

(1974) 08 CAL CK 0031
In the Calcutta High Court
Case No : Suit No. 456 of 1965

Ganpatrai Sagarmull and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-08-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Contract Act, 1872 — Section 180
Railways Act, 1890 — Section 80

Citation : AIR 1975 Cal 265

Hon'ble Judges : Dipak Kumar Sen, J

Bench : Single Bench

Judgement

Dipak Kumar Sen, J.—The plaintiffs, Messrs. Ganpatrai Sagarmull and K. P. Ramaswami Nadar, have instituted this suit against the Union of India, claiming, inter alia, a decree for Rupees 10,017/- in favour of either in the alternative; alternatively, an enquiry into damages and decree for such sum as may be found due, interest, costs and other reliefs.

2. It is alleged in the plaint that at all material times M/s. Ganapatrai Sagarmull, the plaintiff No. 1 acted as the commission agents of K. P. Ramaswami Nadar, the plaintiff No. 2 for sale of cardamoms in Calcutta. It is alleged that on or about the 10th April, 1964, the plaintiff No. 2 delivered to the South Eastern Railways eight bags of dry cardamoms for transportation from Virudhunagar to Shalimar under a Railway Receipt dated the 10th April, 1964 bearing No. C.558753 issued in favour of the plaintiff No. 2.

3. It is alleged that the plaintiff No. 2 was the consignor as also consignee of the said goods. It is alleged further that the plaintiff No. 2 endorsed the said Railway Receipt in favour of K. P. Ramaswami Nadar Sons & Co, a sister concern of the plaintiff No. 2 and made over the same with intent to pass proprietary interest therein. The said K. P. Ramaswami Nadar Sons & Co. endorsed the said Receipt in favour of Canara Bank Ltd. for valuable consideration with intent to pass

proprietary interest therein and made over the same to the Bank. Finally, on or about 21st April, 1964, the said Canara Bank Ltd. for valuable consideration endorsed the said Railway Receipt in favour of the plaintiff No. 1 and made over the same to the latter in Calcutta within the original jurisdiction of this Court also with intent to pass proprietary interest therein.

4. It is alleged that prior to the despatch of the said cardamoms the plaintiff No. 1 was also appointed by the said K. P. Ramaswami Nadar Sons & Co. as its commission agents for the sale of the said consignment on account of the latter on a commission at the rate of 21 per cent of the sale proceeds.

5. It is alleged that the plaintiff No. 1 as the endorsee of the said Railway Receipt and as commission agents was entitled to receive the delivery of the said goods from the defendant and had proprietary interest in the same. It is alleged that the defendant failed and neglected to deliver the said goods in spite of demands and that by reason thereof the plaintiff No. 1 had suffered loss and damages to the extent of Rs. 10,017/- being the value of the said goods for which the defendant is liable to compensate the plaintiffs. Alternatively it is alleged that in the event the plaintiff No. 1 is not competent to maintain this suit, the plaintiff No. 2 claims the said sum of Rs. 10,017/- by way of damages for non-delivery.

6. It is alleged that due notices u/s 77 of the Railways Act. 1890 and Section 80 of the CPC have been given.

7. In the written statement filed on behalf of the Union of India, it is not admitted that the plaintiff No. 2 delivered, or that the contents of the said bags were, cardamoms as alleged. It is denied that the plaintiff No. 2 was the owner of the goods. The validity of the endorsements in the said Railway Receipt have been denied. It is further denied that any endorsement was made within the original jurisdiction of this Court or that the plaintiff No. 1 had any proprietary interest in the goods despatched or that the plaintiffs had any right in respect thereof. It is denied that there has been any negligence on the part of the defendant. It is alleged that the loss of the goods, in any event, was due to the criminal act of some unknown and undetected persons beyond the control of the defendant. The validity and sufficiency of the alleged notices u/s 77 of the Indian Railways Act and Section 80 of the CPC has been denied. It is contended that this Court has no jurisdiction to entertain or try this suit and the plaintiffs have no cause of action against the defendant.

8. It is alleged that in view of the assignment of the Railway Receipt and the passing of property in the goods thereby by the plaintiff No, 2 in favour of the said K. P. Ramaswami Nadar Sons & Co., the plaintiff No. 2 ceased to have any right title or interest in the said Receipt or the goods thereunder. It is alleged that in the premises, the plaintiff No. 2 is not entitled to and cannot maintain this action or claim any relief on the said Railway Receipt or in respect of the goods thereunder.

