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**(1981) 10 KAR CK 0022**  
**In the Karnataka High Court**  
**Case No : RSA 114/75**

Canara Public Conveyance Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 22-10-1981

**Acts Referred:**

Evidence Act, 1872 — Section 115

**Citation :** (1982) 1 KarLJ 169

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## **Judgement**

This appeal by the plaintiff is directed against the judgment and decree, dated: 30-9-1974, passed by the Addl. District Judge, South Kanara, in RA No. 9/1971, allowing the appeal and partially reversing" and modifying the judgment and decree, dated 29, 5-1971, passed by the First Addl. Civil Judge, Mangalore, in OS No. 106/1968, on his file, decreeing the suit of the plaintiff.

Plaintiffs M/s. Canara Public Conveyance Company Ltd. is a public limited liability company having its registered office at Kodialbail, Mangalore-3. The defendant in the suit is the Union of India as owner of Southern Railway, represented by. the General Manager, Southern Railway, Park Town, Madras.

Plaintiffs, according to them, were appointed as contractors for the Out-Agency at Chickmagalur, during July 1957 at Mangalore and were running the Out-Agency from 15-7-1957 till 31-8-1966 on which date the contract of Out Agency as such was terminated. During the period of Out-Agency, 3130 bags of wheat received at Kadur Railway Station, between 19-8-1966 and 28 8 1966, were transported, to Chickmagalur Out Agency, by the plaintiffs under the directions of Kadur Railway Station Master, though the name of the consignee was not stated and known.

At the time of the termination of the Out Agency, on 31-8 1966, the stock of 3130 bags of wheat were lying in Chickmagalur with the plaintiffs. Though at the closure of Out agency, all accounts, records and other goods with the plaintiffs were directed to be delivered to the Kadur Railway Station Master and were so delivered, the above said stock of 3130 bags of wheat were directed to be

retained by the plaintiffs and were so retained by them till further arrangements were made. Accordingly, on 1-9 1966, an officer of the defendant, namely, DC-BDVT, came to Chickmagalur and directed the plaintiffs to deliver the 3130 bags of wheat to the Deputy Commissioner, Chickmagalur, free of wharfage charges. The Deputy Commissioner, Chickmagalur, took delivery of the said 3130 bags of wheat, from the Out-Agency Office from 2-9-1966 to 6-9-1966. Thus the plaintiffs averred that the bags of wheat received from 19-8-1966 to 28-8-1966, were delivered to the Deputy Commissioner, Chickmagalur, from 2-9-1966 to 6-9-1966. Till then the bags of wheat were in the custody of the plaintiffs lying in their office.

The plaintiffs have given the details of the respective dates on which the wheat bags were received and the dates on which the wheat bags were delivered and the number of wheat bags remaining in their custody on each day between 19-8-1966 and 2-9-1966 and the amount due to the plaintiffs at scheduled rates, in schedule "A" annexed to the plaint.

Plaintiffs have claimed that they are entitled to be paid by the defendant charges at the schedule rates and calculating the same they have claimed Rs. 9,923 70 towards the same. They have also claimed Rs. 78-20 due to them towards storage charges of parcels remaining undelivered on 1-2-1966, which were later delivered to the Railway Station Master, Kadur. They have further claimed Rs. 2,500 towards return of deposit and they have claimed interest on the amounts due, namely, Rs. 12,501-90 from the date of suit till payment, as also costs of the suit and other genera) reliefs.

