IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2026
PRONOUNCED ON : 21.08.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. No. 11 of 2021

M/s. Trans Asian Shipping Services (P) Ltd.,
Rep. by its Branch Manager and Authorized
Signatory Mr. Abraham Mathew,
21, Dr. Radhakrishnan Salai,
EVS Tower, Second Floor,
Chennai - 600 004. ..Appellant

Vs.

1. M/s. Shree Ganesh Steel Rolling Mills Ltd.
   Rep. by its Managing Director
   Mr. Raghav Kumar Sharaf,
   14A, Ennore High Road,
   Chennai - 600 019.

2. Ashok Sharaf (Died)
   Managing Director,
   M/s. Shree Ganesh Steel Rolling Mills Ltd.,
   14A, Ennore High Road, Chennai - 600 019.

3. M/s. P.R. Agencies,
   No.13, Bazaar Street, 2nd Street,
   Royapuram, Chennai - 600 013.

4. Ruchira Saraf .. Respondents
   W/o.Late Ashok Sharaf

5. Anushree Jhunjhunwala
   D/o.Late Ashok Sharaf

6. Raghav Kumar Sharaf
S/o.Late Ashok Sharaf

R4 to R6 resides at
O.No.148, N.No.183, Poonamallee High Road,
Kilpauk, Chennai 600 010.

[First respondent (Company) represented by Raghav Kumar Sharaf s/o Ashok Sharaf, memo recorded vide Court order dated 10.12.2025 (ADMCJ)]

[R2 Died. R4 to R6 are brought on record as LRS of deceased R2 vide Court order dated 10.12.2025 made in CMP.Nos.21751, 21752, 21753 of 2025 in AS.No.11/2021. (ADMCJ)]

PRAYER: Appeal Suit is filed under Order XLI, Rule 1 r/w. Section 96 of the Code of Civil Procedure, praying to set aside the Decree and Judgment dated 28.11.2019 passed in OS.No.14018 of 2010 (C.S.No.6 of 2007) on the file of the VI Additional City Civil Court, Chennai.

For Appellant	:	Ms.Anitha Thomas
For Respondents	:	Mr.S.Raghunathan For R1, R4 to R6. R-3 No appearance R2 Died – steps taken

JUDGMENT

This First Appeal has been filed by the plaintiff challenging the judgment and decree dated 28.11.2019 passed by the learned VI Additional Judge, City Civil Court, Chennai, in O.S. No.14018 of 2010. By the impugned judgment, the trial Court dismissed the suit filed by the plaintiff for recovery of Rs.13,31,276/- with interest at 12% per annum, without any order as to costs.

2. The suit was originally filed on 04.12.2006 on the Original Side of this Court as C.S. No.6 of 2007. It was later transferred to the City Civil Court, Chennai, on the ground of pecuniary jurisdiction and renumbered as O.S. No.14018 of 2010.

3. For convenience, the parties are referred to according to their rank before the trial Court. Thus, the appellant is referred to as the plaintiff, the first respondent as the 1st defendant, the third respondent as the 3rd defendant, the legal representatives of the deceased second respondent/2nd defendant as Defendants 4 to 6.

4. The plaintiff, Trans Asian Shipping Services (P) Ltd., is a shipping services company and acted as the Indian agent of M/s. Trans Asian Lines, the ocean carrier. The cargo in question consisted of 188.370 metric tonnes of used and discarded iron and steel scrap rolls meant for melting. M/s. Purna Jaya Metal Alloy SDN BHD, Malaysia, was the consignor of the cargo. M/s. Venus Logistics SDN BHD, Port Kelang, Malaysia, served as its freight forwarder and arranged the shipment from

Port Kelang to Chennai. The cargo was packed in seven 20-foot containers and carried on the vessel Bunga Terasek, Voyage No. YBT 030. M/s. Spices Trading Corporation Limited, Bangalore, was the original consignee, while M/s. Venus Logistics Pvt. Ltd., Chennai, handled the forwarding and shipping documentation at Chennai. The shipment was covered by Master Bill of Lading No. TALFSL 00017640 dated 27.02.2006 issued by M/s. Trans Asian Lines and House Bill of Lading No. PKG/MAA/E5063 dated 27.02.2006 issued through M/s. Venus Logistics Pvt. Ltd.