9. It is further alleged that the endorsement or assignment of the Receipt and

the passing of the property having been made in favour of the plaintiff No. 1 as the commission agent of the said K. P. Ramaswami Nadar Sons & Co. and the plaintiff No. 1 having acted for or on behalf of the said K. P. Ramaswami Nadar Sons & Co. as such agents the plaintiff No. 1 is also not entitled to and cannot maintain any action or claim any relief on the said Railway Receipt or the goods covered thereby. It is alleged that the suit is not maintainable.

10. The following issues were raised and settled at the trial :

(1) Were 8 bags of small cardamoms booked under the Railway Receipt No. C.558753, dated 10th April, 1964?

(2) Have the plaintiffs Nos. 1 and/or 2 any cause of action against the defendant?

(3) Has this Court jurisdiction to entertain this suit?

(4) Were the goods lost due to circumstances beyond the control of the defendant as alleged in paragraph 9 of the written statement?

(5) Is the value of the said 8 bags of cardamoms Rs. 10,017/- as alleged?

(6) To what relief, if any, are the plaintiffs entitled?

11. The first witness to depose on behalf of the plaintiffs was one Paramgir. He is an employee of the plaintiff No. 2 and had been so employed at the relevant time. He used to book goods by railway on behalf of the plaintiff No. 2. He proved the railway receipt dated 10th April, 1964 (Exhibit A) and stated that the consignment mentioned in the document was booked by him. He stated that 8 bags of small cardamoms were delivered by him to the Railways. The said bags were filled by himself and porters and were stitched in his presence. He also weighed the bags and such weights have been correctly mentioned in the Receipt.

12. In cross-examination, he stated that the plaintiff No. 2 maintained books of accounts and the despatch of the particular consignment would be recorded in the said books. The bags were stitched after they were filled up and before despatch paint was applied along the stitch so that the bags may not be tampered with.

13. The next witness to depose on behalf of the plaintiff was one Satyanarayan Saraff. He is an employee of the plaintiff No. 1 since 1953. He knew the plaintiff No. 2 who had business transactions with the plaintiff No. 1 for a long time. According to him, in respect of goods despatched the plaintiff No. 1 would send the relevant Railway Receipt along with a Hundi through the Bank. On payment the plaintiff No. 1 would obtain the Railway Receipt. For the Railway Receipt in the instant case (Exhibit A) the plaintiff No. 1 paid a sum of Rs. 5000/- to the Bank after which the Receipt was endorsed in favour of the former.

14. He proved a Hundi dated the 14th April, 1964 (Exhibit C) drawn by the plaintiff No. 2 in respect of the said 8 bags of cardamoms. The Hundi expressly referred to the Railway Receipt. There was an endorsement in the back of the

document recording the payment made to the Canara Bank Ltd. A claim of Rs. 10,017/- was made on the basis of the value of goods despatched. The price of small cardamom was Rs. 21/- to Rs. 22/- per kilogram. He had personal knowledge of the price of cardamom in April and May, 1964. He proved the counter part of a bill dated 23-4-1964 (Exhibit D) from which it appeared that cardamom was sold on that date at the rate of Rs. 21.16 per kilogram. He also proved the correctness of the correspondence contained in Exhibit A, namely, letters dated 4th June, 1964, 30th June, 1964 and 30th July, 1964, 20th August, 1964 and 16th December, 1964, all written on behalf of the plaintiff No. 1.

15. He stated in cross-examination that Rs. 5,000/- was paid to the Canara Bank on account of the consignor for the purpose of taking delivery of the goods from the Railway. He further stated after sale of the goods the plaintiff No. 1 would deduct the amount from the sale proceeds. The plaintiff No. 1 had books of account which had not been disclosed to prove the price of small cardamom in April, 1964. He admitted that there would be an entry in such books in respect of the bill dated 23rd April, 1964 (Exhibit D). He knew the price of the cardamom which had been booked from Virudhunagar to Shalimar. The consignor had quoted the price of the said cardamom at Rs. 21/-per kilogram which will appear in the annexure to the letter dated 4th June, 1964.

