

**IN THE SUPREME COURT OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an appeal in terms of Section 5 (c) of the High Court of the Provinces (Special Provisions) Amendment Act No. 54 of 2006 and Article 127 of the Constitution.

**SC / APPEAL / 21 / 2019**

**SC / HC (CA) / LA / 67 / 2018**

**WP / HCCA / COL / 306 / 2014 (F)**

**DC COLOMBO / 742 / 09 / DMR**

**Ace Cargo (Pvt) Ltd,**

No. 305, Vauxhall Street,

Colombo 02.

**PLAINTIFF**

**-Vs-**

**Chandramal Apparels (Pvt) Ltd,**

No. 15/A, St. Sebastian Road,

Moratuwella,

Moratuwa.

**DEFENDANT**

**BETWEEN**

**Chandramal Apparels (Pvt) Ltd,**

No. 15/A, St. Sebastian Road,

Moratuwella,

Moratuwa.

**DEFENDANT – APPELLANT**

**-Vs-**

**Ace Cargo (Pvt) Ltd,**  
No. 305, Vauxhall Street,  
Colombo 02.

**PLAINTIFF – RESPONDENT**

**AND NOW BETWEEN**

**Ace Cargo (Pvt) Ltd,**  
No. 305, Vauxhall Street,  
Colombo 02.

**PLAINTIFF – RESPONDENT–**  
**APPELLANT**

**-Vs-**

**Chandramal Apparels (Pvt) Ltd,**  
No. 15/A, St. Sebastian Road,  
Moratuwella,  
Moratuwa.

**DEFENDANT – APPELLANT –**  
**RESPONDENT**

**Before:** E.A.G.R. Amarasekara, J,  
A.H.M.D. Nawaz, J, &  
A.L. Shiran Gooneratne, J

**Counsel:** Samantha Vithana with Hiranga Fernando for the Plaintiff – Respondent  
– Appellant.

Roshan Dayaratne with Himala De Silva for the Defendant – Appellant –  
Respondent.

**Argued on:** 30.10.2024

**Decided on:** 16.06.2025

**A.H.M.D. Nawaz, J.**

1. When a shipping documentation consistently and unequivocally identifies a person as a shipper, can liability for air freight charges be evaded by asserting that a third party was, in fact, the true exporter? This is the pivotal question that arises in this appeal. It is the Defendant - Appellant - Respondent (hereinafter sometimes referred to as “the Defendant”) who raised this defence in this case, where the Plaintiff - Respondent - Appellant (hereinafter sometimes referred to as “the Plaintiff”) sued the Defendant Company claiming what it called air freight charges due. The Defendant demurred it was a third party who owed the Plaintiff the air freight. In order to resolve this question, it is necessary first to untangle the underlying facts from which the dispute arose.
2. Ace Cargo (Pvt) Ltd who is the Plaintiff before this Court instituted this action against Chandramal Apparels (Pvt) Ltd - the Defendant. Ace Cargo asserting *inter alia*;

- (a) The Plaintiff was engaged in the business of providing freight forwarding services for exports and on behalf of their customers, they processed documents in order to facilitate the carriage of goods.*
- (b) The Defendant Company made a request of Ace Cargo - the Plaintiff to transport by air intimate garments and wished to ascertain the charges for such transportation.*
- (c) In response the Plaintiff Company dispatched a quotation to the Defendant Company as regards their charges.*
- (d) The Defendant Company thereafter delivered their garments for air transportation at the warehouse of Ace Cargo.*
- (e) There were 2 shipments carried out on behalf of the Defendant Company and an invoice dated 23 February 2007 was forwarded to the Defendant Company. In terms of the invoice, a sum of Rs 2, 35, 397.22 was due and owing to the Plaintiff from the Defendant.*
- (f) There was also a 2<sup>nd</sup> shipment of garments for carriage by air.*

3. As for the second shipment which was also requested by the Defendant Company to be sent by air, the aforesaid steps before the goods were transported by air were taken by the Ace Cargo and as a result, it has to be stated there was a contractual nexus created by the parties. There was a characteristic feature in that both transportations had as a commonality a number of documents which stand on identical terms. In the circumstances, I would describe the documents one by one which would indicate to this Court the formation of the contract between the Plaintiff and the Defendant.
4. It would appear that for the purpose of forwarding the freight, the Plaintiff submitted a standard form to the exporter, which had to be filled in by the specific exporter. When the exporter filled in the details, they operated as instructions to the Plaintiff Company (Ace Cargo)- the freight forwarder. This document **P3** would set in motion the relationship between the two parties. If one looks at the instructions given by the Defendant Company to Ace Cargo to undertake the

freight forwarding activity on its behalf, the language of the instructions is quite unmistakable. The standard form which the Defendant filled in with the details authorized Ace Cargo to complete the consignment notes and other necessary documents, in connection with the dispatch, carriage and delivery of goods to the carrier on behalf of the Defendant. I would set down below what the Defendant Company undertook to do as regards the carriage;

