



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP (C) No.24340 of 2019)

ESSEMM LOGISTICS

...APPELLANT

VERSUS

DARCL LOGISTICS LIMITED & ANR.

...RESPONDENTS

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.
2. Heard Mr. Anand Sanjay M. Nuli, learned advocate appearing for the appellant and Mr. Manu Beri, learned Advocate appearing for the first respondent.
3. The appellant (ESSEMM Logistics), who was the first defendant in the suit, has preferred this appeal against the rejection of its counter-claim in exercise of power available under Order VII Rule 11 of the Civil Procedure Code, 1908 (in short “CPC”) by

the Court of first instance which order has been upheld by the High Court.

- 4.** The first respondent (DARCL Logistics Limited) was the plaintiff who instituted original suit No.79 of 2013 (DARCL Logistics Limited Vs. ESSEMM Logistics & Anr.) for a recovery of sum of Rs.4,09,53,847/- with interest at the rate of 18% till its realisation, since the first defendant – appellant failed to make payments due as per 530 bills raised during the period 14.11.2011 to 31.01.2012.
- 5.** In the said suit, the first defendant – the appellant herein entered appearance and filed its written statement with counter-claim of Rs.13,04,00,000/- with interest at the rate of 24% on the said amount till its realization. The said counter-claim was set up as under:

1.	Loss of Business Opportunity due to diversification of the Cargo from Gangavaram Port to Paradeep Port	Rs.3,50,00,000/-
2.	Loss of Reputation	Rs.7,50,00,000/-
3.	Loss on account of Idling of Men, Machine & Overheads	Rs.2,04,00,000/-

Total	Rs.13,04,00,000/-
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6. It may be noted that the plaintiff-first respondent is a common carrier and is governed by the Carriage by Road Act, 2007 (new Act) which came into force with effect from 20.07.2010 repealing the Carriers Act, 1865.
7. The Carriers Act, 1865 vide Section 10 provided that no suit shall be instituted against the common carrier for the loss of, or injury to, goods including containers, pallets or similar articles of transport entrusted for carriage, unless a notice in writing for such loss of injury is given before the institution of the suit within six months of the loss coming to the knowledge of the plaintiff.
8. The above Section 10 of the Carriers Act, 1865 for convenience sake is reproduced hereinbelow:

“No suit shall be instituted against a common carrier for the loss of, or injury to, goods [including containers, pallets or similar articles of transport used to consolidate goods] entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.”

- 9.** The above Section 10 of the Carriers Act, 1865 bars the institution of a suit only against a common carrier for the loss of, or injury to, goods entrusted to the common carriage for the purposes of carriage without giving a notice in writing of the alleged loss within six months of the loss or injury first coming to the knowledge of the plaintiff. In other words, only a suit for recovering damages for the loss of or injury to the goods entrusted to the common carrier for carriage is barred without a legal notice, as aforesaid but not suits of other nature or for recovery of any amount other than due loss or injury to the goods entrusted for carriage.
- 10.** The Carriage by Road Act, 2007 (new) which replaced the earlier Act vide Section 16 provides as under:

“No suit or other legal proceeding shall be instituted against a common carrier for any loss of, or damage to, the consignment, unless notice in writing of the loss or damage to the consignment has been served on the common carrier before the institution of the suit or other legal proceeding and within one hundred and eighty days from the date of booking of the consignment by the consignor.”

11. The aforesaid Section 16 of the new Act is more or less in *pari materia* with the Section 10 of the Carriers Act, 1865 which has been repealed. It also lays down that no suit or legal proceedings shall be instituted against a common carrier for any loss of, or damage to, a consignment unless a notice in writing of such loss to the consignment has been served upon the carrier before the institution of the suit or the legal proceedings within six months from the date of booking of the consignment by the consignor. A close look to the above provision would reveal that it not only bars the suit but also legal proceedings which were not included in the earlier provision of Section 10 of the Carriers Act, 1865. The other deviation is by the use of word “consignment” in place of “goods entrusted”. In other words, both the aforesaid provisions though Section 10 of the Carriers Act stands repealed and ceased to in force, provides for a notice before instituting any suit/legal proceedings against a common carrier for any loss or damage to the consignment. The aforesaid provision is only in context of the institution of a suit or a legal proceeding for the loss of or damage to the consignment and not in respect

of any other kind of loss or damage or claim other than to the loss or damage to the consignment.

- 12.** It is well recognized that in view of Order VIII Rule 6–A (4) CPC, a counter-claim is a virtually a plaint and an independent suit. It is also a settled proposition of law that a plaint which falls within the teeth of the conditions laid down under Rule 11 of Order VII CPC is liable to be rejected at the threshold for which the plaint allegations alone are required to be considered and nothing else.
- 13.** It is in view of the aforesaid facts and circumstances, the plaintiff-first respondent pressed for rejection of the counter-claim set up by the appellant- first defendant under Order VII Rule 11 CPC as it was preferred without issuing the mandatory notice as contemplated mistakenly by Section 10 of the Carriers Act, 1865 but in fact by Section 16 of the new Act.
- 14.** The Court of first instance ordered for the rejection of the plaint for want of issuance of mandatory notice before presentation of the counter-claim which order has been affirmed by the High Court.

- 15.** In assailing the impugned orders of the courts below, it was submitted that the Courts have manifestly erred in not appreciating the provisions of Section 16 of the new Act in its clear literal sense. The said provision is applicable only where the claim is for any loss of, or damage to, the consignment and not in respect of any other claim of loss or damage. The counter-claim of the appellant was not in respect of either the loss or damage to the consignment rather for the loss of business opportunity, loss of reputation and loss on account of idling of men, machine and overheads etc.
- 16.** A plain reading of Section 16 of the new Act reveals that it is applicable only in respect of institution of a suit or legal proceeding against a common carrier for any loss of, or damage to, the consignment. The use of the word “Consignment” in the said provision is very material. It denotes that the suit and legal proceedings in connection with the loss or damage to the consignment alone are covered by it for which purpose, a notice is mandatory. The said provision has no application in reference to loss of any other kind or the suit or legal proceedings

instituted for recovery of damages in respect of loss of different nature.

- 17.** A reading of the counter-claim clearly reveals that the damages claimed are in respect of loss set up by the appellant-first defendant in connection with the loss of business opportunity, loss of reputation and loss on account of idling of men, machine and overheads. It had not instituted any suit or legal proceedings such as counter-claim for any loss or damage to any consignment. The courts below have clearly lost sight of the above aspect of the matter and without making any distinction between the various kinds of claims otherwise arising other than claims for loss or damage to the consignment, illegally directed to reject the counter-claim.
- 18.** The provision of Section 16 of the new Act does not come into play vis-à-vis the condition of giving a notice in respect of claims for damages for the loss of reputation, business opportunity etc. as such claims are not in connection with the damage or loss to the consignment.

- 19.** In view of the aforesaid facts and circumstances, we are of the opinion that no notice under Section 16 of the new Act was necessary for instituting any suit or legal proceedings much less counter-claim against the common carrier for recovering the loss other than the loss of or damage to the consignment and, therefore, the courts below manifestly erred in rejecting the counter-claim under Order VII Rule 11 CPC as barred by Section 16 of the new Act.
- 20.** Accordingly, the impugned judgment and orders dated 07.08.2019 and 21.9.2017 are set aside and the appeal is allowed with the direction to the Court of first instance to proceed with the suit as well as the counter-claim in accordance with the law.
- 21.** There will be no orders as to costs.

..... **J.**
(V. RAMASUBRAMANIAN)

..... **J.**
(PANKAJ MITHAL)

New Delhi;
May 01, 2023.