16. The next witness on behalf of the plaintiffs was one Ram Abatar Goel. He is an employee of the plaintiff No. 1 since January, 1963. He also knew the plaintiff K. P. Ramaswami Nadar. He had signed on the back of Exhibit C, viz., the Hundi dated the 14th April, 1964. He deposited a sum of Rs. 5,000/- to Canara Bank Ltd. at the Bagri Market Branch. The endorsement of the Bank on the Hundi was made in his presence. After payment the Railway Receipt was made over by the Bank. According to him, the price of small cardamom in April, 1964 was between Rs. 21/- or Rs. 22/- per kilogram. He admitted that the consignor mentioned in the Railway Receipt was K. P. Ramaswami Nadar Sons & Co.

17. The last witness on behalf of the plaintiff was one Sakti Bhusan Chakraborty, the Assistant Secretary of the Calcutta Kirana Merchants Association. This Association maintains records of market rate of spices. He proved the monthly market rate of spices showing the prices of cardamoms in the months of April and May, 1964 which varied from Rs. 16/- to Rs. 24/- per kilogram (Exhibit F). According to him, Rs. 16/- was the rate for the most inferior quality and Rs. 24/- was that of the highest quality. The practice of the Association was to collect weekly prices from which the monthly report used to be prepared. In 1964 he used to collect such reports himself. In cross-examination, he stated that in the year 1964, he was an assistant in the Association and in charge of the office under the Secretary. He admitted that from the records maintained by the Association it was not possible to obtain the prices of any spice on any particular day.

18. On the basis of the pleadings and the evidence as adduced above the issues may be considered.

19. Issue No. 1 : Paramgir the employee of the plaintiffs. No. 2, has deposed that the eight bags despatched under the Railway Receipt dated the 10th April, 1964 were filled with cardamoms by himself with the help of porters. The bags were stitched in his presence. He himself delivered the bags to the Railway. This evidence is unchallenged and there is no evidence to the contrary. I hold that the bags despatched by Railway contained small cardamoms and I answer this issue in the affirmative and in favour of the plaintiffs.

20. Issue No. 2 : I propose to consider first the position of the plaintiff No. 2. Evidence has been led on behalf of the plaintiffs to prove the original ownership of the plaintiff No. 2 of the said cardamoms. It is to be noted, that the consignor in the said Railway Receipt dated the 10th April, 1964 is K. P. Ramaswami Nadar Sons & Co. which is admittedly an entity different from the plaintiff No. 2. The Railway Receipt, however, contains endorsements both of K. P. Ramaswami Nadar Sons & Co. as also the plaintiff No. 2. No evidence has been led to show under what circumstances the goods were booked in the name of K. P. Ramaswami Nadar Sons & Co. or how the said endorsements of K. P. Ramaswami Nadar Sons & Co. and the plaintiff No. 2 were made in the said Receipt.

21. It, however, appears that it was the plaintiff No. 2 who drew the Hundi after payment against which the plaintiff No. 1 obtained the Railway Receipt from the Canara Bank Ltd.

22. The contract of carriage under the said Railway Receipt being between K. P. Ramaswami Nadar Sons & Co. and the Railways the plaintiff No. 2 cannot base its cause of action on the same. The ownership of the plaintiff No. 2 in the said goods at the time of the institution of this suit is also not free from doubt. Without further evidence as to the transaction as between the plaintiff No. 2 and the said K. P. Ramaswami Nadar Sons & Co. as indicated by their respective endorsements on the said Railway Receipt it is not possible to come to a conclusion whether the plaintiff No. 2 remained the owner of the goods consigned or became an agent of the said K. P. Ramaswami Nadar Sons & Co. In the circumstances, I hold that the plaintiff No. 2 has no cause of action in this suit. To this extent, this issue is answered in the negative and in favour of the defendant.

23. So far as the plaintiff No. 1 is concerned, the position is less complicated. Admittedly, the plaintiff No. 1 has obtained the Railway Receipt from the Canara Bank on payment of a sum of Rs. 5,000/- which is undoubtedly a valuable consideration. The Hundi dated the 14th April, 1964 (Exhibit C) contains an endorsement of the payment made on behalf of the plaintiff No. 1 to the Canara Bank Ltd. Saraff has stated that it was a term of the transaction that after the sale of the goods, the plaintiff No. 1 would deduct the money advanced from the sale proceeds. In the circumstances, it appears that for the purpose of repayment of the money advanced the goods were to be treated as security and/or would be deemed to have been secured in favour of the plaintiff No. 1.

