

(2001) 12 BOM CK 0012
In the Bombay High Court
Case No : Admiralty Suit No. 21 of 1992

Kohinoor Carpet Manufacturers	Vs	APPELLANT
Forbes Gokak Ltd. and Another		RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:

Admiralty Courts Act, 1861 — Section 6
Bills of Lading Act, 1856 — Section 1, 1
Carriage of Goods by Sea Act, 1925 — Article 3, 2
Carriage of Goods by Sea Rules — Rule 6

Citation : (2002) 3 ALLMR 796 : (2002) 4 BomCR 295

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Sunip Sen and A.S. Bilawala and Kishore Shriya, instructed by Bilawala and Co, for the Appellant; N.G. Thakar, Sr.C. and Rahul Narichania, Sudeep Dasgupta and Santosh Pandey, instructed by Pimenta Kapasi and Co., for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—Plaintiffs are a registered partnership firm who have filed the present suit against defendant No. 1 as the shipping agent of the defendant No. 2. Defendant No. 2 is the shipping company incorporated under the laws of Norway having its office c/o. Sirachan Shipping Company, 390, World Trade Center, Norfolk, Virginia 23510, U.S.A. Defendant Nos. 2 are carrier of goods. On 30th August, 1990 plaintiffs sent six rolls of carpets for Am Pak Trading Company in container No. TRIU 403005-8 vide Bill of Lading No. HOLU 0404 ROM NF 010 per vessel "HOEGH DRAKE" Trading Co. to U.S.A. The port of loading was at Bombay and the port of discharge was Norfolk. The goods were to be exported by the plaintiff through the agent of defendant No. 2 i.e. the first defendant. The consignment was to reach its destination on 27-9-1990 and was to be cleared at Norfolk by clearing agents of consignee namely M/s. Cavilior Shipping Co. Inc. The clearing agents were advised that the cargo would arrive not by vessel

"Hoegh Drake" but by vessel "Hoegh Dyke" on 5-11-1990. The cargo failed to arrived by the vessel "Hoegh Dyke" on 5-11-1990. Plaintiff received a letter dated 24-6-1991 from M/s. Oriental Rug Warehouse, a division of M/s. Am Pak Trading Company informing the plaintiffs that the said shipment has been lost somewhere and that the shipping company, i.e. defendant No. 2 has not been able to locate the said cargo. Defendant No. 1 also wrote to the plaintiffs by their letter dated 5th July, 1991 that six rolls of carpets for Am Pak Trading Company did not out turn from the said container and also that they have not been able to locate the cargo till that date. It is the case of the plaintiffs that the consignee lodged their claim with the shipping company for the loss of cargo at destination. The claim was not accepted by the shipping company vide their letter dated May 20, 1991. Plaintiffs thereafter preferred claim with defendant No. 1 by letter dated 19th July, 1991. In the said letter the plaintiffs specifically stated that the defendant No. 1 will also remain responsible for any claim by M/s. Am Pak Trading Company for losses or damages suffered by them on account of non-receipt of the said cargo. It is their further case that the consignee lodged a claim with plaintiff by letter of 25th July, 1991 for the loss of profit, loss of prestige suffered by them by non-supply of the said goods to them. The case of the plaintiff is that as the defendant has neglected to pay the said claim of the plaintiffs for compensation for loss of cargo, defendants are jointly and severally liable for the losses. The claims have been quantified in the particulars of claim. In paragraph 12, it is averred that the claim can be enforced by action in rem against the carrier "Hoegh Drake" and in personam against defendant Nos. 1 and 2. The plaintiffs case is that the office of the defendant No. 2 is situated at Bombay within the jurisdiction of this Court in its admiralty and vice admiralty jurisdiction. It is then averred that the suit is within limitation as the goods were shipped on 30-8-1990. The plaintiffs lodged their claim with defendants on 19-7-1991 i.e. within one year of the shipment of the said consignment. The suit it is contended is filed within three years of the cause of action.

