
(1991) 04 BOM CK 0022

In the Bombay High Court

Case No : Notice of Motion No. 2318 of 1990 In Admiralty Suit No. 9 of 1990

Laxmi Board and Paper Mills Ltd.

APPELLANT

Vs

M.V. "Seacrest Achiever" and others

RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:

Admiralty Courts Act, 1861 — Section 6
Colonial Courts of Admiralty (India) Act, 1891 — Section 2
Contract Act, 1872 — Section 194

Citation : AIR 1992 Bom 86 : (1991) 3 BomCR 574

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : S.K. Sen, instructed by Miss M. Sen, for the Appellant; S. Venkateswaran, instructed by . P.S. Pratap and M/s. Bhatt and Saldanha, for the Respondent

Judgement

1. By this notice of motion the first Defendant prays that the suit be dismissed against it and pending the hearing and final disposal of the suit, the amount of Rs. 3,12,000/- deposited by the first Defendant as security for releasing the first Defendant from arrest, be returned to the agents of the first Defendant together with accrued interest. It would be necessary to state the salient facts to appreciate the contentions raised by the first Defendant by the present notice of motion.

2. The plaintiffs filed the present suit on 16th February, 1991 (Sic), claiming a sum of Rs. 3,11,950.45 Ps. with the interest and costs against the first Defendant vessel M. V. Seacrest Achiever. The plaintiffs allege that due to the failure and negligence of the first Defendant they had been required to incur demurrage and detention charges aggregating to the aforesaid sum which was a claim enforceable against the first Defendant in the admiralty jurisdiction of the Court. The plaintiffs moved for and obtained an order of arrest of the first Defendant vessel on 16th February, 1990. The first Defendants appeared before the Court on 17th February, 1990 and agreed to deposit the bail amount of

Rs.3,12,000/- with their learned counsel by way of four cheques drawn in the name of their learned counsel and further undertook to furnish security by way of Bank Guarantee on or before 21st February, 1990. The arrest, seizure and detention of the first Defendant vessel, under the order dated 16th February, 1990, was vacated pursuant to the minutes of the order dated 17th February, 1990. Subsequently, the Defendants sought time to furnish the Bank Guarantee till 7th March, 1990, on which date they sought and obtained the leave of the Court to deposit in this Court the sum of Rs.3,12,000/- in lieu of the Bank Guarantee. The said amount which was deposited in this Court has been invested in Fixed Deposit of a Nationalised Bank under the orders of the Court. The Defendants thereafter took out the present notice of motion and sought for dismissal of the suit against them and refund of the deposited amount to them.

3. In the affidavit in support of the notice of motion, the defendants raised the following contentions in support of the motion:

"(a) The alleged claim of the plaintiffs does not fall within the provisions of the Admiralty Courts Act 1861.

(b) The plaintiffs have no cause of action against the 1st defendant vessel.

(c) There is no privity of contract between the plaintiffs and the 1st defendant vessel.

(d) The alleged cause of action as pleaded does not fall within the ambit of the Admiralty Courts Act 1861.

(e) There is no duty whatsoever owed by the 1st defendant vessel to the plaintiffs.

(f) No action in rem can lie against the 1st defendant vessel in respect of the alleged claim of the plaintiffs."

They have also put forward their case on the merits. The case put forward by the Defendants in the affidavit in support of the motion is as follows:

(a) The first Defendant vessel was, at the relevant time, on charter to M/s. Transnautic Line Inc., Liberia, under a time charterparty. The said vessel was utilized for the Middle East to India Container Services by them. M/s. Merzario Shipping Agencies Private Limited are the agents of Transnautic Line Inc. in Bombay. Transnautic Line Inc. also carried cargo of other shipping Lines, like Ceylon Shipping Corporation, on board their vessels, if the other shipping lines were unable to carry their cargo due to lack of shipping space on their own vessels.

(b) M/s. Zenath Paper Traders delivered certain cargo to Ceylon Shipping Corporation for shipment on board their vessel "Lanka Mahapola" Voyage 84 at the Port of Hodeidah. Ceylon Shipping Corporation had issued their Bill of Lading dated 4-12-1989 in respect of the said cargo. The said Bill of Lading stated that the said cargo was to be delivered at the order of Canara Bank, Foreign

Department, India. The said Bill of Lading showed Laxmi Board and Paper Mills as the party to be notified and the Port of Discharge as Bombay with transshipment.

