

***Singh and Another vs. Baidyabati Sheoraphull Co-operative Bank Ltd and Another*** reported in **2021 SCC Online SC 244** in the context of proceedings under section 7 or 9 of the Insolvency and Bankruptcy Code.

The Hon'ble Supreme Court in the said decision held as follows:

*“95. If, in the context of proceedings under Section 7 or 9 of the IBC, Section 14 were to be interpreted with rigid and pedantic adherence to its literal meaning, to hold that only civil proceedings in Court would enjoy exclusion, the result would be that an applicant would not even be entitled to exclusion of the period of time spent in bona fide invoking and diligently pursuing an earlier application under the same provision of IBC, for the same relief, before an Adjudicating Authority, lacking territorial jurisdiction. This could not possibly have been the legislative intent.”*

44. In the case on hand also, the consumer complaints filed by the respective plaintiffs were validly filed and only thereafter pursuant to the decision of the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case reported in **2000 (1) CTC 556** referred to supra, such consumer complaints were held to be not maintainable and hence, it can be inferred



that the respective plaintiffs with good faith and bonafide intentions had earlier chosen one of the legal remedies available namely filing of consumer complaints instead of choosing the other option namely filing suits. The ratio laid down by the Hon'ble Supreme Court in ***Sesh Nath Singh and Another vs. Baidyabati Sheoraphull Co-operative Bank Ltd and Another*** reported in ***2021 SCC Online SC 244*** referred to supra can also be applied to the facts of the instant case also.

45. In view of the above, it is clear that section 14 of the Limitation Act is also applicable to the special enactments including the Indian Carriage of Goods by Sea Act, 1925, unless and until any of the special enactments excludes the applicability of section 14 of the Limitation Act. As observed earlier, the Indian Carriage of Goods by Sea Act, 1925 does not exclude the applicability of section 14 of the Indian Limitation Act and hence, section 14 of the Indian Limitation Act applies to Indian Carriage of Goods by Sea Act, 1925 which is in pari materia with Hague Rules or Hague Visby Rules which the learned counsel for the Appellant relied upon during the course of his arguments.

46. Even though, during the course of his arguments, the learned counsel for the Appellant/first defendant submitted that the Hague Rules or Hague-Visby Rules as the case may be applies to the subject consignments, the substantial questions of law raised by the Appellant/first defendant in these second appeals does not disclose the same. Infact, in the written statement filed by the Appellant/first defendant before the trial court, there is no specific plea made by the Appellant/first defendant that the Hague Rules or Hague-Visby Rules as the case may be applies to the subject consignments. Under the Code of Civil Procedure, there must be a specific plea in the written statement with regard to the contentions raised by the first defendant. Indian Carriage of Goods by Sea Act, 1925 relates to claims against the sea carrier only in respect of damage to the cargo in ships from any Port in India to any other Port whether in or outside India.

47. Section 2 of the Indian Carriage of Goods by Sea Act, 1925 reads as follows:

*“2. Application of Rules.—Subject to the*

*provisions of this Act, the rules set out in the Schedule (hereinafter referred to as “the Rules”) shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in India to any other port whether in or outside India.”*

48. In the case on hand, admittedly, the damaged cargo arrived at the Port of Chennai from a Port outside India and therefore, the Indian Carriage of Goods by Sea Act, 1925 is not applicable to the subject consignments. The decisions relied upon by the learned counsel for the respondents 1 & 2 / plaintiffs reiterate the said position. As seen from the pleadings of the Appellant/first defendant as well as in the grounds raised by the first defendant in these second appeals, consistently they have taken a stand that the Indian Carriage of Goods by Sea Act, 1925 is applicable to the subject consignments, though in the course of arguments, the learned counsel for the Appellant/first defendant had taken a different stand and submitted that reference to the Indian Carriage of Goods by Sea Act has been made only for the purpose of highlighting the fact that the Indian Carriage of Goods by Sea Act is also based on International Convention of Carriage of Goods by Sea Act held

in Brussels i.e., Hague Rules as would be seen from the preamble of the said Act and the terms and conditions of the bills of lading issued in all the three suits.

