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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	**29.10.2026**
DELIVERED ON	**5.11.2026**

CORAM

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR. JUSTICE GK.MUTHUKUMAAR

APPEAL(CAD) No. 2 of 2026

CNR: {HCMA012919712025}

Case QR

Mac Nels Container Lines Private Limited,
Having its registered office at,
No.6, Kamachi Street, Lakshmiamman Nagar,
Errukkencherry, Chennai-600 118,
Having Branch office at No.88 Old No.289,
Thambu Chetty Street, Chennai- 600001.

..Petitioner(s)

Vs

1. Evergreen Shipping Agency India Private Limited,
   Having its registered office at Marathon Next Gen Innova A G-01,
   Opposite Panisula Corporate Park,
   Off Ganpat Rao Kadam Marg,
   Lower Parel(West) Mumbai, Maharastra 400 013,,
   and having branch office at,
   Century Centre No.75 (old No.39),
   T.TK.road, Alwarpet, Chennai 600 018,
   Rep by its Authorized Sginatory/Manager,
   M.R.Ravi.

2. Evergreen Marine Corp (Taiwan) Limited,
   No.166, Sec 2, Ming Shen E.Rd.,
   Taipei City, Taiwan,
   Rep by its Power of Attorney M,.R.Ravi,
   Having address at,
   Century Centre, 2nd floor, No.76, T.T.K.Road,
   Alwarpet, Chennai-600 018.

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3. Evergreen Shipping Agency (Europe),
GMBH France,
No.12 Course Commandant Fratacci Immeuble,
Le Colbert, Le Havre, Cedex 76085,
France, Rep by its Power of Attorney
M.R.Ravi, Having address at,
Century Centre, 2nd floor, No. 76,
T.T.K.Road, Alwarpet, Chennai-600 018.

4. Blue Rock Minerals,
Sr.No.33/1617, Sistam Engg.
College Road, Ampolu (Vii),
Srikakulam Dist 532 001,
Andhra Pradesh.

..Respondent(s)

This Appeal is filed under Section 96 of the Code of Civil Procedure and Section 13 of the Commercial Courts Act, to set aside the judgement and decree dated 23-04-2025 passed in COS.No.1660 of 2022, on the file of the Principal Commercial Court at Egmore, Chennai.

For Petitioner(s): Mr.K.Bijai Sundar

For Respondent(s): Mr.C.Thiyagarajan for
Mr.P.Giridharan, for R1 to R3

JUDGMENT

(Judgment of the Court was delivered by GK. Muthukumaar J.)

This Appeal has been filed against the judgment and decree dated 23.04.2025 made in C.O.S.No.1660 of 2022, passed by the Learned Principal Judge, Commercial Court at Egmore, Chennai. The first defendant is the appellant before this Court.

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2. For the purpose of convenience, the parties are being referred to as per their respective array in the suit.

3. The suit has been filed for recovery of a sum of Rs.31,69,480.49/- from the defendants, along with interest and costs.

4. The defendants contested the same. The written statement was filed by the first defendant. During trial, P.W.1 was examined and Exs.A1 to A16 were marked on the side of the plaintiff. No witness was examined on the side of the defendants. However, Ex.B1 was marked on behalf of the defendants during the cross examination of P.W.1. Upon trial, the Commercial Court decreed the suit against both the defendants 1 and 2 and held that they were jointly and severally liable to pay the suit claim. Accordingly, a sum of Rs.22,55,854.49/- was awarded to the plaintiffs, along with further interest at the rate of 12% per annum from the date of plaint till the date of realization and proportionate costs. Being aggrieved by the same, the first defendant has preferred this appeal.

5. The case of the plaintiffs in short is that in the course of business, the first plaintiff had exported the consignments belonging to the second defendant, at the instance of the first defendant, to the port of Le Havre, France. The Bill of Lading marked as Ex.B3, is the binding contract between the first

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plaintiff and the first defendant with regard to the consignments of the second defendant that were shipped. As regards the delivery of the consignment, the plaintiff had raised invoices, which were marked as Exs.A9 to A12. The payments against the same by the defendants remained outstanding despite requests by the plaintiffs to clear them and hence, the plaintiffs proceeded with the filing of the present suit.