5. While the cargo was in transit, the original consignee, M/s. Spices Trading Corporation Limited, sold it to the 1st defendant (M/s. Shree Ganesh Steel Rolling Mills Ltd.) under a High Seas Sale Contract dated 04.03.2006. The 1st defendant thus became the purchaser of the cargo. The 3rd defendant (M/s. P.R. Agencies) acted as the clearing and forwarding agent of the 1st defendant. By letter dated 13.03.2006, the 3rd defendant requested the plaintiff (Trans Asian Shipping Services (P) Ltd.) and M/s. Venus Logistics Pvt. Ltd. to amend the Import General Manifest so as to show the 1st defendant as the consignee.

6. According to the plaintiff, before the containers were released, the 1st defendant, through the 3rd defendant, executed a Container Bond dated

14.03.2006. Under the bond, the 1st defendant undertook to return the empty containers within 15 days of taking delivery, to make good any damage caused to them, and to pay any detention or demurrage charges for any delay. A security deposit of Rs.20,000/- for each container, amounting to Rs.1,40,000/- for all seven containers, was also paid by demand draft. The plaintiff thereafter issued a Delivery Order dated 14.03.2006 and released the seven containers.

7. The plaintiff's case is that, after the cargo was cleared, the defendants failed to return the empty containers within the agreed period. Despite repeated demands and exchange of notices during April and May 2006, the containers were not returned. The plaintiff therefore lodged a complaint with the Thiruvottiyur Police Station on 02.06.2006. Thereafter, four of the seven containers were returned on 08.06.2006. The remaining three containers bearing Nos. TLXU2001252, TLXU2007142 and TLXU2009931 were not returned. The plaintiff consequently lodged another police complaint on 21.06.2006.

8. The plaintiff therefore claimed a total sum of Rs.13,31,276/-. This consisted of Rs. 2,88,229/- towards demurrage charges for the four containers returned on 08.06.2006, Rs. 34,587/- towards interest, Rs. 6,49,769/- towards detention charges for the three containers that were

not returned, Rs. 2,83,691/- towards their depreciated replacement value, and Rs. 75,000/- towards customs duty.

9. On this basis, the plaintiff filed the suit seeking recovery of Rs.13,31,276/- from Defendants 1 to 3 jointly and severally, together with interest at 12% per annum from the date of the plaint till payment and costs.

10. The 1st defendant filed a written statement, which was adopted by the 2nd and 3rd defendants. They denied the plaintiff's case and contended that the plaintiff was only the delivery agent of M/s. Trans Asia Lines, the actual carrier of the cargo. According to them, the plaintiff had no locus standi or authority to file the suit in its own name. They also contended that the actual carrier was a necessary party to the suit and that the plaintiff had not proved either ownership of the containers or authority to claim them. The defendants further stated that there was no contract between the plaintiff and the 1st defendant and that the terms of the Master Bill of Lading and House Bill of Lading could not be enforced by the plaintiff against them. They also claimed that the security deposit of Rs.1,40,000/- and another sum of Rs.60,000/- relating to an earlier consignment were collected under pressure as a condition for issuing the delivery order. According to them, the Container Bond was prepared by

the plaintiff and signed solely to avoid delays in clearing the cargo and the resulting demurrage and storage charges.

11. The defendants further stated that, after the cargo was removed from the containers, the empty containers were offered for return at the place nominated by the plaintiff within the permitted period. However, the plaintiff refused to receive them, first without giving any reason and later on the ground that the containers were damaged. According to the defendants, no joint survey was conducted to prove such damage. They also stated that the plaintiff had already retained the security deposit to cover any such damage. The defendants contended that they had no use for the empty containers and had repeatedly asked the plaintiff to take them back. According to them, the plaintiff later accepted only four containers and refused to receive the remaining three. They stated that they were ready to return the remaining three containers if the security deposit was refunded, but the plaintiff neither refunded the amount nor received the containers. They also contended that the police complaint was lodged solely to pressure them in what was essentially a civil dispute.