2. Defendants filed their joint written statement. It was firstly contended that the suit was not maintainable under the admiralty jurisdiction of this Court. The suit it is contended, has been filed under the provisions of section 6 of the Admiralty Court Act, 1861. The claim of the plaintiff in the suit is for alleged loss of consignment which was on the vessel m.v. Hoegh Drake" at Bombay for carriage to the Port of Norfolk. The claim therefore, is not claimed in respect of goods coming into any port in India as envisaged by section 6 of the Admiralty Court Act, 1861. Without prejudice it is contended that the suit is barred by limitation. The consignment it is averred, was shipped on Board the vessel m.v. "Hoegh Dyke" at an Indian Port, viz. Bombay and as such the provisions of the Indian Carriage of Goods by Sea Act, 1925 and the rules set out in schedule thereto are compulsorily applicable to the contract of carriage of the said consignments. Reference is then made to section 2 of the Indian Carriage of Goods by Sea Act, 1925 as also Rule 6 of Article 3 of the schedule to the Indian Carriage of Goods by Sea Act, 1925. Vessel M.V. "Hoegh Dyke" it is pleaded arrived at the Port of

Norfolk on 5-11-1990 and sailed from the said port on 7-11-1990 after discharging her cargo consigned to the said port. The suit has been filed on 25-8-1992 much after the expiry of one year period of limitation provided for by Rule 6 of Article 3 and the schedule to Indian Carriage of Goods by Sea Act, 1925 and therefore, is time barred. It is also averred that the plaintiffs have no cause of action to file or maintain the suit. The Bill of lading issued for the consignment which is in the subject matter of the suit has been endorsed by the plaintiffs and delivered to M/s. Am Pak Trading Co. the Notified Party mentioned in the said Bill of Lading. The plaintiffs, it is contended, are not holders of the said Bill of Lading and are therefore, not entitled to make a claim on the basis thereof or to file or maintain the suit. M/s. Am Pak Trading Company have in fact made a claim on second defendant on the basis of said Bill of Lading. Considering that the present suit is liable to be dismissed. It is then set out that the whole of the cause of action in the suit has not arisen within the jurisdiction of this Court and that the second defendants do not carry on business within the jurisdiction of this Court. Leave has also not been obtained under Clause 12 of the Letters Patent before filing of the suit. It is then, specifically pleaded that the suit against first defendant is not maintainable as they were not carriers of the consignment and are not owners of the vessel m.v. "Hoegh Dyke" in which the consignment was shipped. They have merely acted as agent of the vessel and are therefore, not personally liable. In these circumstances, the suit against the first defendant is liable to be dismissed. Dealing with the merits of the matter, it is averred that the consignment was received on or about 30-8-1990 in respect thereof Bill of Lading earlier described was issued by the first defendant as agents of the second defendants. The Bill of Lading shows plaintiffs as shippers of the said consignment, and showed the consignee as "Unto Order" and the notified party as M/s. Am Pak Trading Company. It is also averred that the said container was destuffed on 7th November, 1990 after discharge at the port of Norfolk when it was found that the said consignment was not traceable. There are various other contentions in so far as averments on merits of the claim by the plaintiffs.

4. On 9-2-2001 issues have been framed which are reproduced herebelow. At this stage, considering the discussion hereinafter, the answer to the issue as proved, not proved or not required to be decided is also set out against the issues.

ISSUES FINDINGS

1. Whether the suit is not maintainable for Not answered in view the reasons stated in para 1 of the written of answers to other is statement? **sues.**
2. Whether this Court has jurisdiction to Partly in the affirmative entertain the suit? **tive. Suit against defendant No. 2 not maintainable.**
3. Whether the suit is barred by limitation? **In the affirmative.**
4. Do the plaintiffs prove that on 30th August, In the affirmative. 1990 they shipped 6 rolls of Indian hand made Woollen Carpets in Container No. 482005-8

vide Bill of Lading No. HOLU 0404 ROM NP 010, was per vessel "Hoegh Drake" of defendant No. 2 at U.S.A. for being carried to the port of Norfolk in U.S.A.?

5. Does defendant No. 1 prove that it was not the In the affirmative. carrier of the suit consignment and that it acted only as agent of the vessels?

6. Are plaintiffs entitled to enforce their claim In the negative. in rem against the vessel "Hoegh Drake"?

7. Whether the plaintiffs are entitled to enforce In the negative. their claim in personam against the defendants?

8. Whether the plaintiffs are entitled to a decree In the negative. against the defendants jointly and severally for a sum of Rs. 16, 69, 410, 13/-?