49. Under Order VIII Rule 2 and 3 of Code of Civil Procedure, it is clear that the defendants must raise, in their pleadings matters which show the suit not to be maintainable and the denial with regard to the allegations made by the plaintiffs must be specific and the defendant must deal specifically with each allegation of fact of which they do not admit the truth, except damages. Order VIII Rule 2 and 3 of CPC is extracted hereunder:

**“2. New facts must be specially pleaded-**The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

**3. Denial to be specific-** It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.”

50. In the case on hand, no specific plea has been taken by the first defendant in its written statement that Hague Rules or Hague Visby Rules as the case may be is applicable for the subject consignments. Infact, the first defendant has only specifically pleaded that Indian Carriage of Goods by Sea Act, 1925 is applicable to the subject consignments, though as observed earlier by this Court, the said enactments is not applicable to the subject consignments in view of the fact that the cargo has arrived from a foreign port. When there is no pleading that Hague Rules or Hague-visby Rules is applicable to the subject consignments and when there is no oral evidence in support of the said contentions, the said contention raised by the learned counsel for the Appellant/first defendant during the course of his arguments is only an afterthought and cannot be accepted by this Court.

51. The decisions relied upon by the learned counsel for the respondents 1 & 2/plaintiffs namely (a) A Division Bench Judgment of the Hon'ble Supreme Court in the case of ***Shipping Corporation of India Ltd. vs. M/s.Bharat Earth Movers Ltd & Another*** reported in ***AIR 2008 SC 728***, (b) A Division Bench Judgment of the Madras High Court dated 11.03.2011 passed in ***O.S.A.No.349 of 2000*** in the case of ***Board of Trustees of Madras vs. M/s.National Engineering Industries Ltd and another*** and (c) A single bench decision of the Kerala High Court dated 02.04.2013 passed in ***CRP.No.1288 of 2003*** in the case of ***M/s.Matheson Keells Enterprises (Pvt) Ltd., and another vs National Insurance Company Limited and another***; supports the contentions of the learned counsel for the respondents 1 & 2/plaintiffs that the Indian Carriage of Goods by Sea Act, 1925 is not applicable to the subject consignments as the said consignments arrived at the Port of Chennai, (Indian Port) from a Foreign port. Whereas, under section 2 of the Indian Carriage of Goods by Sea Act, 1925, the said enactment applies only to



cases where the cargo is carried from any Port in India to any other Port whether in or outside India.

52. In the case of *Economic Transport Corporation vs. M/s. Charan Spinning Mills (P) Ltd & Another* reported in (2010) 4 SCC 114 referred to supra, the Constitution Bench of the Hon'ble Supreme Court while reconsidering the decision rendered by the Hon'ble Supreme Court in *Oberai Forwarding Agency's* case reported in 2000 (1) CTC 556 referred to supra has held as follows:

*“24. We therefore answer the questions raised as follows:*

*(a) The insurer, as subrogee, can file a complaint under the Act either in the name of the assured (as his attorney holder) or in the joint names of the assured and the insurer for recovery of the amount due from the service provider. The insurer may also request the assured to sue the wrong doer (service provider).*

*(b) Even if the letter of subrogation executed by the assured in favour of the insurer contains in addition to the words of subrogation, any words of assignment, the complaint would be maintainable so long as the complaint is in the name of the assured and insurer*

*figures in the complaint only as an attorney holder or subrogee of the assured.*

*(c) The insurer cannot in its own name maintain a complaint before a consumer forum under the Act, even if its right is traced to the terms of a Letter of subrogation-cum-assignment executed by the assured.*

*(d) Oberai is not good law insofar as it construes a Letter of subrogation-cum-assignment, as a pure and simple assignment. But to the extent it holds that an insurer alone cannot file a complaint under the Act, the decision is correct.”*

53. As seen from the aforesaid decision of the Constitution Bench Judgment of the Hon'ble Supreme Court, ***Oberai Forwarding Agency's*** Judgment has held to be not a good law insofar as it construes a letter of subrogation-cum-assignment as a pure and simple assignment. The Hon'ble Supreme Court has held that the consumer complaint is maintainable if the insurer as well as the insured joined together and filed consumer complaint against the sea carrier. The Hon'ble Supreme Court has also held that the amendment made to section 2(d) of the Consumer Protection Act on 15.03.2003 by amendment Act, 62 of 2002 will not

apply to a consumer complaint filed before the date of amendment.