6. The defendants admit the execution of Ex.A3, Bill of Lading and the factual aspect regarding the shipment of the consignments of the second defendant by the first plaintiff was at the behest of the second defendant. However, the defendants would raise objections as to the maintainability of the suit, stating that the other two entities forming part of the consortium had not joined as plaintiffs in instituting the suit and that the suit is bad for misjoinder of parties. They would also contend that the suit is bad for non-joinder of proper and necessary parties, namely, the consignee of the goods in France. The first defendant further raised objections regarding the jurisdiction of the Commercial Court, Chennai, to entertain this lis, contending that the suit ought to have been instituted before the Courts in France, as no cause of action according to the defendants arose in Chennai. That apart, the issue of limitation was also raised by the defendants, contending that the suit was filed beyond the period of limitation, as it had been instituted three years after the cause of action arose.

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7. We have heard the submissions of Mr.Bijai Sundar, Learned Counsel appearing for the first defendant and Mr.C.Thiyagarajan for Mr.P.Giridharan, Learned Counsel appearing for the plaintiffs. There is no representation in this appeal for the second defendant.

8. The sum and substance of the contention of Mr.Bijai Sundar, Learned Counsel for the first defendant is that the suit is bad for mis-joinder of parties. This is because, of the five entities who formed the consortium only three have joined in filing the said suit. Further, the suit is bad for non-joinder of a necessary party, namely, the consignee in France. The Counsel disputes the liability of the first defendant under Ex.A3, Bill of Lading, to pay the sums due to the plaintiffs. He would also submit that the suit is barred by limitation. This is because, according to him, the cause of action arose on 13.06.2018, when the email was sent. However, the suit was instituted only on 14.06.2021, which according to him, is beyond the three-year limitation period. He would also draw the attention of this Court to the various tax invoices particularly, Ex.A12, from which it is evident that the cause of action arose in France and hence, only the Courts in France would have jurisdiction to entertain this suit and not the Commercial Court in Chennai. He would, therefore, submit that the suit against the defendants deserves to be dismissed.

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9. Per contra, Mr. C. Thiyagarajan, Advocate, representing Mr. P. Giridharan, learned counsel for the plaintiffs, would submit that the issues of misjoinder and non-joinder of necessary parties would not arise, in view of the fact that the parties to the contract based on the Bill of Lading, Ex.A3, which formed the concluded contract between the first plaintiff and the first defendant, are arrayed as parties in the suit. Hence, he would submit that the question of misjoinder of the other entities as plaintiffs and non-joinder of the consignee as a defendant would not arise, as their presence is not necessary. He would also contend that the Port of Landing is Chennai and, hence, a part of the cause of action arose in Chennai, within the jurisdiction of the Commercial Court, Chennai, for the purpose of entertaining this lis. As regards the non-production of the original invoices by the first plaintiff to establish the payments made by it towards the charges claimed in the suit from the defendants, he would submit that, as per trade practice, these are online payments, whereby sums were debited from the account of the first plaintiff, on the basis of which invoices Exs.A9 to A12 were raised against the first defendant, which forms the basis of the suit claim. He would further contend that the said invoices had been raised on the basis of the sums so debited from the account of the first plaintiff. He would further contend that the dispute is only with regard to the liability of the defendants and not with regard to the quantum. That apart, he would also contend that the abandonment of the goods by the first plaintiff in France was made as per the specific written instructions of the first defendant, which were

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in turn based upon specific instructions from the second defendant, which are evident from the email communications exchanged between the parties. Finally, as regards the ground of limitation raised by the first defendant, he would contend that, as per the invoices under Exs.A9 to A12, which formed the basis of the suit claim, the non-payment of which gave rise to the suit, the cause of action subsisted until 06.12.2018, which is the date of the last invoice, Ex.A9. He would, therefore, contend that the suit being filed on 14.6.2021, within the three-year limitation period, the same is not barred by limitation.

10. Upon hearing the submissions of both the Learned Counsel and upon perusal of the materials on record, particularly the documents filed in the suit and the evidence of PW1, we find that the following points arise for consideration in this appeal;

(i). Whether the suit is bad for mis-joinder of parties?

(ii). Whether the suit is bad for non-joinder of parties?

(iii). Whether the Commercial Court, Chennai has jurisdiction to try the suit?

(iv). Whether the first defendant is liable with regard to the shipment of the consignments to France through the first plaintiff? and

(v). Whether the suit is barred by limitation?

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Point No.I :

Whether the suit is bad for mis-joinder of parties?