12. The defendants also disputed the entire claim of Rs.13,31,276/- as excessive and unsupported by any agreement. They denied agreeing to the detention or demurrage rates claimed by the plaintiff or to interest at

12% per annum. They disputed the amounts claimed towards demurrage for the four returned containers, detention charges for the three remaining containers, replacement value and customs duty. They also contended that the plaintiff had not produced proper proof of the customs duty claimed. The claim for demurrage in US Dollars was also disputed. The 2nd defendant contended that he was made a party only because he was the Managing Director of the 1st defendant company, and that he could not be held personally liable without any separate undertaking from him. The 3rd defendant also denied liability on the ground that it was only the clearing and forwarding agent of the 1st defendant. On these grounds, the defendants sought dismissal of the suit with costs.

13. The trial Court recast the following eight issues: (1) Whether the plaintiff is having authority to file the suit; (2) Whether the defendants did not return the containers as agreed by them; (3) Whether there is no privity of contract between the plaintiff and the 1st defendant; (4) Whether the suit is barred by misjoinder of parties; (5) Whether the suit is barred by non-joinder of proper and necessary parties; (6) Whether the plaintiff is entitled for the suit amount; (7) whether the plaintiff is entitled for interest; (8) To what relief.

14. On the plaintiff's side, Mr Abraham Mathew was examined as P.W.1, and Exs.A1 to A18 were marked. These documents include the authorisation letter, invoices, cargo container production certificate, amendment letter, Container Bond, legal notices, acknowledgement cards, police complaints, CSR, correspondence between the parties, vessel arrival notice and the Master Bill of Lading. The defendants did not examine any witness. However, during the cross-examination of P.W.1, a copy of the House Bill of Lading dated 27.02.2006, bearing No.PKG/MAA/E50631, was marked as Ex.B1.

15. The Trial Court rejected the defendants' objections regarding the plaintiff's authority to file the suit, absence of privity of contract and non-joinder of the principal carrier. It noted that the 1st defendant had taken delivery of the cargo from the plaintiff and that no evidence was produced to show that the suit was not maintainable. The objection regarding the person who originally signed the plaint was also rejected in view of the subsequent substitution of P.W.1, Abraham Mathew, and Ex.A1, the resolution of the plaintiff company.

16. However, on the return of the containers and the monetary claim, the Trial Court found against the plaintiff. Referring to Exs. A7 and A13, it held that the defendants were willing to return the remaining three

containers, but the plaintiff had refused to accept them unless the amount claimed was paid. It therefore held that wrongful retention of the three containers was not proved.

17. The Trial Court further held that the plaintiff had not produced sufficient evidence to prove the amounts claimed towards demurrage, interest, detention charges, depreciated value of the containers and customs duty. It also noted that no steps had been taken to assess the alleged damage to the containers, though the plaintiff had retained the security deposit.

18. As regards the 2nd defendant, the Trial Court held that he was not a necessary party in his personal capacity merely because he was the Managing Director of the 1st defendant company, though his inclusion did not make the suit bad for misjoinder. The suit was accordingly dismissed without costs.

19. Aggrieved by the judgment and decree of the Trial Court, the plaintiff filed this appeal. The appellant contends that, after deciding Issues 1, 3, 4 and 5 in its favour, the Trial Court ought not to have decided Issues 2, 6 and 7 against it and dismissed the suit. According to the appellant, the Trial Court failed to properly consider Ex.A6 Container Bond, Ex.A14 reply notice, Ex.A15 and Ex.A18 letters and Ex.A16

Cargo Arrival Notice. It also failed to take into account that the defendants did not examine any witnesses.

20. The appellant further contends that the Trial Court was wrong in holding that the plaintiff had refused to receive the containers. According to the appellant, four containers were returned only after the police complaint, and the offer to return the remaining three containers was subject to conditions. The appellant also challenges the rejection of its claims for demurrage, the containers' depreciated value, and customs duty. It therefore seeks to set aside the judgment dated 28.11.2019 and decree the suit as prayed for.