54. In the case on hand, the letters of subrogation have been issued by the respective first plaintiff (insured) in favour the second plaintiff (the insurer) and both of them had joined together and filed consumer complaints against the first defendant (carrier) and therefore, by applying the ratio laid down by the Constitution Bench Judgment of the Hon'ble Supreme Court in *Economic Transport Organisation's* case referred to supra, the decision of the State Consumer Disputes Redressal Commission in A.P.Nos.812, 811 & 810 of 1998 also raises doubt as to its correctness.

55. Having acted with due diligence and good faith, the respective plaintiffs should not be left remediless for no fault of theirs as the consumer complaints filed by them were very much maintainable in law at the time when they instituted the same before the District Consumer Disputes Redressal Forum in O.P.Nos.144, 143 & 142 of 1996. The

decision of the Constitution Bench Judgment of the Hon'ble Supreme Court in *Economic Transport Organisation's* case referred to supra was followed by the Hon'ble Supreme Court in *Ethiopian Airlines vs. Ganesh Narain Saboo* reported in (2011) 8 SCC 539 referred to supra. Therefore, this Court is of the considered view that section 14 of the Limitation Act gets attracted for the suits filed by the respective plaintiffs also.

56. The Doctrine of election comes into play in the instant cases. The Doctrine of election postulates that when two legal remedies are available for the same relief, the aggrieved party has the option to elect either of them, but not both. In the case on hand, the respective plaintiffs had initially chosen the legal option of filing consumer complaints and only due to the fact that subsequent to the initiation of the same, by virtue of the decision rendered by the Hon'ble Supreme Court in Oberai Forwarding Agency's case reported in 2000 (1) CTC 556, the respective plaintiffs had to file civil suits. Only if the plaintiffs had initiated both the legal remedies at the same time, the question of the suits filed by the

respective plaintiffs getting barred by law will arise and when such is not the position in the case on hand, the applicability of section 14 of the Limitation Act to the suits filed by the respective plaintiffs cannot be questioned as it has been validly instituted in good faith, bonafides and in accordance with law.

57. The decisions relied upon by the learned counsel for the Appellant/first defendant namely (a) A single bench judgment of the Madras High Court in the case of *M/s.M.R.F. Limited and another vs. M/s. Singapore Airlines Limited and another* reported in **2014-1-L.W.921**; and (b) A Single Bench Judgment of the Bombay High Court dated 23.01.2018 in the case of *British Airways vs. M/s.Bhagwandas B.Ramchandani* have no bearing for the facts of the instant case, as the instant case deals with the carriage of goods by sea, whereas in the aforesaid decisions, it relates to carriage of goods by Air. Further in the aforesaid decisions, the plaintiffs chose a wrong forum, whereas in the case on hand, the respective plaintiffs had chosen the correct forum at the time of institution of the consumer complaints. In both the decisions

referred to supra, the Court has observed that having chosen a wrong forum to make a claim, the plaintiffs cannot take advantage of their own wrong, whereas in the case on hand, the facts are totally different as on the date of institution of consumer complaints, the said consumer complaints were infact maintainable in law and only after the subsequent decision rendered by the Hon'ble Supreme Court in ***Oberai Forwarding Agency's*** case reported in ***2000 (1) CTC 556*** referred to supra, there was a change of law and only thereafter, the plaintiffs pursuant to the order passed by the State Consumer Disputes Redressal Commission were constrained to file civil suits for the same relief. Hence, the aforesaid decisions relied upon by the learned counsel for the Appellant/first defendant is not applicable to the facts of the instant case.

