

(1924) 03 MAD CK 0009
In the Madras High Court

Clan Line Ltd.

APPELLANT

Vs

R. Srinivasa Pai (died) and Others

RESPONDENT

Date of Decision : 11-03-1924

Acts Referred:

Contract Act, 1872 — Section 65

Citation : AIR 1924 Mad 885 : (1924) 20 LW 378

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—In this second appeal, the Clan Line Steamship Company, Limited, is the appellant. The respondents are certain merchants in

Cochin, who were consignees of certain goods, which the defendant company had undertaken to carry from Liverpool and London to Cochin,

under bills of lading, Exhibits 50, 51 and 52. The language of all these bills is exactly similiar and it will be sufficient to refer to one of them in

considering the case The total freight to Cochin was paid as advance freight in England and the goods were put on board of one of the defendant

company's steamers, S.S. ""Clan Mackellar."" The ship duly arrived in the Bombay Harbour, but when it arrived there, it was commandeered by the

Government of India for use as transport and in consequence its voyage with cargo had to be terminated and all its cargo was discharged in that

port. The steamship agents gave notice of what happened to all the consignees, including the plaintiffs, by Exhibit 24, and asked them to make

arrangements to take delivery in Bombay. Some correspondence passed between the parties, the effect of which will have to be considered

presently, finally, plaintiff's goods were forwarded to Cochin by the defendant company's agents in Bombay on board S.S. Upada, a vessel

belonging to the B.I.S.N. Co. and were taken delivery of by the plaintiffs on payment of the freight and other charges, amounting to Rs. 1,720 and

odd, for the carriage of the goods, from Bombay to Cochin--plaintiffs aver that these charges were wrongfully collected from them and that they

are not liable for them and they seek in this suit to get a refund of that money with a small sum for damages for short delivery.

2. The Subordinate Judge, who tried the suit, dismissed it; but on appeal, the District Judge has given the plaintiff's a decree for part of the amount

claimed, made up of the freight and incidental charges connected with the transshipment of the goods from Bombay to Cochin, and of the damages

claimed. The plaintiffs have not appealed as regards the amount disallowed, but the defendant company has appealed and has contended before

me that the suit should, have been dismissed.

3. The main question for decision is whether the defendant company was entitled to call upon the plaintiffs to pay the charges for the carriage of

goods from Bombay to Cochin. There can be no doubt that, when Clan Mackellar was commandeered in Bombay, its voyage terminated as the

result of "'restraint of rulers'", the words used in paragraph 3 of the bill of lading, Exhibit 50, and the ship-owners were not liable for any loss for

damages occasioned thereby. The restraint of rulers being one of the excepted causes under paragraph 5, the Master of the ship was entitled under

that paragraph to land the plaintiffs' goods in Bombay, at their expense and risk, and the shipowners' responsibility ceased, as soon as notice was

given to the shippers by Exhibit 24. Though the voyage to Cochin had not been completed, the shipowners were not bound to refund any portion

of the advance freight paid, or to carry the goods to Cochin at their expense. These propositions are laid down in a recent decision of this High

Court, with reference to this very voyage of S.S. Clan Mackellar and the bill of lading there was in the same terms as here. The learned Judges

have referred to the English authorities on the points, and have discussed the questions at length and as I respectfully follow that ruling, it is not

necessary for me to discuss these questions again. It was urged that these learned Judges were wrong in applying the English law to the case and

that as soon as Clan Mackellar entered the Indian territorial waters, where the commandeering took place, the Indian Law applied and that

Section 65 of the Indian Contract Act, governed the case. I am unable to accept this argument. The parties have expressly covenanted by the very

first clause in the bill of lading that their contract was to be judged by "the law of the Flag" and that certainly meant in this case the English law, till

the contract came to an end by the goods being landed in Bombay. The further dealings between the parties may be governed by the Indian Law,

but it is not necessary to decide it definitely, as it makes no difference in the result.

4. In the case above cited, the learned Judges dismissed the shipper's claim against the Clan Line Company, for the payment of the charges,

incurred by them in carrying their goods from Bombay to Mangalore, which was the Port of destination in that case. The only difference between

that case and this case is that whereas in that case the shippers paid the carrying charges, here the Clan Line Company paid them and collected

them from the shippers on delivery of the goods. I do not think this makes any real difference as to the result. It was, however, argued that as the

plaintiffs did not ask the defendant company to send goods from Bombay to Cochin, their action in so sending must be treated as one taken by

them gratuitously and voluntarily and of their own accord, as a piece of officious interference by them with plaintiffs' goods and therefore they were

not entitled to be repaid in law the expenses they were put to. This argument was accepted by the District Judge and he directed the money

collected for such charges to be refunded. It seems to me that this is an entirely wrong view to take of the case. Within two days after the goods

were landed in Bombay, the plaintiffs wrote Exhibit V to the defendant's agents in Cochin and asked when the goods will be transhipped to