The suit was filed on 1 12 1968. It was resisted by the defendant by filing the written statement. The defendant admitted that the plaintiffs were appointed as contractors of defendant's Out Agency at Chickmagalur, from 15 7-1957 to 31 8-1966. The terms and conditions of the contract, according to the defendant, were later set out in the memorandum of agreement, dated 20 1 1967, as per Ex. D-1. The defendant formally denied that he requested the plaintiffs to retain the bags of wheat. However, defendant admitted that the bags of wheat were delivered to the Out-Agency as averred. Defendant further admitted that the Deputy Commissioner, Chickmagalur, was contacted and the Deputy Commissioner, was persuaded to take delivery of the consignment and accordingly delivery was taken by the Deputy Commissioner, Chickmagalur. The defendant further admitted that the goods were lying unentered. According to the defendant, defendant did not collect any wharfage from anybody in respect of the said consignment. Hence defendant contends that the plaintiff is not entitled to the charges. With regard to the return of security deposit, the defendant contends in para 10 of the written statement that the plaintiff has not complied with the terms of the agreement. Hence the same was not refunded. The defendant further contends that the plaintiffs are not entitled for interest. Defendant further contended that the claim of Rs. 78-20 made in the plaint is not correct.

On those pleadings the trial Court raised the following issues:

- 1) Has this Court no jurisdiction to entertain the suit because of the clause alleged to exist in the agreement referred to in para 9 of the written statement?
- 2) Is the suit premature?
- 3) Is the plaintiff entitled to claim wharfage charges?
- 4) What is the correct, amount of wharfage charges due, if any?
- 5) Is the plaintiff entitled to claim storage charges as prayed? What is the correct amount of storage charges due, if any?
- 6) Is the plaintiff entitled for payment of the security?
- 7) What deduction, if any, is the defendant entitled to make from out of the security deposit amount?
- 8) To what interest, if any, is plaintiff entitled?
- 9) Is the notice sent proper and valid under S. 80, CPC?
- 10) To what relief, if any, is the plaintiff entitled?

During hearing M.K. Sheshappa (PW 1) was examined on behalf of the plaintiffs and they got marked Ex. P-1 to P-19. On behalf of defendant, K. Venkata Narasu (DW 1), DCI Southern Railway, Bangalore, was examined and defendant got marked Exs. D-1 to D-3.

The trial Court, appreciating the evidence on record, answered issues 1 and 2 in the negative, issue No. 3 in the affirmative; under issue No. 4 the trial Court held that the Plaintiffs were entitled to claim according to wharfage rates; under issue No. 5 it held that the plaintiffs are entitled to partial recovery; issue No. 6 was answered in the affirmative; issue No. 7 in the negative and on issue No. 8, the trial Court held that the plaintiffs were entitled to claim interest at Rs. 1,475-23 and under issue No. 9 the trial Court held that the notice issued was valid and legal. In that view the trial Court decreed the suit of the plaintiffs for Rs. 13,798-83 with proportionate costs and future interest at 5 per cent on Rs. 12,293-60, from the date of suit till payment. Aggrieved by the said judgment and decree, the defendant went up in appeal before the District Judge, Mangalore in RA No. 9/1971. The Additional District Judge who heard the appeal raised the following points as arising for his consideration:

- 1) Whether the learned Civil judge was right in holding that he had jurisdiction to try the suit and that the suit was not premature?
- 2) Whether the plaintiff was entitled to claim wharfage in respect of the consignment of 3130 bags of wheat from the Railways?
- 3) Whether S. 70 of the Indian Contract Act can be made applicable and if so, what amount must be paid by the Railways as compensation?

- 4) Whether the plaintiff is entitled for interest prior to the date of suit?
- 5) Whether the security amount can be ordered to be refunded to the plaintiff without his executing "no demand certificate" in favour of the Railways?
- 6) What order to be passed in the circumstances of the case.

The learned Addl. District Judge, reassessing the evidence on record, held under the points as follows:

- 1) The learned Civil Judge had jurisdiction to try the suit and the suit was not premature.
- 2) The plaintiff is not entitled to claim wharfage.
- 3) S. 70 of the Indian Contract Act can be applied to the facts of the present case, even though not pleaded by the plaintiff and the plaintiff is entitled to collect Rs. 3,130 as compensation for keeping the goods in his custody until delivery thereof to the Deputy Commissioner.
- 4) The plaintiff is not entitled for interest prior to the date of suit.
- 5) The plaintiff can claim security amount without executing the corresponding "no demand certificate" in favour of the Railways?

and in that view the first Appellate Court partially allowed the appeal and modified the decree of the trial Court to that extent. The first Appellate Court decreed that "the defendant do pay the plaintiff Rs. 5,684 80 with interest thereon at 6 per cent from the date of suit till date of realisation", with proportionate costs in the trial Court. It further directed that there shall be no order as to costs of the appeal. Aggrieved by the said judgment and decree, the plaintiffs have instituted the above second appeal before this Court.