58. Insofar as other decisions relied upon by the learned counsel for the Appellant/first defendant namely (a) A Division Bench Judgment of the Kerala High Court in the case of ***Union of India vs. Scindia Steam Navigation Company Limited*** reported in ***AIR 1974 KERALA 136*** and (b) A Single Bench Judgment of the Madras High Court in the



case of *E.I.D. Parry (India) Limited vs. Far Eastern Marine Transport Co. Ltd., and another* reported in *1998-1-LW 320* are concerned, the said decisions have no bearing to the facts of the instant case as the said decisions did not deal with section 14 of the Limitation Act, but dealt with suits which were filed beyond the period of one year in claims arising under the carriage of goods by sea. Further in those cases, the plaintiffs did not approach another forum as in the instant cases.

59. Both the courts below have rightly appreciated the pleadings and the evidence available on record as well as the relevant statutory provisions and only thereafter have decreed the suits filed by the respective plaintiffs by rejecting the contentions raised by the defendants that the suits are barred by law of limitation, since the said suits have been filed beyond the prescribed period of one year under the Indian Carriage of Goods by Sea Act.

60. The Arbitration and Conciliation Act is also a special enactment like that of Indian Carriage of Goods by Sea Act, 1925. The

Hon'ble Supreme Court in the case of *State of Goa vs. Western Builders* reported in *AIR 2006 SC 2525* held that section 14 of the Limitation Act is applicable to Arbitration and Conciliation Act also as there is no express exclusion of section 14 of the Limitation Act under the provisions of the Arbitration and Conciliation Act. Infact in the aforesaid decision, the party had prosecuted before a wrong forum bonafide, even then the Hon'ble Supreme Court held that section 14 of the Limitation Act is applicable. In the case on hand, the respective plaintiffs had initiated the consumer complaints bonafide before the correct forum, on the date when the said complaints were filed and only thereafter, in view of the law as held by the Hon'ble Supreme Court in *Oberai Forwarding Agency's* case reported in *2000 (2) CTC 556* referred to supra, the respective plaintiffs were constrained to pursue the civil remedy by filing suits before the City Civil Court at Chennai.

61. The Substantial questions of law formulated by this Court on 24.07.2009 at the time of admission of these second appeals are answered in the following manner:

(a) The suits have been validly instituted and courts below have rightly applied section 14 of the Limitation Act and has rightly excluded the period during which proceedings were pending before the consumer forum for the same relief for the purpose of saving limitation;

(b) The courts below were correct in invoking section 14 of the Indian Limitation Act, while interpreting the statutory law governing the contract of carriage of goods by Sea;

(c) The judgments relied upon in the grounds of appeal in ground No.16 have no bearing to the facts of the instant case;

(d) The Courts below have concurrently held that the suits are maintainable by applying section 14 of the Limitation Act which is a correct finding as the respective plaintiffs have initiated consumer complaints with good faith, bonafides and in accordance with law. The courts below have rightly applied section 14 of the Indian Limitation Act which saves limitation for the suits which are the subject matter of these second appeals.

62. For the foregoing reasons, the substantial questions of law formulated by this Court are answered against the Appellant and there is

no merit in these second appeals. Accordingly, these second appeals are dismissed and the judgments and decrees of the courts below are hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