(c) On or about 12-12-1989, M/s. Ceylon Shipping Corporation loaded certain containers on board the first Defendant vessel at the Port of Khorfakkan. The first Defendant vessel accepted the said cargo and agreed to carry the same from Khorfakkan to Bombay. M/s. Transnautic Line Inc. issued their non-negotiable Bill of Lading dated 12-12-1989 indicating that the said cargo was received for shipment on board their vessel M. V. Seacrest Achiever at the Port of Khorfakkan for discharge at Bombay and the shipper being Ceylon Shipping Corporation, Dubai, and the consignee also being Ceylon Shipping Corporation, Bombay.

(d) The Bill of Lading issued by M/s. Transnautic Line Inc. was a non-negotiable document which could not have been endorsed by Ceylon Shipping Corporation in favour of any third party including the Plaintiffs. The said Bill of Lading was the only contract between the first Defendant and M/s. Ceylon Shipping Corporation and the first Defendant was obliged to deliver the cargo thereunder in good order and condition to the consignee mentioned therein i.e. M/s. Ceylon Shipping Corporation. Under Clause 8 of the conditions of carriage incorporated on the reverse of the said Bill of Lading, it had been stated "any clause herein giving names of parties who desire to be notified of the arrival of the goods at destination, is solely for the information of the carrier's agent and failure to notify shall not involve the carrier in any responsibilities and relieve the merchant from any obligation hereunder."

(e) That when the first Defendant vessel arrived at Bombay on 15th December, 1989, the said containers of Ceylon Shipping Corporation were discharged and delivered by the agents of the first Defendant vessel, M/s. Merzario Shipping Agencies Private Limited, to the second Defendants, who are the agents of Ceylon Shipping Corporation.

(f) That upon delivery of the cargo to the agents of M/s. Ceylon Shipping Corporation, the obligation of the first Defendant came to an end.

4. The first Defendants contend that there has never been any privity of contract between the plaintiffs, who are the assignees of the original Bill of Lading issued by the Ceylon Shipping Corporation, and the first Defendant. The only contract of carriage entered into by the first Defendant was with M/s. Ceylon Shipping Corporation for carrying their cargo from Khorfakkan to Bombay. This having been accomplished successfully, and there being no dispute between the said consignees of cargo and the first Defendant in this regard, the obligation of the first Defendant under the contract of carriage came to an end. The first Defendant owed no duty to the Plaintiffs, either under the contract or otherwise, so as to enable them maintain any action against the first Defendant.

5. The Plaintiffs, by their affidavit in reply dated 15th November, 1990, have

denied several of the facts alleged in the affidavit in support of the motion and have contended that since the prayer in the notice of motion is based on the contention that the suit is not maintainable in law in the admiralty jurisdiction, if at all the motion is to be heard, it must proceed on a demurrer and not by raising controversial facts. This position was accepted by Shri Venkateswaran, learned counsel for the first Defendant, who submitted that in an admiralty cause of action the first Defendant need not to take out a formal notice of motion in support of the affidavit and that if he enters his appearance under protest and takes up the contention that the Court had no jurisdiction to entertain the suit as an admiralty action, then, the Court must, if satisfied, dismiss the suit forthwith, cancel the bail sought for release of the ship and refund the cash deposit of bail amount. On this position, that the jurisdiction of this Court to entertain the suit in admiralty jurisdiction has to be determined on the basis of the averments made in the plaint, the parties are agreed, and I shall proceed to do so accordingly.

6. The nature of the admiralty jurisdiction and its contours have been ably traced out in the judgments of Kantawala J. in *Sahida Ismail Vs. Petko R. Salvejkov and Others*, and by Lentin J. in *Dimitrios Paizis and Others Vs. Motor Vessel "Nicos" and Others*, . These judgments hold that by virtue of the provisions of the Colonial Courts of Admiralty (India) Act, 1891, the High Court of Judicature at Bombay, as a Colonial Court of Admiralty, has the same jurisdiction as was then exercised by the High Court of England in its admiralty jurisdiction under the provisions of the Admiralty Courts Act, 1861. Thus, in order to appreciate the exact nature of jurisdiction of this Court on the admiralty side, we must transport ourselves back in time to Circa 1861, and look at the Admiralty Courts Act, 1861.

7. Section VI of the said Act provides as under :

"VI. The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship for damages done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of owner, master, or crew of the ship, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part-owner of the ship is domiciled in England or Wales. Provided always that if in any such cause the plaintiffs do not recover twenty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried by the said Court."