*I/We hereby authorize Ace Cargo to complete the consignment notes & other necessary documents., in connection with dispatch, carriage & delivery of goods on behalf of me/us under the provisions of the relevant articles of the carriers general conditions of carriage & the standard terms & conditions of Ace Cargo a copy of which can be obtained on my / our request.*

*I/We hereby declare that particulars shown hereon & furnished by me/us or my/our agent are correct & that I am/We are aware of & accept the general conditions of carriage.*

*I/We further undertake to reimburse Ace Cargo with all charges & expenses incurred on this shipment & assume full responsibility for the freight of the goods herein mentioned or in case of amount incurred should the consignee fail to pay the same.*

*I/We are aware that the insurance cover is not under taken by Ace Cargo unless specifically requested by me/us.*

5. A perusal of the above which has been assented to clearly demonstrate that there is an unambiguous undertaking on the part of the Defendant to *reimburse Ace Cargo with all charges and expenses* incurred on the shipment. This preliminary arrangement set in motion the relationship between the parties and unmistakably the relevant instructions in regard to both the two shipments indicate that the

Defendant Chandramal Apparels (Pvt) Ltd had always been identified as the shipper. Even the Sri Lanka Customs – Goods Declaration known as (CUSDEC) which was marked at the trial as **P4** identifies Chandramal Apparels (Pvt) Ltd as the exporter.

6. This Court also finds two commercial invoices in regard to both consignments wherein the exporter or shipper is identified as the Defendant Company.
7. The House air waybills in regard to both shipments, were issued by the freight forwarder, Ace Cargo and it is unambiguously clear that there was no doubt at all about the identity of the exporter. The documents for both shipments leave this Court in no uncertainty as to the identity of the exporter and as the learned Additional District judge of Colombo concluded by his judgement dated 11 November 2014, it was the Defendant which became the exporter and shipper in the case of both consignments.
8. However, I did come across a document identified as an Air Waybill, that designated the freight forwarding company Ace Cargo as the shipper. I hasten to point out that only in this air waybill Ace Cargo is designated as the shipper. However, even in this air waybill which was marked as **P8**, Ace Cargo (Pvt) Ltd is also identified as the issuing carrier's agent and this document has also been signed by Ace Cargo as the issuing carrier's agent. Thus, it is clear that the freight forwarding agent is also identified as the carrier's agent. All these documents state that freight had been pre-paid.
9. In all other documents which I have referred to above, the Defendant Company is specifically identified as the shipper or exporter. From the contractual document which required details such as the name of the shipper to the CUSDEC, the commercial invoice and master air waybill Chandramal Apparels (Pvt) Ltd is identified without any scintilla of doubt as the shipper or exporter.

10. I would further observe that the instructions given to Ace Cargo by Chandramal Apparels (Pvt) Ltd clearly and unmistakably show Ace Cargo also acting as the agent of the shipper.
11. Taking advantage of the designation of Ace Cargo (Pvt) Ltd as the shipper in the airway bill that I have pointed out in paragraph 8, it was argued that the Defendant was not the shipper in this case. But it so happens that the non-negotiable air waybills are essentially delivered to the freight forwarder who acts on behalf of the shipper thus proving the principal – agency relationship between the shipper and the freight forwarder. I must also point out that as I have observed in paragraph 8, the Plaintiff Ace Cargo has also acted as the agent of the carrier.
12. In the *4<sup>th</sup> Edition of Halsbury's Laws of England* (Volume 5), the characteristics of forwarding agents are narrated in the following manner;

***442. Characteristics of forwarding agents***

*“A forwarding agent is one who carries on the business of arranging for the carriage of goods for other people. It must be clearly understood that a forwarding agent is not, in general, a carrier: he does not obtain possession of the goods: and he does not undertake the delivery of them at the other end. All that he does is to act as agent for the owner of the goods to make arrangements with the people who do carry, such as shipowners, road hauliers, railway authorities and air carriers, and to make arrangements, so far as they are necessary, for the intermediate steps between the ship and the rail, the customs or anything else”.*

13. Halsbury also states that although there is a clear distinction between a forwarding agent and a carrier, the same person may carry on both activities at once, and contract sometimes as one and sometimes as the other. In other words, it is acknowledged that a forwarding agent can act in a dual capacity as an agent

of both the shipper as well as the carrier. This is evidenced by the non-negotiable air waybill which I alluded to in paragraph 8, wherein the freight forwarding agent issued the non-negotiable air waybill as an agent of the carrier.