9. What order? Suit dismissed.

5. In support of their case, plaintiffs have examined one Shahbuddin Siraji and the defendants in turn have examined as their witness one Vilasrao Rangrao Patil. Documents have also been exhibited. One document which has not been exhibited nor marked; has been taken on record as Article 1 subject to the orders to be passed by this Court at the stage of hearing. That will be adverted to in the course of discussion.

6. With the above, the first issue needs to be answered. The said issue is based on the averments in paragraph 1 of the written statement. The onus of proving this issue therefore, is on the defendant. The issue is based placing reliance on section 6 of the Admiralty Courts Act, 1861. In short the issue is whether the action in personam can be maintained against agents and the owners of the vessel in respect of loss occasioned to shipment of goods from a port in India to port outside India. On behalf of the plaintiff, their learned Counsel contends that in view of the judgment of the Apex Court in M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, , such action would be maintainable. On consideration of the judgment, it is clear that what was in issue was the right to maintain an action in rem in admiralty jurisdiction by Court in India in respect of vessel sailing out from the port in India. It does not seem that the issue of maintenance of action in personam was in issue before the Apex Court. Considering that to my mind the judgment in M.V. Elisabeth and others (supra) would not cover the issue to be answered. At the highest, there are some observations which may assist in coming to that conclusion. However, in so far as this issue is concerned, arguments have not been advanced on that count. The only argument advanced was that the suit against defendant No. 2 would not be maintainable in this Court as defendant No. 2 does not carry on business or have its office within the jurisdiction of this Court. In view of the answer, which I propose to give in answering the other issues, I do not propose to decide Issue No. 1.

7. We then come to the second issue whether this Court has jurisdiction to entertain the suit. This issue is based on the plea that the whole of cause of

action of the suit has not arisen within the jurisdiction of this Court as the second defendant does not carry on business within the jurisdiction of this Court nor has any office here and further leave has not been taken under Clause 12 of the Letters Patent before filing the suit. Plaintiffs have filed present suit based on section 6 of the Admiralty Courts Act, 1861 or account of loss suffered by them for failure of the vessel to deliver the goods in terms of the bill of lading at the port of discharge. To my mind considering the language of Clause 12 of Letters Patent of this Court, that would not apply when the plaintiffs invoke the admiralty jurisdiction. In other words, even if the party on a cause of action arising within the jurisdiction of this Court and part of cause of action arises outside the jurisdiction, permission under Clause 12 would not be requested as long as action can be sustained under the admiralty jurisdiction. Therefore, contention that suit is not maintainable on the ground that the permission under Clause 12 of the amended Letters Patent of this Court was not applied for has to be rejected.

We then come to the other part of the argument namely whether the suit against defendant No. 2 who does not carry on business and or have the office within the jurisdiction of this Court could be maintained. From the pleadings, though it was contended that the suit is also filed as an action in rem against vessel, there is nothing on record to show that when the suit was filed that the vessel was within the admiralty jurisdiction of this Court. In other words, there would be no action in rem in so far as facts of the present case are concerned. At the highest it would be action in personam. Therefore, would an action in personam be maintained against defendant No. 2 in this Court. Defendant No. 2 has not submitted themselves to the jurisdiction of this Court. On the contrary they have raised a plea contesting the jurisdiction of this Court. In the light of that, the issue needs to be answered. Gainful assistance may be made from the judgment in the case of World Tanker Carrier Corporation Vs. SNP Shipping Services Pvt. Ltd. and Others, . The Apex Court dealing with this aspect of the matter held as under:

"The presence of a foreign defendant who appears under protest to contest jurisdiction, cannot be considered as conferring jurisdiction on the Court to take action. Unless a foreign defendant either resides within jurisdiction or voluntarily appears or has contracted to submit to the jurisdiction of the Court, it is not possible to hold that the Court will have jurisdiction against a foreign defendant." See in this connection R. Viswanathan Vs. Rukn-UI-Mulk Syed Abdul Wajid, Raj Rajendra Sardar Maloji Marsingh Rao Shitole Vs. Sri Shankar Saran and Others, ."

This statement of law, therefore, is against plaintiff in the present suit. That was action in what is known as limitation action. Needless to say that to sue a foreign defendant in this country, the foreigner either must be resident and or carry on business. These are the principles applicable in Private International Law. The only exception is if such party submits to the jurisdiction. In the instant case, defendant has not. In view of that, to my mind, suit against defendant No. 2

before this Court as filed was not maintainable. Issue No. 2 therefore, has to be partly answered in the affirmative in as much as the suit against defendant No. 2 will have to be dismissed on the ground of want of jurisdiction.