This section precisely states the types of claim, the persons by whom the High Court of Admiralty can be moved and the circumstances under which such jurisdiction can be invoked. The Plaintiffs have invoked this jurisdiction u/S. VI of the said Act, and, unless their claim falls within the amplitude of this section, they must fail.

8. In order to appreciate whether the Plaintiffs have made out a case which falls within the scope of section VI, it is necessary to cull out the relevant averments from the plaint. The Plaintiffs claim to be the consignees of the Bill of Lading No. 1 dated 4-12-1989 issued by M/s. Ceylon Shipping Corporation for delivery of cargo to the order of Canara Bank, Foreign Department, Bombay, with transshipment. The cargo was to be carried on board M. V. Lanka Mahapola at Hodcidah. The cargo consisted of 2217 bales of new corrugated cutting waste papers in containers. The plaintiffs alleged that though their Clearing Agents were in constant touch with the second Defendants, who handled the first Defendant vessel during call at Bombay in December 1989, the Clearing Agents were informed by the second Defendants that the consignment was to arrive per "Daulagiri" on 16th January, 1990. On 15th January, 1990, however, the Clearing Agents were surprised to learn from the second Defendants that the consignment had already arrived per the first Defendant vessel on 15th/ 18th December, 1989. The consignment incurred B.P.T. demurrage charges and the second Defendants refused to issue the delivery order to the Plaintiffs' Clearing Agents without payment of B.P.T. demurrage charges in the sum of Rs. 1,55,118/- and container detention charges amounting to Rs. 1,55,403/-. Thus the Plaintiffs were forced to pay the aforesaid aggregate sum of Rs. 3,10,521-20 Ps. before they could get the consignment released. The Plaintiffs allege that it was the bounden duty and obligation of the Defendants, both by the relevant contract of affreightment and by the custom of Bombay Port, to have notified the Plaintiff or its Clearing Agents and the Canara Bank, by public notices in the press as well as by personal individual notices, of the name of the final vessel by which the said consignment was transhipped and by which it was to arrive, as also the expected date of her arrival and commencement of discharge, well in advance of the arrival date. The Plaintiffs allege that it is the universal practice and custom of the trade for carriers and/or their agents to notify, by public notice and individual notices to the consignees, the name of the vessel by which their consignments are transhipped and also of the expected date of arrival of the vessel in port, to enable the consignees to clear their cargo without having to incur any demurrage or container detention charges. The Plaintiffs plead that the Defendants failed and neglected to carry out their aforesaid obligations and as a result thereof the Plaintiffs were unable to clear the consignment in time and they had to incur demurrage and detention charges amounting to Rs. 3,10,521.20 Ps., which is attributable to the "negligence and/or misconduct and/or breach of duty and/or breach of contract on the part of the Defendants." The Plaintiffs plead that the consignment which was on board under the Bill of Lading, of which they are the assignees, was carried into the Port of Bombay by the first Defendant vessel, a German Flag Vessel, whose owners are not domiciled in India. The Plaintiffs, therefore, claim to be entitled to file this action in rem as well as in personam against the Defendants and also to arrest the first Defendant vessel. The Plaintiffs thus maintain that this Court has jurisdiction in its Admiralty side to entertain the present suit and that the suit against the first Defendants is perfectly valid and maintainable.

9. It is not disputed by the first Defendants that the Plaintiffs are the assignees of the Bill of Lading No. 1 dated 4th December, 1989, by which the goods were accepted by Ceylon Shipping Corporation to be carried from Hodeidah to Bombay. It is also not disputed that the Ceylon Shipping Corporation, in exercise of their right of transshipment, transhipped the goods and, instead of sending them by M. V. Lanka Mahapola, consigned the goods per the first Defendant vessel. It is also not disputed that the first Defendant vessel was the vessel which actually carried the concerned goods in to the port of Bombay. What is strenuously contended by the learned counsel for the first Defendant vessel is that there is no privity of contract between the first Defendant vessel and (he Plaintiffs and that the remedy of the Plaintiffs for the alleged loss, if any, can lie only against the shipper who had issued the Bill of Lading, i.e. Ceylon Shipping Corporation. Ceylon Shipping Corporation not being a party to this suit, the suit against the first Defendants must fail, as the first Defendants did not recognize either the consignor of the goods, M/s. Zenath Paper Traders, or the Plaintiffs. As far as the first Defendants are concerned, the contract of affreightment was to carry certain goods consigned by M/s. Ceylon Shipping Corporation from Hodeidah to Bombay. This having been accomplished, and there being no claim against the first Defendant vessel by Ceylon Shipping Corporation, whose agent had duly received the consigned goods at Bombay Port, the first Defendants submit that they owed no duty -- statutory, contractual or otherwise -- towards the Plaintiffs, nor were they liable for their alleged loss arising on account of B.P.T. demurrage and the container detention charges.