14. Halsbury further contains the following. The fact that a person describes himself as a forwarding agent is not conclusive: and it is a question of fact to be decided according to the circumstances of each case whether a person normally carrying on business as a forwarding agent contracts solely as agent so as to establish a direct contractual link between his customer and a carrier (or possibly with several carriers, each undertaking a different part of the transit), or whether he contracts as principal to carry the goods, the customer appreciating that he will perform the contract vicariously through the employment of sub-contractors. The nature of the carriage, the language used by the parties in describing the role of the person concerned, and any course of dealing between the parties will be relevant factors.
  
15. I have to point out that this case is not concerned with the dual capacity of the freight forwarder. It is undisputed that the freight forwarding Company - the Plaintiff has made payment on behalf of the exporter in this case and a sum of Rs. 421,419.22/- has been claimed from the Defendant who allegedly owed this sum for the prepaid freight charges. The Defendant has denied such liability on the basis that it was not the exporter in the transactions. The documentary evidence led in the case established beyond a scintilla of doubt that it was the Defendant who was the exporter / shipper at all times.
  
16. Confronted with this documentary evidence, the learned counsel for the Defendant Company argued it was one Shiham Azeez who was the real exporter behind the transactions and it is to that elusive Shiham Azeez that the Plaintiff must have recourse in order to recover the monies owed as freight charges. The Court has carefully scrutinized both the oral and documentary evidence led in this case but the Court finds that there is no credible evidence to conclude that it was Shiham Azeez who was the shipper in this case. There are email communications between

the Plaintiff and the Defendant where the name of Shiham Azeez figures to the effect that the freight forwarding Company had information from Shiham Azeez as to the weight of the shipment. One such communication marked as P1 shows that Ace Cargo - the Plaintiff was writing to the Defendant about the freight to be paid and that they would debit Chandramal Apparel with the freight charges. The question arises why the Plaintiff must debit the Defendant if the Defendant was not the shipper or exporter. In other words, the email communications show that it was the Defendant who had undertaken the liability to pay the freight charges and not the elusive Shiham Azeez who was alleged to be the shipper.

17. On the question of liability, the facts immanent in the case have been correctly assessed by the learned additional District Judge of Colombo but the learned High Court judges of the Civil Appellate Court of the Western Province were in error when they concluded that the Defendant Company owed no liability towards the Plaintiff. The letters of demand and reminders have gone a-begging and that establishes that in the teeth of overwhelming evidence the Defendant deliberately chose not to respond to the letters and reminders sent by the Plaintiff.
18. The learned High court judges have completely misunderstood the scope of the relationship between the parties and I conclude that the Ace Cargo acted as the agent of the shipper namely Chandramal Apparels (Pvt) Ltd in arranging carriage and paying the freight charges.
19. In "**Carriage of Goods by Sea by Martin Dockray**<sup>1</sup>, under the chapter "Shipper's liability for freight" it is stated as follows;

*In the case of liner shipping, the shipper named in the bill of lading (air way bill) is normally the person who has entered into the contract for carriage with the carrier and is normally the person who is liable to pay the freight. But this is not always the case, as Hobhouse LJ,*

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<sup>1</sup> Third Edition (2004) at p 285

*explains in Cho Youn Shipping Co. Ltd Vs. Coral (UK) Ltd<sup>2</sup>. It was held that in the absence of some other consideration, the shipper is contractually liable to the carrier for the freight.*

20. In Schmitthoff's "***The Law and Practice of International Trade***" there is a clear pronouncement that the shipper is primarily liable for payment of the freight.<sup>3</sup> Since the Plaintiff who contracted as the agent of the Defendant with the carrier and paid the freight on its behalf, the agent – the Plaintiff freight forwarding Company must be paid by the Defendant. The Defendant submitted that the case was erroneously filed in the District Court of Colombo. The legal position is to the contrary. The law of agency in this country as adumbrated in Section 3 of the "Introduction of the Law of England" or the "Civil Law Ordinance" is governed by English Law and according to English law the debtor should seek out the creditor and pay while under the Roman-Dutch Law the converse is the case - see ***Nadarajah v. the Attorney - General***<sup>4</sup>. The Plaintiff Company is situated in Colombo and thus, the cause of action arose in Colombo as the Defendant Company failed to seek out the Plaintiff Company and make the payment.

21. In the circumstances, I proceed to answer the questions of law in favour of the Plaintiff – Respondent – Appellant and conclude that the appeal of the Plaintiff Company must be allowed. Accordingly, this Court sets aside the judgement of the Civil Appellate High Court of Colombo dated 26 January 2018 and affirms the judgement of the learned additional District judge of Colombo dated 11 November 2014. The appeal is allowed with costs.

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<sup>2</sup> 1997 2 Lloyd's Rep 641, CA.

<sup>3</sup> 12th Edition, see p 305

<sup>4</sup> 59 N.L.R 136 at 140

**Judge of the Supreme Court**

**E.A.G.R. Amarasekara, J**

**Judge of the Supreme Court**

I agree

**A.L. Shiran Gooneratne, J**

**Judge of the Supreme Court**

I agree