8. Though the issue was not specifically raised to my mind, from the pleadings of the parties, the evidence on record an issue pertaining to jurisdiction has to be answered and that issue is as to whether the plaintiff considering the endorsement in the bill of lading in favour of the consignee was entitled to maintain the suit in this Court. From the pleadings itself, plaintiff had averred that they had shipped goods in the vessel of defendant No. 2 to their consignees M/s. Am Pak Trading Company at U.A. It is further averred that consignees on failure of goods to arrive at the Port of discharge of Norfolk, lodged claim with shipping company for the loss of cargo at destination. The defendants in their written statement had pleaded that the plaintiffs in the bill of lading had shown consignees as "Unto Order" and notified party as M/s. Am Pak Trading Company. In the evidence of Shahbuddin Sheerazi, P.W. 1 in his affidavit which evidence has been reiterated in his oral examination at paragraph 1, he has set out that he knows Hanif Sultan who is owner of the consignee M/s. Am Pak Trading for last more than 5 years. He has done business with M/s. Am Pak Trading Company for last 5 years. Thereafter the said witness has stated in respect of the original bill of lading that the original is with defendants or their U.S. agents to whom it was submitted by the consignee in support of the claim. The witness thereafter has deposed that the bill of lading, invoice, packing certificate were endorsed and submitted to Central Bank of India, a copy was sent to Am Pak Trading. The bill of lading though endorsed the property and title remained with plaintiffs and could pass only after payment. What is more important is the following evidence:

"The documents were accepted by the consignee on deferred payment and in view of non delivery payment has not been made."

The witness then sets out that the consignee M/s. Am Pak Trading Company lodged a claim. In the evidence of D.W. 1 Vilasrao Rangrao Patil, the said witness has deposed that the consignee has made claim against the defendant No. 2. He has then deposed that he denies the claim made by the plaintiff because it is F.O.B. shipment. From this evidence, what emerges is that the bill of lading was endorsed in favour of the consignee. Based on that consignee on failure to receive the goods made demand on defendant No. 2. What will be the consequence following from this evidence.

It is argued on behalf of plaintiff that u/s 1 of the Indian Bill of Lading Act, 1856, every consignee of goods named in a bill of lading and every endorsee to bill of lading to whom property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself. u/s 3, every bill of lading in the hands of a consignee or endorsee for

valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some parts thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board.

Reference has been made to this section as on behalf of plaintiff it was sought to be advanced at the bar that the goods had not been shipped and in these circumstances, defendant No. 1 would be liable for the goods. To my mind, it is not possible to accept the argument advanced at the bar on behalf of the plaintiff in the absence of any pleadings to that effect in the plaint. On the contrary in the plaint, averments were that on 30-8-1990 the plaintiff shipped the goods vide bill of lading on vessel "Hough Drake" to their consignees M/s. Am Pak Trading Company at U.S.A. Interpretation of section 1 of the Indian Bills of Lading Act, 1856 need not detain us as in my opinion the issue has been concluded by the judgment of the Apex Court in *British India Steam Navigation Co. Ltd. Vs. Shanmughavilas Cashew Industries and Others*, . Considering what is bill of lading the Apex Court observed that the bill of lading is a symbol of the goods and the right to possess those passes to the transferee of the bill of lading. In other words, its transfer is symbolic of the transfer of the goods themselves and until the goods have been delivered, the delivery of the duly indorsed bill of lading operates as between the transferor or transferee, and all who claim through them, as a physical delivery of the goods. Proceeding further, the Apex Court observed that it is an accepted principle that the bill of lading is not a contract of affreightment, for that has been made before the bill of lading was signed and delivered, but it evidences the terms of that contract. The bill of lading serves as a receipt and also as a document of title and may be transferred by endorsement and delivery. Article III(3) of the Hague Rules says that a bill of lading is prima facie evidence of the receipt by the carrier of the goods described therein. The Hamburg Rules define a bill of lading under Article 1(7) as a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document.