24. Whatever be the position vis-a-vis the plaintiff No. 2 and K. P. Ramaswami Nadar Sons & Co., so far as the plaintiff No. 1 is concerned, it is an endorsee of the said Railway Receipt for valuable consideration and further it acquired an interest in the goods covered by the said Receipt by advancing money against the said Receipt, The right of the plaintiff. No. 1 against the goods under the said Railway Receipt can be enforced as against the plaintiff No. 2 as well as the said K. P. Ramaswami Nadar Sons & Co.

25. Mr. Roy Choudhury, appearing on behalf of the plaintiffs, cited a number of decisions in order to establish that the plaintiff No. 1 had a valid cause of action in this suit. One of the earlier decisions is in the case of Hari Mohan Dutt Vs. Dominion of India, . In that case it was held that if there was an endorsement of a Railway Receipt for valuable consideration and same resulted in the property in the goods consigned under the said Railway Receipt passing to the endorsee then the endorsee can maintain a suit in a Court if such endorsement was made within its original jurisdiction. This decision seems to proceed on the basis that endorsement of a Railway Receipt for valuable consideration would necessarily result in the property to the goods passing to the endorsee.

26. He also relied on the decision of this Court in the case of Mohammad Safique Vs. Union of India (UOI) and Others, . It was held in this case that endorsement of a Railway Receipt transfers both the contract of carriage as also the title to goods in favour of the endorsee. Next he relied on another decision, of this Court in the case of Commissioners for the Port of Calcutta Vs. General Trading Corporation Ltd. and Another, . It was held in this case that negotiation of a Railway Receipt for value is normally intended to pass the property in the goods. The above decision was followed in the subsequent case of I.S.P. Trading Co. Vs. Union of India (UOI), . In this case last mentioned which was also cited by Mr. Roy Chowdhury it was held that upon the transfer of a Railway receipt and other documents by the Bank for valuable consideration the transferee acquires the right of ownership over the goods. Mr. Roy Chowdhury also relied on the decisions, reported in Dominion of India as owner of G.I.P. Rly. and Another Vs. Gaya Pershad Gopal Narain, , and AIR 1957 Nag 31. The law laid down in these decisions is consistent with the principles laid down in the decisions of this Court discussed above.

27. A decision of the Supreme Court in the case of The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI), was also cited and relied on. In this case a consignor endorsed three Railway Receipts in favour of the plaintiff-Bank against an advance of a sum of money which was less than the actual value of the goods. The consignments under the Railway Receipts did not reach their destination. The Bank as an endorsee for valuable consideration sued the Union of India for recovery of full value of the goods by way of damages. The Supreme Court found on the evidence adduced that the Bank had advanced money on the security of the Railway Receipt and the transactions relating thereto, i. e., advance of a loan, the execution of Promissory Notes and the endorsement of

the Railway Receipts together formed one transaction, and their combined effect was that the Bank was in the control of the goods consigned under the said Railway Receipts. The Supreme Court held as follows :

"(a) An owner of goods can make a valid pledge by the transferring the Railway Receipt representing the goods;

(b) Mercantile agents though they do not possess the full bundle of the rights of the consignor can make a valid pledge by bona fide transfer of Documents of Title and the same is true of owners with defective titles;

(c) Construing Section 180 of Indian Contract Act, the Supreme Court held that a pledgee has the same remedy as the owner of the goods would have against a third person for deprivation of the said goods or injury to them."

28. The majority in the Supreme Court decided that the Bank as a pledgee could maintain the suit for the full value of the consignment. The majority decision, however, left the point open whether the transfer of a Railway Receipt would necessarily transfer the contract of carriage embodied therein.

29. On the evidence adduced in this case it appears to me that the plaintiff No. 1 is an endorsee of the Railway Receipt for valuable consideration. It also appears that the money advanced by the plaintiff No. 1 for obtaining the Railway Receipt through the Bank was meant to be recovered from the sale proceeds of the goods. In these circumstances, it appears that the plaintiff No. 1 acquired a valuable right to the goods in the nature of a pledge or a security. The position of the plaintiff No. 1 in the instant case appears to me to be the same as the position of the Bank in the case before the Supreme Court.

30. Following the law as laid down in this Court and the Supreme Court as discussed above, I hold that the plaintiff No. 1 has a valid cause of action in this suit. To this extent I answer this issue in the affirmative and in favour of the plaintiffs.