The learned Counsel Sri Shivashankar Bhat, appearing for the appellants strenuously urged before me that the learned Addl. District Judge, was not justified in coming to the conclusion that the plaintiffs were not entitled to charge the wharfage charges, they being the regular charges that they were entitled to charge under the contract Ex. D-1. He further submitted that in fact the contract continued and was subsisting when the stock of wheat bags were received and till they were delivered to the Deputy Commissioner, Chickmagalur, at the direction of the department. Alternatively, he submitted that even if S. 70 of the Contract Act were made applicable the same charges that were to be paid to the plaintiffs during the period of contract, had to be paid even for the subsequent period.

As against that Sri H.G. Balakrishna, learned advocate appearing for the respondent-defendant in the appeal argued supporting the judgment and decree of the learned Civil Judge. He submitted that even in the contract Ex. D-1, there was no stipulation that the Railways should pay wharfage charges towards the charges of the plaintiffs in case the consignee was unknown. In that view he

submitted that the learned Addl. District Judge, was justified in awarding Re. 1 per bag as reasonable compensation.

The sole point, therefore, that arises for my consideration in this second appeal is:

"Whether the learned Addl. District Judge was justified in modifying the charges to be paid to the plaintiffs and whether the learned Addl. District Judge was justified in holding that charges equal to wharfage charges could not be paid to the plaintiffs?

It is not in dispute that the plaintiffs served as contractors for the Out Agency, at Chickmagalur for the defendant. It is further not in dispute that the contract commenced in the month of July 1957. It is further not in dispute that the contract was an oral contract and that subsequently a written contract came into existence only in the year 1967 as per Ex. D-1, fixing the period of contract as from 15-7-1957 to 31-8-1966. It is further not in dispute that on the date of the termination of the contract, the plaintiffs handed over all records and articles to the Station Master at Kadur as directed. It is the further case of the plaintiffs that they were by then already in receipt of 3130 bags of wheat and were directed by the defendant to continue with the custody of these bags till further orders and that the plaintiffs were informed to deliver the said bags of wheat to the Deputy Commissioner, Chickmagalur, only on 1-9-1966 and that thereafter plaintiffs started delivery from 2-9-1966 and completed it on 6-9-1966. It is for this period, during which the bags of wheat were in their custody, as the contractors for the Out-Agency at Chickmagalur, that the plaintiffs have claimed the charges.

Ex. D-1 is the written contract. That contains in clause 12 thus:

"The Contractors shall make no charges of any kind whatsoever to the consignor or consignee for the booking or carting of any parcels and goods or for any duty which they should perform in pursuance of the Out Agency's business carried on beyond the ordinary freight wharfage or demurrage charges prescribed in the Railway Goods and Coaching Tariffs for the time being in force as hereinbefore provided".

Thus, it is obvious that the contractors, namely, the plaintiffs were entitled to collect the wharfage charges as notified by the Railway for the goods, from the consignee and it is further on record that the contractors used to submit bills covering the wharfage charges to the defendant towards their charges and the defendant used to honour the bill by the 15th of next month. That was the practice that was followed during the period of contract.

The question arises as is contended by the learned counsel for the respondent, as to whether it is permissible for the plaintiffs-contractors to claim charges even with regard to the goods for which there was no consignee or in other words whether the plaintiffs can claim charges even when wharfage charges are not collected?