It is therefore, clear that on production of the bill of lading the liability of the carrier is established and ordinarily relief could have been granted against such carrier. The limited question is when the consignee produces bill of lading then will the plaintiff herein have any cause of action left to file the present suit. In my opinion, considering the case of the plaintiff himself, that the bill of lading was endorsed in favour of the consignee and that the consignee had accepted the bill of lading, but deferred payment would clearly show that title for the goods has passed in favour of the consignee. If that be the case, from the evidence on record and considering the ratio descend from the judgment in *British India Steam Navigation Co. Ltd. (supra)*, the title in the goods has passed in favour of the consignee and in these circumstances, no suit at the instance of

the plaintiff herein for the loss occasioned by fault of the carrier shall be maintained before this Court. A similar view, I find has also been taken by a Division Bench of this Court in Appeal No. 782 of 2000 in *Trano Hind Shipping Co. Ltd. v. Ajanta Pharma Limited and another*, decided on 4th April, 2001, but however on a Notice of Motion. Whether in the absence of framing of issue or proving the documents, suit can be dismissed is another aspect of the matter. However, what is important is the ratio of the judgment in *British India Steam Navigation Co. Ltd.* (supra). The issue No. 2 therefore, in its second aspect will have to be held in favour of the defendants and the suit will have to be dismissed as not maintainable.

9. That leaves us with the third issue which is whether the suit is barred by limitation. The plaintiffs pleaded that the suit is within limitation on the ground that the goods were shipped on 30-8-1990. The claim was lodged on 19-7-19991 or 2-11-1991 and the suit itself is filed on 25-8-1992. However, it is the contention of the defendants that the limitation in the instant case would be governed by the provisions of the Indian Carriage of Goods by Sea Act, 1925 and more specifically Clause 6 of Article 3. The relevant portion of which reads as under:

".....In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. This period may, however, be extended if the parties so agree after the cause of action had arisen. Provided that a suit may be brought after the expiry of the period of one year referred to in this sub paragraph within a further period of not more than three months as allowed by the Court."

Admitted facts on record in the present case are that the bill of lading is dated 30-8-1990. The ship "Hoegh Dryke" arrived at Norfolk on 15-11-1990 and sailed from the said port on 7-11-1990. The suit was filed on 25-8-1992. At Exhibit A collectively is the letter dated 12-4-1991. In the said letter it is set out that the formal claim was lodged on 2-11-1991 by the shipping agent (Cavalier Shipping Co.). It will thus be clear that the fact that the cargo was not discharged was to the knowledge of the plaintiff as early as 2-11-1991 and that the goods had not arrived. The suit was filed only on 25-8-1992. Considering Article 3, Clause 6, the suit as now filed by the plaintiff would be barred by limitation. The leading case on the subject is the judgment of the Apex Court in *The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar*, , where Article 3 paragraph 6, Clause 3 came up for consideration. Before the Apex Court in issue were the following questions:

- (1) What is meaning of the word "loss" as used in the second Clause;
- (2) Whether the Clause only prescribes Rule of limitation or also provides for the extension of right to compensation after certain period of time.
- (3) Ascertainment of the date on which the goods to be delivered and have been

delivered for the purpose of this Clause.

There is another aspect which I need not advert to.

Answering the first question, the Apex Court held that the word "loss" means and includes every loss to the owner of the goods whether it is whole of the consignment or part of the consignment which is not delivered and where such non delivery of the whole or part of the goods, being total loss of merely loss to the owner by such fact of non delivery would be loss within the meaning of word as used in para 6 and it would also include any loss or damage caused to shipper or consignee in respect of which a grievance is made and in respect of which claims for compensation is made from the shipping company. The Apex Court finally summed up the issue by answering that the loss means and includes any loss caused to ship or consignee by reason of the inability of the ship or the carrier to deliver the part of whole of the goods for whatever reasons such failure may be due. Answering the second issue the Apex Court held that the words "discharged their liability" has totally disappeared and not only that the remedy as regards liability has disappeared and that the words are apt to express an intention of total extinction of the liability and should, specially in view of the international character of the legislation, be construed in that sense. It is hardly necessary to add that once the liability is extinguished under this Clause, there is no scope for any acknowledgment of liability thereafter.