31. Issue No. 3 : In respect of this issue Mr. Roy Choudhury contended that part of the cause of action of the plaintiff No. 1 has arisen within the original jurisdiction of this Court. He further contended that by reason of a part of the cause of action of the plaintiff No. 1 having so arisen, leave under Clause 12 of the Letters Patent was obtained whereunder this suit was instituted and as such this Court had ample jurisdiction to entertain and try this suit. In support of this proposition he relied on several decisions of this Court. First, he relied on the decision in Hari Mohan Dutt Vs. Dominion of India, , discussed above. In this case it was also held that where property passed on endorsement of a Railway Receipt for valuable consideration and if such endorsement was within the jurisdiction the endorsee can maintain the suit in the Court within whose jurisdiction the endorsement was made.

32. He also relied on the decision in the case of Alliance Assurance Co. Ltd. Vs. Union of India (UOI), . It was held in this case that assignment of a Railway

Receipt was a part of the cause of action in a suit in respect of the goods consigned under the receipt. It was held further that the Court within whose jurisdiction such assignment takes place is competent to entertain and try the suit.

33. In the case already discussed, i. e. Commissioners for the Port of Calcutta Vs. General Trading Corporation Ltd. and Another, it was also held that a negotiation of a Railway Receipt for value is normally intended to pass the property in the goods and part of the cause of action of the holder of the Railway Receipt arises at the place where the document is negotiated. This decision was also followed in I.S.P. Trading Co. Vs. Union of India (UOI), .

34. Mr. H. M. Dhar appearing on behalf of the defendant relied successively on the decisions in the case of AIR 1947 169 (Bom.); Fushraj Thanmull Vs. Union of India (UOI), and Singamsetti Ramarao Vs. The Union of India (UOI), . These decisions have considered the effect of mere endorsement and/or successive endorsements of a Railway Receipt and have laid down that a mere endorsement does not entitle an endorsee to sue on a Railway Receipt nor such mere endorsement constitute a part of the cause of action of an endorsee for such a suit. Endorsement for valuable consideration has not been considered except that in the Calcutta case i.e. Fushraj Thanmull Vs. Union of India (UOI), it is observed that a Railway Receipt is a document of title within the meaning of Section 2(4) of the Sale of Goods Act and if the same is endorsed by the consignor to the consignee for a valuable consideration; such endorsement might form part of the endorsee's cause of action. These decisions do not advance the case of the defendant any further and in any event the same cannot prevail over the law laid down by the Supreme Court in the case discussed above.

35. In the premises, I hold that a part of the cause of action of the plaintiff arose within the jurisdiction of this Court.

36. Lastly, Mr. Dhar, relied on an un-reported judgment of a Division Bench of this Court in Civil Rule No. 1843 of 1971 (Cal) in the matter of Oghadmal Choudhury v. Union of India. In this case the jurisdiction of Courts with reference to Section 80 of the Indian Railways Act was considered by the Division Bench. The present Section 80 of Indian Railways Act as amended by Act XXIX of 1961 is as follows :--

"Suit for compensation-- A suit for compensation for loss of life, or personal injury to a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted-

(a) If the passenger was, or the animals or goods were, booked from one station to another on the Railway of the same Railway administration, against that Railway administration;

(b) If the passenger was, or the animals or goods were, booked through over the railway of two or more railway administrations against the railway administration

from which the passenger obtained his pass or purchased his ticket or to which animals or goods were delivered for carriage, as the case may be or against the railway administration on whose railway the destination station lies or the loss, injury, destruction, damage or deterioration occurred, and in either, case, the suit may be instituted in Court having jurisdiction over the place at which the passenger obtained his pass or purchased his ticket or the animals or goods were delivered for carriage, as the case may be, or over the place in which the destination station lies or the loss, injury, destruction, damage or deterioration occurred."

37. The Division Bench held that in the case of loss or short delivery of goods, a suit for compensation can be instituted either in the Court having jurisdiction over the place where the goods were booked; or in the Court having jurisdiction over the place or the destination of the goods; or, in a Court having jurisdiction over a place at which the loss, injury, destruction, damage or deterioration occurred.

38. It also construed the effect of the said Section 80 of the Railways Act read along with Sections 4 and 20 of the Code of Civil Procedure. Section 4 of the CPC is as follows :

"In the absence of any specific provision to the contrary nothing in the Code shall be deemed to limit or otherwise affect any special or local law in force or any special jurisdiction or power conferred, or any special form or procedure prescribed by or under any other law for the time being in force."