It is settled principle of law that if in a contract there are latent ambiguities, it is the duty of the Court to try to understand the intention of the parties by looking to the conduct of the parties to the contract. The Supreme Court of India has dealt with this aspect of the matter in *Godhra Electricity Co. Ltd. v. State of Gujarat*, AIR 1975 SC 32. His Lordship. Mathew, J, who spoke for the Bench has discussed this aspect from para 10 onwards. In para 11 of his judgment this is what his Lordship has observed:

"In the process of interpretation of the terms of a contract, the Court can frequently get great assistance from the interpreting statements made by the parties themselves or from their conduct in rendering or in receiving performance under it. Parties can, by mutual agreement, make their own contracts; they can also, by mutual agreement, re-make them. The process of practical interpretation and application, however, is not regarded by the parties as a re-making of the contract; nor do the Courts so regard it. Instead, it is merely a further expression by the parties of the meaning that they give and have given to the terms of their contract previously made. There is no good reason why the Courts should not give great weight to these further expressions by the parties, in view of the fact that they still have the same freedom of contract that they had originally. The American Courts receive subsequent actions as admissible guides in interpretation. It is true that one party cannot build up his case by making an interpretation in his own favour. It is the concurrence therein that such a party can use against the other party. This concurrence may be evidenced by the other party's express assent thereto by his acting in accordance with it, by his receipt without objection of performances that indicate it, or by saying nothing when he knows that the first party is acting on reliance upon the interpretation (See Corbin on Contracts, Vol, 3, Pp. 249 and 254-55)".

After reviewing the several Indian and English cases, his Lordship proceeds to say in para 17 of the judgment thus:

"We are not certain that if evidence of subsequent acting under a document is admissible it might have the result that a contract would mean one thing the day it is signed but by reason of subsequent event? it would mean something a month or year later. Subsequent "interpreting" statement might not always change the meaning of a word or a phrase. A word or a phrase is not always crystal clear. When both parties subsequently say that by the word or phrase which, in the context, is ambiguous, they meant this, it only supplies a glossary as to the meaning of the word or phrase. After all, the inquiry is as to what the intention of the parties was from the language used. And, why is it that parties cannot clear the latent ambiguity in the language by a subsequent interpreting statement? If the meaning of the word or phrase or sentence is clear, extrinsic evidence is not admissible. It is only when there is latent ambiguity that extrinsic evidence in the shape of interpreting statement in which both parties have concurred should be admissible. The parties themselves might not have been clear as to the meaning of the word or phrase when they entered into the

contract. Unanticipated situations might arise or come into the contemplation of the parties subsequently which would sharpen their focus and any statement by them which would illuminate the darkness arising out of the ambiguity of the language should not be shut out. In the case of an ambiguous instrument, there is no reason why subsequent interpreting statement should be inadmissible".

"The question involved is this: Is the fact that the parties to a document, and particularly to a Contract, have interpreted its terms in a particular way and have been in the habit of acting on the document in accordance with that interpretation, any admissible guide to the construction of the document? In the case of an unambiguous document, the answer is "No", (See Odgers' Construction of Deeds and Statutes, 5th Ed. by G. Dworkin, PP. 118-119)".

"But, as we said, in the case of an ambiguous one, the answer must be "yes". In *Lamb v. Coring Brich Co.*, (1932) 1 KB 710, at 721, a selling agency contract contained the words "the price shall be mutually agreed". Documents showing the mode adopted for ascertaining the price were put in evidence without objection. In the Court of Appeal, Greer LJ said:

"In my opinion, it is not necessary to consider how this contract was acted on in practice. If there had been an ambiguity and the intention of the parties had been in question at the trial, I think it might have been held that the parties had placed their own construction on the contract and having acted upon a certain view, had thereby agreed to accept it as the true view of its meaning.

Thereafter, his Lordship considered the decision in *Balkishen v. Legge* (27 IA 58) and proceeding in para 19 this is what his Lordship has observed:

"In these circumstances, we do not think we will be justified in not following the decision of this Court in *Abdulla Ahmed v. Animendra Kissen Miner* (1960) SCR 30, 46, where this Court said that extrinsic evidence to determine the effect of an instrument is permissible where there remains a doubt as to its true meaning and that evidence of the acts done under it is a guide to the intention of the parties, particularly, when acts are done shortly after the date of the instrument."