11. To determine the issue of misjoinder of parties, it becomes necessary to refer to the Seaway Bill of Lading, along with the reverse terms and conditions, dated 15.03.2018, which is marked as Ex.A3. Clause I(2) of the terms and conditions of the said Seaway Bill of Lading, Ex.A3, defines "Carrier" as follows:

> *"Carrier" means the Vessel Provided identified on the front of this Bill doing business as Evergreen Line, which is a Joint Service Agreement as defined by the U.S. Shipping Act of 1984 and any amendments there to, consisting of Evergreen Marine Corporation (Taiwan) Limited, Evergreen Marine (UK) Limited, Italia Maritima S.P.A Evergreen Marine (Hong Kong) Limited and Evergreen Marine (Singapore) Ptd. Ltd."*

From the above, it is seen that the term "Carrier" has been defined in the terms and conditions to mean the Vessel Provider identified on the front of the Bill, doing business as Evergreen Line, which is a Joint Service Agreement comprising of the entities mentioned above. In view of the above, it is clear that "Carrier" means the Vessel Provider identified on the front of the Bill of lading, Ex.A3, doing business as Evergreen Line. Upon a perusal of Ex.A3, it is seen that the words "Evergreen Line, a Joint Service Agreement" are clearly mentioned at the top of the Bill. Further, Ex.A3 is stated to have been issued by Evergreen Shipping Agency India Private Limited, the first plaintiff herein. The

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shipper/exporter is mentioned as Mac-Nels Container Lines Private Limited, the first defendant herein. In the instant case, the first plaintiff is the freight forwarder, and the first defendant is the Vessel Provider and Shipper, who acted for and on behalf of the second defendant, who is the principal. From Ex.A3, which is the Bill of Lading, it is clearly evident that the Bill of Lading was issued by the first plaintiff to the first defendant with regard to the consignments comprising cut and polished granite tombstones (Monument Type). The place of receipt of the consignment is stated as Chennai. The place of loading is stated as Chennai. The place of delivery is mentioned as Le Havre, a Port in France. From Ex.A3, it is clear that the same forms a concluded and binding contract between the first plaintiff and the first defendant with regard to the shipment of the consignment from Chennai to Le Havre, France. Therefore, privity of contract exists only between the first plaintiff and the first defendant. From the definition of the term "Carrier" in Clause 1(2) of the terms and conditions in Ex.A3, we find that the words "Evergreen Line" are also mentioned at the top of Ex.A3. Thus, plaintiffs 2 and 3 are part of the Service Agreement, as defined under the term "Carrier". Under Exs.A15 and A16, plaintiffs 2 and 3 have given Power of Attorney to the first plaintiff to act on their behalf in the suit. Therefore, we hold that, even as per the definition of "Carrier" under the terms and conditions mentioned in Ex.A3 and the Powers of Attorney under Exs.A15 and A16, the first plaintiff is entitled to prosecute the suit claim against the defendants. Therefore, we do not agree with the contrary submissions of the

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learned counsel for the first defendant stating mis-joinder of party. Further, we also find that, dehors the terms and conditions, there exists privity of contract between the first plaintiff and the first defendant under the Indian Contract Act, as the Bill of Lading, in clear and unambiguous terms, mentions that the same was issued by the first plaintiff to the first defendant. Further, the suit has been filed in India in accordance with the applicable Indian laws. Therefore, dehors the definition of "Carrier" under the terms and conditions of Ex.A3, the suit filed by the first plaintiff against the first defendant, solely on the basis of Ex.A3, is maintainable. We, therefore, reject the contrary submissions of the learned counsel for the first defendant. Accordingly, we find that the issue of misjoinder of parties does not arise. This point is answered accordingly.

Point No.II :

Whether the suit is bad for non-joinder of parties?

12. Upon an examination of the Bill of landing under Ex.A3, it is seen that Ex.A3 forms the concluded and binding contract between the first plaintiff and the first defendant only, as the freight forwarder and the shipper, respectively, whereby the goods of the second defendant were admittedly shipped. Thus, going by Ex.A3, we find that, though the name of the consignee is mentioned, the same is only for the purpose of delivery, and the consignee is not a party to Ex.A3. Hence, no contract exists between the consignee and any

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of the parties to this lis. Moreover, no relief has been sought against the consignee. Therefore, as rightly contended by Mr. C. Thiyagarajan, learned counsel for the plaintiffs, we hold that the consignee is not a proper or necessary party to this lis. This point is therefore answered accordingly.

Point No.III :

Whether the Commercial Court, Chennai has jurisdiction to try the suit?

