

(1924) 09 MAD CK 0080
In the Madras High Court

Arab Farai bin Ali Banamoon

APPELLANT

Vs

Jatha Meghji and Another

RESPONDENT

Date of Decision : 17-09-1924

Acts Referred:

Citation : 86 Ind. Cas. 751

Hon'ble Judges : Ramesam, J; Jackson, J

Bench : Division Bench

Judgement

Ramesam, J.—This appeal arises out of a suit for damages for breach of a contract of Charter party. The plaintiff is a merchant of a place

called Shermacala, a port in the South of Arabia on the Gulf of Aden. The first defendant is the owner of a vessel called Patharath. The second

defendant is the first defendant's agent and master of the vessel. The appeal was withdrawn so far as the second defendant is concerned and is

pressed only against the first defendant or first respondent. The contract of Charter party is embodied in Ex. I dated the 23rd March, 1917.

According to this contract, the ship was to be loaded with cargo such as keta, planks, katia, jaggery, dry ginger, coffee etc., and was to proceed

to Shermacala. The amount of freight was Rs. 2,301. Rs. 1,000 was to be paid in advance and was so paid by the plaintiff. The remaining Rs.

1,301 was to be paid on the ship reaching the port of destination. The ship was to be loaded at Calicut within three to four days and she was to be

unloaded and the goods taken within five to eight days at Shermacala. There were the usual clauses of exemption from liability on account of act of

God and King's enemies. The ship sailed on the 2nd April 1917. It went first to Marma Goa which it left on the 24th of April. In the course of the

voyage, the ship met a storm and its gale-pole was damaged. It is said that a part of the cargo was jettisoned on the 27th of April and the ship had

to go to the port of Karwar on the 1st May, 1917. At Karwar the master of the ship made an application to the Port Authorities for help to land

the goods. This is Ex. K. At the same time he made a statement, Ex. E. In this statement we have got, in one of the answers, the following passage,

I had gone near Marma Goa, there I took malim in the vessel and without entering the port I anchored at a distance and from there I proceeded

on date 24th." The rest of the cargo was landed at Karwar and information was given to the plaintiff who was then at Bombay. This was on the

28th of August 1917. The plaintiff gave notice by the 6th of September 1917 insisting that the goods should be taken back from Karwar to

Shermacala but the master did not take plaintiff's goods. He took other cargo and left Karwar for Calicut On the 8th September 1917. The usual

notices passed between the legal advisers of the plaintiffs and defendants. The suit was filed on the 15th April 1918.

2. The only evidence we have got in the case is that of the plaintiff and his witnesses. The plaintiff is P.W. No. 3 and examined three witnesses P.

Ws. Nos. 1, 2 and 4. The defendant adduced no evidence. Neither the master of the ship nor anybody else on his side has gone into the box.

Beyond the solitary statement above mentioned by me in Ex. E, we have no information exactly as to the purpose why the ship went to Marina

Goa. The plaintiff in his evidence says that there is no necessity to go to Goa to take up a malim. The evidence is uncontradicted. It is settled law

that if the Charter party says nothing more except that the cargo should be carried from one port to another, it is an implied condition that the ship

must go according to the nearest route between the ports. Any usage permitting deviation may be proved: vide Maclachlan's "Law of Merchant

Shipping," page 473. The distance between Calicut and Marma Goa is 200 miles along the coast. We find on the map that Shermacala is

practically due west of Calicut. The plaintiff in his evidence says: "The usual route to go to Shermacala is due west from Calicut along the Islands.

The voyage would take 18 or 20 days. The usual route is not through Goa and Karwar. At that season it was unsafe to go that way. The right

route would have been along the west of Calicut." There is no cross-examination on this portion of the plaintiff's deposition. He repeats the same

thing in re-examination. We must hold that the master of the ship is guilty of deviation which has not been justified in the case. It is unnecessary to consider any other point.

3. There being an unjustified deviation, it follows that the plaintiff is entitled to recover all damages caused by the deviation. He is entitled to

recover the jettisoned cargo, he is entitled to recover damages and the costs of the cargo, he is entitled to all the incidental expenses including the

advanced freight (Scrutton's Charter Parties, page 137). The result is that the appeal must be allowed and decree must be given to the plaintiff for

the sum of Rs. 6,700 with subsequent interest at 6 per cent. from the date of the plaint up to this date and interest at 6 per cent. on the aggregate

amount till payment. The plaintiff will be entitled to his costs throughout on the sum of Rs. 6,700. The decree will be against the first defendant only.

The decree for Rs. 2,500 against the second defendant will remain unaffected.

4. The memorandum of objections will be dismissed with costs.

Jackson, J.

5. I agree.