Thus, as ruled by the Supreme Court of India, it is manifest, that when there are latent ambiguities in the document, the subsequent conduct of the parties offers a good guide for interpreting it. It is from that point of view that we will have to consider how the parties during the period of contract, which was then an oral contract, conducted themselves in the case of stock of goods by the plaintiffs where the consignees were not known.

PW 1 has referred to the item of wharfage and storage charges paid when the amounts were not collected. These items are at pages 7, 9 and 10 of Ex. D 2. The payments for the month of June, July 1976 are in the files at page 15 and 16. The wharfage and storage charges on such goods are allowed. Similarly, item 11 in Ex. D-3, at page 42 and at 46 of Ex. D-3, 521/4kg. and item 14 at page 54 were goods re-booked and storage charges and wharfage charges are paid.

Similarly there are bills on pages 17 and 18 which include such wharfage and storage charges. On page 19 a bill for August 1966 wharfage has been sanctioned by the defendant. PW 1 has further stated, in the course of his evidence "defendant has paid all previous claims, wharfage for similar claims" and the said statement is not challenged in the cross-examination. Thus, it is obvious, that parties to the contract have perfectly understood that even in cases where wharfage is not to be collected the plaintiffs have to be paid at the wharfage rates and that practice has been consistently followed during the contract period.

DW 1 in the course of his evidence has stated:

"Out-Agency is responsible for safe custody and storage of goods from the time it receives. Wharfage is given to Out-Agency for keeping goods in safe custody, and proper storage. No other rents or compensation is paid for that custody."

Thus, it becomes clear that the plaintiffs have to collect wharfage where under the rules the Railways have to collect wharfage. But that is not a condition precedent for paying the plaintiffs their charges. Plaintiffs are paid the charges for keeping the goods in safe custody and for storage and the services rendered by them. They are not paid any separate rents for the premises that they use and the services they render. It is for that reason that parties have obviously agreed that whether wharfage is collected or not the plaintiffs have to be paid rates as if wharfage is collected. Hence, payment to the plaintiffs is not dependent on the collection of wharfage. In the circumstances therefore, I am constrained to hold that there is no substance in the contention raised before me by the learned Counsel for the respondent that in the contract Ex. D-1, there is no stipulation for paying charges to the plaintiffs in the case of goods for which wharfage is not to be collected. Plaintiffs have to be paid at the rate of collection of wharfage whether wharfage is collected or not collected for the reasons discussed above.

That takes me to the second point raised before me as to whether plaintiffs are entitled for payment at the rate contemplated in the contract. It admits of no doubt that when these goods were received by the Out-Agency the contract was, even according to the defendant valid and subsisting, because these goods were received between 19-8-1966 to 28-8-1966. It is the case of the plaintiffs that when they were asked to hand over the other things on the date of the termination i.e., on 31-8-1966, they were asked to keep the bags of wheat in their custody till further orders and accordingly plaintiffs kept them in their custody and delivered them to the Deputy Commissioner, Chickmagalur from 2-9-1966 to 6-9-1966 on direction from defendant. Therefore, there cannot be any dispute for payment of charges to the plaintiffs from 19-8-1966 to 31-8-1966 which is covered by the contract period even according to Ex. D-1. The point at issue would be whether the same charges should be paid for the subsequent period, namely, from 2-9-1966 to 6-9-1966. Prima facie, it is clear that when the defendant requested the plaintiffs to continue the Out-Agency

work with regard to the bags of wheat till they were delivered to the Deputy Commissioner, the defendant is bound to honour the charges of the plaintiffs in accordance with the terms of the contract. Plaintiffs have changed their position on the request and assurance made by the defendant. Plaintiffs could have thrown out the bags of wheat on the termination of contract. They have not done so, because, they honoured the request made by the defendant. They changed their position on the representation made by the defendant and obviously the representation was that they should continue to keep the bags of wheat on the same terms and conditions that were stipulated in the contract as construed by the practice of the parties earlier. Therefore, the defendant is obviously estopped from contending to the contrary on the principle of promissory estoppel as explained by the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd., v. State of U.P.*, AIR 1979 SC 621.