Answering the third issue, the Apex Court held that the point of time that ship leaves the Port is the latest point of time by which goods have been delivered. It is then observed that even if there was no definite term in the bill of lading as regards the delivery, it will follow necessarily from the nature of carriage of goods by the ship that the delivery of the cargo carried by the ship should be made between the date of arrival of the Port and its departure from the Port. There can be no escape from the conclusion that the point of time when the ship leave the Port is the latest point of time by which the goods should have been delivered.

In the instant case, it is true that the exact date when the ship left Port though pleaded in the written statement has not been proved by evidence either oral or documentary. However, what is material to note is that the plaintiff themselves in the plaint had identified the container by number and further fact that when the said contained was unloaded at the Port of discharge. The goods shipped did not out turn. Therefore as noted earlier, they had knowledge considering Exhibit A collectively which is letter dated 12-4-1991 by Caviller Shipping Company. The suit was filed on 25-8-1992. Therefore, clearly beyond the prescribed period of one year and the extended period of three months which the Court can condone if such application was made. Considering the above, to my mind Issue No. 3 has to be answered in favour of the defendants and it has to be held that the suit is barred by limitation.

10. Before I proceed to answer Issue No. 4, it would be proper that Issue No. 5

which again the burden of proving is cast on the plaintiffs need be answered. The said issue is based on the plea defendant No. 1 that they only acted as agents of the vessel and were not carriers and as such were not liable. I will not advert to the pleadings except to consider evidence of P.W. 1 Vilasrao Rangrao Patil. In his evidence, the witness has stated that the bill of lading was issued by defendant No. 1 as agent of defendant No. 2. In re-examination witness has deposed as under:

"The first defendant enters into contract for handling of the ship and the cargo with defendant No. 1. Apart from this act, other job was undertaken. In examination in chief it is further set out that defendant No. 1 acts as agent for about 4/5 companies. The companies are named therein. Defendant No. 1 was the handling agent and accepts cargo on behalf of defendant No. 2 shipping company."

It is argued on behalf of the plaintiff that considering that they are agents of known principal and that they were general agents and not special agents, the suit against them would not be maintainable.

The contention raised on behalf of the defendant No. 1 has merit. Considering that they were general agents and not special agents. In *Shiv Bhagwan Moti Ram Saraoji Vs. Onkarmal Ishar Dass and Others*, , Chief Justice Chagla in the matter of liability of agent observed as under:

"He may carry on the business through an agent but even so, the agent through whom he carries on the business must be such an agent as to be in a position to contract debts on behalf of his principal which would make the principal personally liable for those debts. It has also been said that, if business is carried on through an agent, the agent must be a special agent who attends exclusively to the business of the principal and carries on in the name of the principal and not a general agent who does business for any one that pays him. (See Sir Dinshah Mull's Commentary on the Code of Civil Procedure, page 117). It is perfectly true, as pointed out by the learned Judge below that, in carrying on business, Clause 12 does not require the personal factor as it does in the case of working for gain. But even so, there must be a carrying on of the business and not merely the owning of it or having an interest in it."

This view has been followed by another learned Single Judge of this Court in the case of contract entered into by agents contracting on behalf of the foreign delivery. See *Midland Overseas Vs. m.v. "CMBT Tana"* and others, .

Considering the above, in my opinion as defendant No. 1 as general agent would not be personally liable and as such suit against defendant No. 1 will have to be dismissed. Issue answered accordingly in favour of defendant No. 1.

11. That leaves us with Issue No. 4. Considering the bill of lading which is admitted. I need not further discuss the issue. As that issue will have to be answered considering the bill of lading itself in favour of the plaintiff.

12. In so far as Issue No. 6 is concerned, the vessel was not within the jurisdiction of this Court when the suit was filed nor was the vessel during the pendency of the suit, arrested by any order of this Court and considering that to my mind, this would be an action purely in personam against defendant No. 1 and not in rem against the vessel. Hence, issue No. 6 will have to be answered against plaintiff.

13. That leaves us with Issue Nos. 7 and 8. Considering the finding earlier given that the plaintiff had no cause of action to maintain the suit and that the suit itself is barred by limitation. Hence, Issue No. 7 must be answered against defendants and consequently also Issue No. 8.

I do not propose to consider the last issue considering answers to Issue Nos. 1, 2, 3 and 5. For the reasons aforesaid suit dismissed. In the circumstances of the case there shall be no order as to costs.

C.C. expedited.