21. Learned counsel for the appellant/plaintiff submitted that the Trial Court erred in dismissing the suit, as the defendants had admittedly taken delivery of all seven containers from the plaintiff without questioning the plaintiff's title or authority at the time. It was submitted that Exs. A2 and A3 relate to the TLXU series containers at issue in the suit. As regards containers TTNU 2773266 and CRXU 1736400, the plaintiff's case is that they had been taken on lease from third parties. According to the appellant, the defendants, after taking delivery of the containers from the plaintiff, could not later dispute the plaintiff's right to claim in respect of them.

22. Learned counsel further submitted that the plaintiff's claim is based on Ex.A6 Container Bond, Ex.A16 Cargo Arrival Notice, and the provisional bills forming part of Exs.A14 and A15. According to the plaintiff, these documents show the defendants' obligation to return the containers and to pay detention or demurrage charges for any delay. It was pointed out that four containers were returned only on 08.06.2006, and that the charges due for the period of delay were not paid. The remaining three containers were not returned at all and, according to the plaintiff, had to be treated as a total loss. On that basis, the plaintiff claimed their depreciated replacement value and customs duty.

23. Learned counsel also submitted that the 1st defendant company is responsible for the decisions of its deceased Managing Director, the 2nd defendant, who, according to the plaintiff, was responsible for retaining the containers. It was emphasised that the defendants did not examine any witness to prove their case that the plaintiff had refused to receive the containers. By contrast, the plaintiff repeatedly demanded their return, and four containers were returned only after the police complaint was lodged. Since the transaction was commercial in nature, learned counsel submitted that the plaintiff is also entitled to interest under Section 34 of the Code of Civil Procedure. It was therefore argued that the Trial Court

ought to have accepted the plaintiff's documentary evidence and decreed the suit.

24. Learned counsel for Respondents 1, 4, 5 and 6, on the other hand, submitted that the suit itself is not maintainable. According to them, the plaintiff was merely an agent of the disclosed principal, M/s. Trans Asian Lines. Relying on Section 230 of the Indian Contract Act, 1872, it was argued that an agent cannot enforce a contract in its own name unless the case falls within one of the recognised exceptions. It was also pointed out that the plaintiff had neither filed the suit as the principal's power of attorney agent nor produced any authority from the principal authorising it to sue. Reliance was placed on The Oriental Insurance Co. Ltd. v. M/s. P.S.T.S. & Sons Pvt. Ltd.

25. Learned counsel for the respondents further submitted that Exs.A2 and A3 do not prove that the plaintiff owned the seven containers involved in the suit. According to them, there is no clear link between those invoices and the suit containers, and Ex.A3 is in the name of M/s. Nortrans Marine Services Pvt. Ltd. It was also argued that Ex.A16 is only a Cargo Arrival Notice and, by itself, cannot form the basis for claiming detention charges. Ex.A6 Container Bond refers to detention charges as provided in the relevant Bill of Lading, but the Trial Court found that the

alleged Clause 15.4 and the detention tariff relied upon by the plaintiff do not appear in Ex.A17 Master Bill of Lading. The respondents also contended that Ex.A6 limits their liability, that the plaintiff had already collected security deposits, and that no proper documents were produced to substantiate the amounts claimed for depreciated replacement value and customs duty.

26. Learned counsel further submitted that Exs. A7, A9, A10, A13, A14 and A15 show that the remaining containers were offered for return but were not accepted by the plaintiff. It was argued that the plaintiff could not succeed merely because the defendants did not examine any witness, since the burden of proving the plaintiff's claim remained on the plaintiff. As regards the 2nd defendant, it was submitted that he had not given any personal guarantee and that Ex. A6 was signed only on behalf of the 1st defendant company. Therefore, according to the respondents, he could not be personally liable for the company's contractual obligations. For the same reason, his legal representatives, Respondents 4 to 6, could not be held liable. On these grounds, learned counsel sought dismissal of the appeal and confirmation of the Trial Court’s judgment.

27. The Trial Court framed an issue as to whether the plaintiff had the authority to institute the suit and answered it in favour of the plaintiff.

The defendants have not filed any cross-appeal challenging that finding. Therefore, that finding has attained finality, and the present appeal is confined to the findings rendered against the plaintiff.