39. It was held that Section 20 of the CPC to the extent it enables a court to entertain the suit, if a part of the cause of action arose within its jurisdiction affected the special jurisdiction conferred by the amended provision of Section 80 of the Railways Act. It was held that Section 20 of the Code produced an "effect" or "change" of the special jurisdiction conferred by Section 80 of the Railways Act and thereby affected the same and therefore Section 20 would not apply to a suit covered by Section 80 of the Railways Act. On this finding the Court of Small Causes, Calcutta was held not to have jurisdiction to try a suit filed in that Court in respect of short delivery of goods where only a part of the cause of action, viz., the endorsement and delivery of a Railway Receipt obtained against payment to a Bank, arose within its jurisdiction.

40. Mr. Dhar contended that following this judgment it should also be held in this case that mere endorsement or delivery of a Railway Receipt though for a valuable consideration would not confer by themselves jurisdiction to this Court to entertain or try the suit.

41. It is to be noted that this suit has been filed in this Court under Clause 12 of the Letters Patent. Under this clause this Court is empowered to try and determine suits of every description, in all cases, if the cause of action shall have arisen in part within the local limits of the ordinary original jurisdiction of this court in case the leave of the Court has been obtained first. The only limitation

imposed in this clause is that the High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Causes Court at Calcutta. The language of Clause 12 is not the language of Section 4 of the Code of Civil Procedure. Therefore, even if it be held that Clause 12 of the Letters Patent affects the special jurisdiction conferred by Section 80 of the Railways Act, in the absence of any inherent limiting clause as in Section 4 of the Code of Civil Procedure, Section 80 of the Railways Act should not be so construed as to take away the jurisdiction of this Court to try such suits.

42. Section 80 of the Railways Act by itself does not profess to override all other laws or any particular law for the time being in force.

43. The next question which falls for consideration is whether in view of Section 80 of the Railways Act having indicated jurisdiction of Courts for trial of particular types of suits, by necessary implication excludes the jurisdiction of other Courts to try such suits.

44. It is settled law that the exclusion of the jurisdiction of Civil Courts is not to be readily inferred and there is a presumption against the exclusion of jurisdiction of Civil Courts by a statute. See *D. D. Bhalla v. District Co-operative Bank Limited Abdul Waheed Khan Vs. Bhawani and Others*, , *Raichand Amulakh Shah Vs. Union of India (UOI)*, , *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*, , *Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy*, .

45. In Section 80 of the Railways Act neither there is any express exclusion of the jurisdiction of the other Courts nor can there be any such bar by necessary implication. The use of the word "may" in the section appears to make the section an enabling section. The section by itself does not create special rights or special liabilities nor does it constitute any special tribunal for adjudication of such right or liabilities. See *Lala Ram Swarup and Others Vs. Shikar Chand and Another*, .

46. In view of the above I hold that, so far as this Court is concerned Section 80 of the Indian Railways Act does not affect the jurisdiction of this Court to try suits against Railways where any part of the cause of action arises within the original jurisdiction of this Court and leave is obtained under Clause 12 of Letters Patent. I answer this issue in the affirmative and in favour of the plaintiffs.

47. Issue No. 4: Mr. Dhar, on behalf of the defendant, conceded on this issue and did not press the same.

48. Issue No. 5 : Sakti Bhusan Chakraborty, the Assistant Secretary of the Calcutta Kirana Merchants Association, has proved from the records of the Association that prices of small cardamoms for the months of April and May, 1964 varied from Rs. 16 to Rs. 24 per kilogram. Satya Narayan Saraff has proved one transaction in small cardamoms entered into on the 23rd April, 1964 (Exhibit B) where cardamoms were sold at the rate of Rs. 21.16 per kilogram. The quality

of the cardamoms which were despatched in the instant case has not been proved by anybody. Therefore, the value of the said eight bags of cardamoms has to be determined at the lowest rate, i.e., Rs. 16/- per kilogram. At this rate the total works out at Rs. 7632/-being the value of the net weight 477 kilograms. I hold that the value of the said eight bags of the cardamoms is Rs. 7632/-and I answer this issue accordingly in favour of the plaintiff to the extent indicated.

49. There will be a decree in favour of the plaintiff No. 1 for Rs. 7632/-, interest on judgment at the rate of 6 per cent. per annum and costs.