13. For the purpose of deciding this point, it becomes necessary to once again analyse the Bill of Lading, Ex.A3, which forms the concluded and binding contract between the first plaintiff and the first defendant. In Ex.A3, the place of receipt of the consignment is mentioned as Chennai. The place of loading is mentioned as Chennai, and the place of delivery is mentioned as the port of Le Havre, France. That apart, from the email communications exchanged between the parties, which are marked as Ex.A8, we find that the same were sent and received from the places of the first plaintiff and the defendants in Chennai, within the jurisdiction of this Court. From this, it is evident that the first plaintiff communicated from Chennai and the second defendant also communicated from Chennai. The communications pertaining to the shipment exchanged between the first plaintiff and the first defendant were all from Chennai, within the jurisdiction of this Court. Further, Ex.A3 was signed and executed by the first plaintiff at Chennai, and the payments

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mentioned in Ex.A3 are stated to be prepaid at Chennai. Therefore, we find that a substantial part of the cause of action in relation to this contract arose in Chennai, within the jurisdiction of this Court. Hence, we find that this Court has jurisdiction to try and determine the present suit. This point is answered accordingly.

Point No.IV :

Whether the first defendant is liable for the shipment of the consignment to France?

14. To answer this point, it becomes necessary to once again revert to Ex.A3, the bill of lading. As already discussed above, Ex.A3 forms the concluded and binding contract between the first plaintiff and the first defendant with regard to the consignment of the second defendant that were shipped at the instance of the first defendant acting as the agent of the second defendant through the first plaintiff, from the Port of Chennai to the Port of Le Havre, France. In view of which, we find that the privity of contract under Ex.A3 exists between the first plaintiff and the first defendant. Further, from the invoices under Exs.AA9 to A12, it is clearly evident that these invoices have been raised by the first plaintiff in the name of the first defendant. The e-mail communications under Ex.A8 clearly confirm that Ex.A3 was acted upon and the consignment was shipped pursuant to the execution of Ex.A3. From the e-mails communications, Ex.A8, it is also clearly evident that pertaining to the

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consignment of the second defendant that was shipped under Ex.A3, towards non-payment of weighting and terminal handling charges etc., the invoices Exs.A9 to A12 have been raised by the first plaintiff against the first defendant. Therefore, we hold that the defendants are jointly and severally liable to the plaintiffs for the suit claim. But unfortunately, we find that the second defendant, the owner of the consignment has not filed written statement nor let in any evidence. In such circumstances, this Court leaves it open to the first defendant to work out its remedy against the second defendant as regards its liability to the first plaintiff towards the suit claim. Therefore, this point is answered to the effect that the defendants 1 and 2 are jointly liable to pay the suit claim as decreed.

Point No.V

Whether the suit is barred by limitation?

15. As regards the ground of limitation contended by the first defendant, we find that the liability of the defendants arises out of Ex.A3, and the claim is based on invoices Exs.A9 to A12. Of these invoices, the last of it being Ex.A9 is dated 06.12.2018. The suit was instituted on 14.06.2021, therefore we find that the present suit is well within the three-year limitation period. Therefore, we find that the suit is not barred by limitation. This point is answered accordingly.

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16. In view of the above findings, we find that the judgment and decree of the Trial Court decreeing the suit is in accordance with law and hence does not warrant any interference. Therefore, the judgment of the Commercial Court, Chennai, is upheld, and this appeal is dismissed.

17. Before parting with this judgment, we wish to state that the well-being and progress of a nation depend on the development and proper upbrining of the younger generation. Good judgments are a combined outcome of the Bar and the Bench. Therefore, legal talent, particularly young talent, has to be identified and encouraged in the best interest of the institution. It is for this reason that we place on record our sincere appreciation to Mr.C.Thiyagarajan, the young junior Counsel for the plaintiffs for his crisp, short and sweet argument, which was also well presented. The Counsel for the first defendant is undoubtedly a seasoned and well-reputed lawyer who, also receives our sincere appreciation for his in-depth arguments.

18. In the facts and circumstances of the case, the parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.K.,J.) (G.K.M.,J.)
5.11.2026

Index: Yes/No
Speaking/Non-speaking order
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To

The Principal Judge,
The Commercial Court,
Chennai.

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N.SATHISH KUMAR, J.
AND
GK.MUTHUKUMAAR, J.

VKR

A Pre-delivery Judgment in
APPEAL(CAD) No. 2 of 2026

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