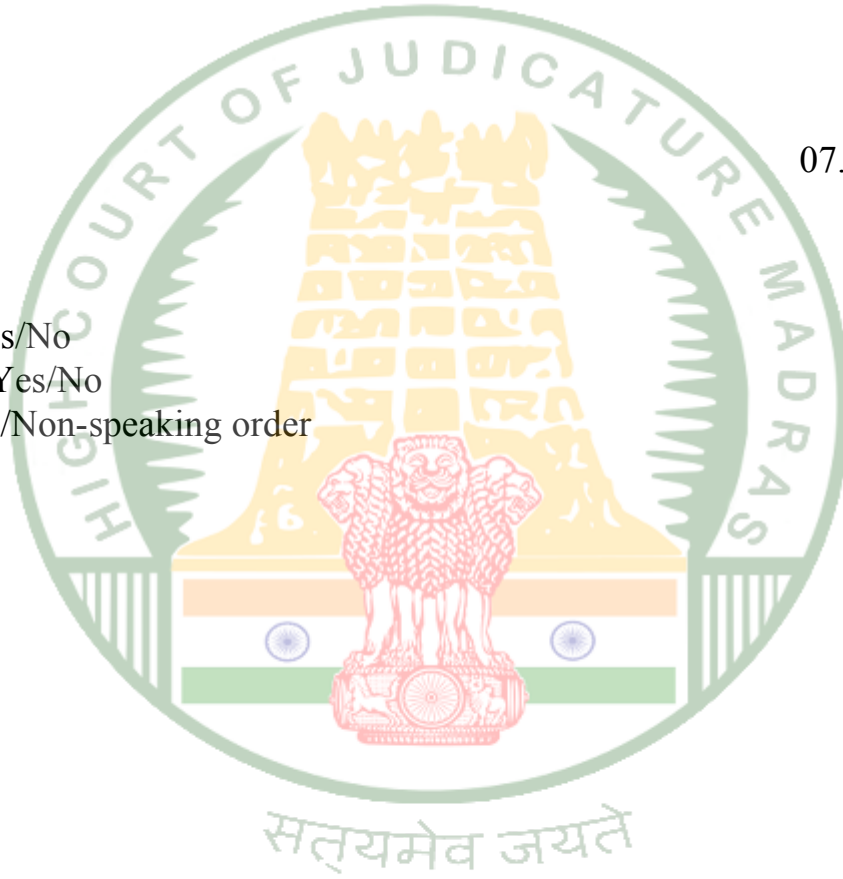
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Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order



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To

1. The Additional District Judge, Chennai, Fast Tract Court No.II

2. The II Assistant Judge, City Civil Court, Chennai

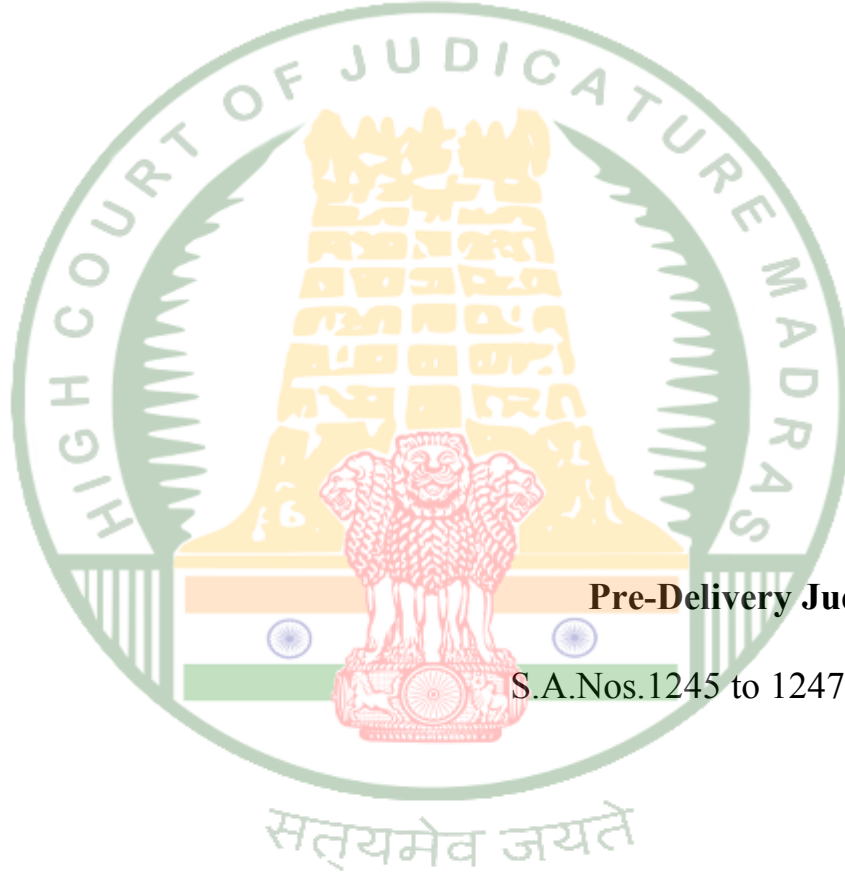


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S.A.Nos.1245 to 1247 of 2007

**ABDUL QUDDHOSE, J.**

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**Pre-Delivery Judgment**

S.A.Nos.1245 to 1247 of 2007

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07.09.2021