28. The following points arise for determination in this appeal:

(i) Whether the finding of the trial Court on Issue 2 – that it was the plaintiff, and not the defendants, who refused redelivery of the empty containers – is sustainable on a reappraisal of the evidence?

(ii) Whether the plaintiff has proved its entitlement to the sums claimed, or to any part thereof, and to interest thereon?

(iii) Whether the deceased 2nd defendant, and consequently Respondents 4 to 6 as his legal representatives, can be held personally liable?

Point (i):

29. In a first appeal under Section 96 CPC, this Court has to independently examine the evidence on record and arrive at its own conclusions. Where the case depends mainly on documents rather than on the manner in which witnesses gave evidence, this Court can assess those documents and draw its own findings.

30. Under Ex.A6, the 1st defendant had to return the containers within 15 days from the date of taking delivery. The containers were taken on or about 14.03.2006 and the free period therefore ended around 29.03.2006. According to the plaintiff, four containers were returned only on 08.06.2006, more than two months later, and three containers were never returned. Thus, there was clearly a delay in returning the containers. The main question is who was responsible for that delay.

31. The defendants first stated in Ex.A7, the legal notice dated 10.04.2006, that they had tried to return the containers but the plaintiff had refused to receive them. This was nearly two weeks after the free period had ended. There is no earlier document, such as a delivery challan, letter or email, showing that the defendants had attempted to return the containers or that the plaintiff had refused to accept them. Ex. A7 also does not state which containers were allegedly damaged, and the defendants did not request a joint survey to verify the alleged damage.

32. The plaintiff, in its reply dated 24.04.2006 under Ex.A14, denied the defendants' version and called upon them to return the containers. This does not support the defendants' case that the plaintiff itself was refusing

to receive them. Further, four containers were returned only later, after the plaintiff had approached the police. This circumstance supports the plaintiff's case that the delay was on the defendants' side.

33. At the same time, there is some inconsistency in the plaintiff's own documents. The Provisional Bill dated 12.05.2006, sent along with Ex.A15, shows 12.05.2006 as the "Returned On" date for all seven containers. However, according to the plaintiff's subsequent case, three of those containers had still not been returned even after that date, as evidenced by the police complaint dated 21.06.2006 and the demand letter dated 14.09.2006 under Ex.A18.

34. There is no explanation in the evidence for this entry. It may be that 12.05.2006 was used only as a cut-off date for calculating charges and not as the actual date of return. This appears possible because the plaintiff continued to demand return of the containers even after 12.05.2006.

35. On the evidence available, this Court finds that the 1st defendant failed to return the three containers within the time fixed under Ex.A6. There is no reliable document showing that the defendants had previously offered to return those containers and that the plaintiff had refused to receive them. Therefore, the finding of the Trial Court on Issue No.2 is set aside. It is held that the delay in returning containers Nos.

TLXU2001252, TLXU2007142 and TLXU2009931 was on the part of the 1st defendant. Accordingly this point is answered.

Point (ii):

36. Merely because the 1st defendant failed to return the three containers, the plaintiff does not automatically become entitled to the entire amount claimed. The plaintiff must still prove the legal basis for each part of the claim and also prove the actual amount of loss suffered. This is especially necessary for claims regarding detention charges, the depreciated value of the containers, and customs duty, since these amounts require specific proof and cannot be awarded merely on the basis of a breach.

37. As regards detention or demurrage charges, the plaintiff relied on a tariff said to be contained in Clause 15.4 of Ex.A17. The Trial Court found that no such clause appears in Ex.A17. The plaintiff also relied on Ex.A16, the Cargo Arrival Notice. However, Ex.A16 was only a notice issued to Venus Logistics Pvt. Ltd. and not to the 1st defendant. The 1st defendant was not a party to that notice, and there is no document showing that it agreed to the daily detention rates mentioned in it. The general reference in Ex.A6 to charges under the Bill of Lading is not

enough to make those rates binding on the 1st defendant. Therefore, the plaintiff has not proved its claim for detention or demurrage charges.