Cochin. He wrote again Exhibit VI to the defendant's agents immediately to dispatch his goods by country craft, as no steamers were then

available. The plaintiffs no doubt offered to take delivery of the goods in Bombay, but it was on condition that the company should pay the

difference in the freight and the transhipment and other charges. The defendant company never agreed to pay these, as they were not bound to,

under the law. The plaintiffs were apparently under the impression that, if the company sent the goods themselves, they would not have to pay the

expenses. They again wrote Exhibit AA where they say "as no steamers are available," they will take delivery in Bombay if its charges would be

paid by the company. Defendant's agent wrote in reply Exhibit D, wherein they repudiated their liability to pay any difference in freight and offered to deliver in Bombay, only on guarantee being given freeing them from all claim for charges. In reply to a further letter from the plaintiffs, they sent a telegram insisting on the guarantee. Though the plaintiffs wrote Exhibit CC, on the 10th January, to say that they would take delivery, they did not actually do so. On the 20th, a steamer became available to tranship these goods to Cochin and the defendant's company's Bombay agents took advantage of the opportunity and transhipped the goods by S.S. Upada. In the meanwhile, they had received instructions from their home office to forward the goods to the port of destination, but at the cost of the consignee, from whom the charges were to be collected before delivery, as shown by Exhibit 36. It is clear from all this correspondence that the defendant's agents never intended to tranship the goods gratuitously but always intended to hold the consignee responsible for the charges. The plaintiffs asked the defendant's agents to send the goods to Cochin, even by country craft, if no steamer was available. Even when they proposed to take delivery in Bombay, they did so, only because it was thought no steamers were available. See Exhibit AA. It seems to me that the correspondence shows that plaintiffs did want their goods to be sent by the defendant's agents to Cochin, whatever dispute there might be, as to who should bear the charges. The plaintiffs' proposal to take delivery themselves in Bombay was conditional on there being no steamers available. Defendant's agents were therefore justified in sending the goods by S.S. Upada, when that steamer became available and I agree with the Subordinate Judge that the defendant company acted as plaintiffs' agents in doing so. The dispute as to the liability to pay the charges has really nothing to do with the authorization to send the goods by steamer. The dispute has to be decided not on the ground whether the defendant company sent the goods voluntarily, but on the ground as to who was responsible to pay those charges under the law; plaintiffs' subsequent conduct, after they knew that the goods had been sent on to Cochin, clearly shows that even, if they did not actually authorise such sending, they acquiesced in and accepted the defendant's action and ratified it. Second plaintiff wrote to the defendant's agents Exhibit XI to say that he was entitled to the delivery of the goods and not one Liladhur who was disputing his right and

that he would pay the charges on receipt of particulars; the 1st plaintiff wrote Exhibit VII the next day to the same effect. Subsequently the plaintiffs

took delivery of the goods and paid the charges. They say in their plaint that they paid under protest, but that was denied and on the evidence it

does not appear that they made any protest. They did not in any way repudiate defendant's action in bringing the goods to Cochin; nor did they

insist on delivery in Bombay. If the defendants were bound to pay the expenses for carrying the goods to Cochin under the law, the absence of

protest at time of payment may not be material; but it is very material in considering whether the parties treated the defendant's action in carrying

the goods as a voluntary and gratuitous one.

5. It seems to me further that even, if the defendant company had no authority to send the goods for the plaintiffs to Cochin and that plaintiffs'

subsequent action did not amount to a ratification, defendant company will still be entitled to claim compensation u/s 70 of the Contract Act. No

doubt, as stated in *Damodara Mudaliar v. Secretary of State* (1895) 18 Mad. 88, quoted by the District Judge and approved of in *Jaso Kumari v.*

Basanta Kumar Roy (1905) 32 Cal. 374. "'The Section should not be so read, as to justify the officious interference of one man with the affairs or

property of another.'" But this is not a case of that sort at all. The defendant company were carriers for the plaintiffs and but for the unforeseen

action of the Government of India, they would have carried the goods to Cochin. In such cases, the master has power and ought to ask for the

cargo owners and make such arrangements, with regard to the cargo as prudence dictates. See *Carver on Carriers*, 6th Edn., p. 421. It is true he

ought to obtain instructions from the cargo owners, if it is practicable to do so; but in this case, the instructions were, if anything, in favour of

sending the goods. Even if he fails to obtain instructions, his action cannot be treated as unlawful; nor was it so treated, by the plaintiffs themselves.

Nor can the defendant company be looked upon as mere officious interferers in sending the goods. It seems to me they acted lawfully and as they

clearly did not intend to act gratuitously in the matter and as plaintiffs have enjoyed the benefit, they are bound to pay the charges claimed as

compensation.

6. In any view, the plaintiffs are not entitled to the refund claimed. No separate

argument has been adduced before me, regarding the claim for damages for short delivery. That is a claim that should have been made against the British India Steam Navigation Company and not against the defendant company. In the view I take, the second appeal is, therefore, allowed, and the decree of the lower appellate Court is set aside and the decree of the first Court restored, with costs here and in the Court below.