"The Sugar Mills, AIR 1979 SC 621, case is an important decision on the doctrine of promissory estoppel. It introduces order and coherence in the law of promissory estoppel, first, by pointing out what the *Indo-Afghan*, AIR 1968 SC 718, case did not lay down, and then by distinguishing the three cases which appeared to militate against the doctrine of the *Indo-Afghan* case.

The law as it emerges from the Sugar Mill's case may be stated thus:

In enforcing a promissory estoppel, the Court is not enforcing a contract but it is applying equitable principles where circumstance require such application; and Government and public authorities will be bound by the representations which they make if they are acted upon by the parties to whom they are made. There can, however, be no promissory estoppel against an obligation imposed by law on a public authority to act in a particular manner, nor can there be any promissory estoppel if to enforce such estoppel would be against the public interest. A bare statement, however, that to enforce estoppel would be against public interest is not enough. The question of public interest is subject to judicial review and the Court must be satisfied that facts and circumstances exist which show that public interest would suffer if promissory estoppel were enforced.

Bearing in mind the ratio decidendi in the case, I am constrained to hold that the defendant in the case is estopped on the doctrine of promissory estoppel from contending that plaintiffs are not entitled to claim the charges as under the contract Ex. D-1 explained earlier for the entire period.

Sri Seervai, the learned author on Constitutional Law of India, in Vol. III (2nd Edn.) at P. 1888, in para 11.146BE, stating about the Sugar Mill's case has observed:

"But for the fact that Art. 299 required that a contract entered into by a State must be expressed to be made by the Governor and must be executed on his behalf by such person and in such manner as he may direct, there would have been no need to resort to equitable estoppel. For the facts set out earlier clearly establish a contract."

Similar observations, *mutatis mutandis*, apply to the facts of the present case.

It may be pointed out in this context that the learned Additional District Judge was not justified in considering the penal nature of the wharfage charges while awarding charges of the plaintiffs for the Out-Agency work that the plaintiffs were doing. It is not relevant to consider whether the wharfage charges recovered from consignees are penal or a little higher than the reasonable charges. In this context as admitted by DW 1 himself, charges are given to the Out-Agency for keeping the goods in safe custody, for proper storage and services rendered. No other rent or compensation is paid in that behalf. We are concerned with the charges given to the plaintiffs for all the services that they rendered inclusive of rent for the premises. That being so, whether the concept of wharfage involves an element of penalty or not is not at issue while determining the charges of the plaintiffs. Charges are paid as reasonable compensation for the services rendered by them, as rent for premises used and care taken guaranteeing the safe custody of goods. There is no element of penalty involved in that at all. Therefore, I am constrained to hold that the learned Addl. District Judge was in error in introducing the element of penalty while considering the payment to be made to the plaintiffs.

In the result, therefore, I am of the considered view that plaintiffs are entitled to receive charges as agreed for the entire period claimed by them at the same rate, namely, at the rate of collection of wharfage which is the only amount agreed to be paid to them as stated above. In that view, I hold that the learned Civil Judge was justified in awarding the amount at the agreed rate for the full period due and the learned Addl. District Judge was in error legally in reducing that amount, even without considering the contract period, to Rupee one per bag, for the entire period in question. The appeal is, therefore, entitled to succeed.

No other point was raised before me for my consideration.

In the result, the appeal is allowed; the judgment and decree of the learned Addl. District Judge, reducing the charges from Rs. 12,293-60 to Rs. 5,684-80 are hereby set aside. The defendant shall pay Rs. 12,293-60 along with future interest at 6 per cent per annum from the date of suit till payment along with proportionate costs of the plaintiffs before the trial Court. No costs in the appeals.