38. As regards the depreciated replacement value of the three containers and the customs duty, P.W.1 admitted in cross-examination that no document was produced to prove either amount. He also admitted that he had not verified those figures from any independent record. The only basis for these amounts was the plaintiff’s own demand letter dated 14.09.2006, marked as Ex.A18. Since the defendants had disputed their liability throughout, their failure to separately deny each figure in Ex.A18 cannot be treated as an admission. The plaintiff could not prove these claims by relying solely on its demand letter.

39. Further, in view of the finding under Point No (i), the plaintiff’s claim has to be considered on the basis of Ex.A6, the Container Bond executed in its favour. Ex.A6 limits the defendants’ liability for the value of the containers and customs duty in the event of total loss. The plaintiff states that the limit is Rs.1,00,000/- per container, while Respondents 1, 4, 5, and 6 contend that the maximum liability is Rs.1,00,000/- for all seven containers. Upon examining the record, this Court finds that the respondents’ submission is supported by Ex. A6.

40. Since the total liability under Ex.A6 is limited to Rs.1,00,000/- for all seven containers, and three containers were not returned due to the default of the 1st defendant, the proportionate amount for those three containers comes to Rs.42,857/-, being three-sevenths of Rs.1,00,000/-. In the absence of proof of any higher actual loss, the plaintiff is entitled only to this amount.

41. The plaintiff is therefore entitled to Rs.42,857/- with interest at 6% per annum from 04.12.2006, the date of filing of the suit, till realisation. The claim for detention or demurrage charges and any amount over and above Rs.42,857/- is rejected for want of proof. Accordingly this point is answered.

Point (iii):

42. It is well settled that a company has a legal identity separate from its directors. A director is not personally liable for the debts or contractual obligations of the company merely because he holds that position. Personal liability can arise only in limited situations, such as where the director has given a personal guarantee, acted fraudulently, or where a law specifically makes him liable.

43. In the present case, none of these circumstances has been pleaded or proved. Ex.A6 was executed on behalf of the 1st defendant company and not by the 2nd defendant in his personal capacity. There is also no personal guarantee given by the 2nd defendant.

44. The plaintiff has argued in its written submissions that the corporate veil should be lifted because the 1st defendant company is now controlled by the family of the deceased 2nd defendant. This was not pleaded in the plaint and was not an issue before the Trial Court. In any event, a later change in the management of the company cannot by itself make the 2nd defendant personally liable for an earlier obligation of the company.

45. Point (iii) is therefore answered against the plaintiff. The 2nd defendant was not personally liable for the amount due. Therefore, his legal representatives, Respondents 4 to 6, are also not liable. The decree shall be only against the 1st defendant company.

Conclusion:

46. For the reasons stated above,

Point (i) is answered in favour of the plaintiff. The 1st defendant was responsible for the failure to return the three containers, and the Trial Court's finding on Issue No. 2 is set aside.

Point (ii) is answered partly in favour of the plaintiff. The plaintiff is entitled to Rs. 42,857/- with interest at 6% per annum from 04.12.2006 until realisation. However, the claim for detention or demurrage charges and any amount above Rs.42,857/- is rejected for want of proof.

Point (iii) is answered against the plaintiff. The deceased 2nd defendant was not personally liable and, therefore, his legal representatives are also not liable.

Result:

47. In the result, A.S. No.11 of 2021 is partly allowed. The judgment and decree dated 28.11.2019 in O.S. No.14018 of 2010 are set aside to that extent. The suit is decreed against the 1st defendant alone for Rs.42,857/- (Rupees Forty-Two Thousand Eight Hundred and Fifty-Seven only), with interest at 6% per annum from 04.12.2006 till payment. The suit is dismissed against the 2nd defendant, his legal representatives, namely

Respondents 4 to 6, and the 3rd defendant. The parties shall bear their own costs. Any connected miscellaneous petitions are closed.

21.08.2026

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Index:Yes/No
Speaking Order /Non-speaking order
Neutral citation:Yes/No

To

1.The VI Additional City Civil Court,
Coimbatore.

2. The Section Officer,
V.R.Records,
Madras High Court.

DR. A.D. MARIA CLETE, J

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PRE-DELIVERY JUDGMENT IN
A.S. No. 11 of 2021

21.08.2026