10. The first Defendants contend that the claim u/S. VI of the Admiralty Act, 1861 could only be preferred in respect of damage done to the goods by negligence or misconduct on the part of the ship owner, master or crew of the ship, or damages done to the goods or any part thereof for any breach of duty or damages done to the goods for any breach of contract on the part of owner, master or crew of the ship. There being no contract between the Plaintiffs and the first Defendant vessel, the claim could not be founded on S. VI at all. In other words, it is their contention that the claim u/S. VI can be only against the ship which has issued the Bill of Lading and that the "breach of duty" contemplated under S. VI must be of a duty founded on the contract of carriage and not otherwise.

11. In my view, this contention is misconceived and overlooks the amplitude of the words used in S.VI of the Act. There is nothing in S. VI of the Act to indicate that the claim can only be against the ship which has carried the goods into the Bombay Port and which has issued the Bill of Lading. It is well known that Bills of Lading are negotiable commercial documents of title and under the provisions of the Bills of Lading Act, 1856, the assignee of the Bill of Lading would step into the shoes of the original holder of the Bill of Lading. The property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement to him and he 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. The plaintiffs, being the assignees of the Bill of Lading issued by Ceylon Shipping Corporation, are in the same position as the original consignor of goods.

12. In *Sahida Ismail Vs. Petko R. Salvejkov and Others*, , following the judgment in *Cap Blanco* (1913) PD 130, it was observed in paragraph 27 of the judgment:

"In this case it is pointed out that S. VI was intentionally framed in large and general terms and ought to be construed with as great latitude as possible within the fair meaning of the words on the ground that the statute being remedial of grievance, by amplifying the jurisdiction of English Court of Admiralty, ought, according to the general rule applicable to such statutes, to be construed liberally so as to afford the utmost relief which the fair meaning of its language will allow. It is also pointed out that it is wholly unnecessary in order to found the jurisdiction under the statute that the goods should be carried into an English port for the purpose of delivery or in pursuance of the contract."

Again in paragraph 29 of the learned Judge observed :

"The principle in the case of *Cap Blanco* (1913) PD 130 has been followed by the Calcutta High Court in *Rungta v. Owners etc.* in *S. S. Edison* (1961) 66 Cal WN 1083. After reviewing the English cases, the High Court has taken the view that in order to attract the jurisdiction of the Admiralty Court it is not necessary that the goods should be imported into India or that their carriage should be for delivery in India. It is sufficient if the goods are carried into an Indian Port and there is a breach of duty or contract on the part of the master in respect of the goods so carried."

It is the duty of the Court to liberally construe the provisions of S.VI so as to afford the utmost relief which the fair meaning of the language therein will allow.

13. In my view, the plaintiffs being the assignees of the Bill of Lading, are not disentitled from maintaining an action against the first defendants in the admiralty jurisdiction, if their claim can be fitted into the provisions of S. VI. The averments in paragraphs 7 and 8 of the plaint, make it clear that, apart from a breach of contract, the plaintiffs have also alleged that by virtue of the custom in the Bombay Port the carrier was obliged to notify the consignee or the party required to be notified under the Bill of Lading and that it was breach of this duty or obligation on the part of the first defendant vessel which entailed damages to the plaintiffs being by way of B.P.T. demurrage and container detention charges, which they had to pay to the second defendant. For the purpose of determining the jurisdiction of the Court, I must proceed on the footing that these averments are true. If they are, I see no reason why the claim cannot fall under S.VI of the Admiralty Act, 1861. In my view, a claim can arise under S. VI against the owner, master or crew of the ship in three ways :--

(1) for damage done to the goods or any part thereof by the negligence or misconduct;

(2) for any breach of duty; and

(3) for any breach of contract.

Each of these heads is independent. While the claim for damage done to the goods must necessarily be by the negligence or misconduct, the claim for any "breach of duty" or "breach of contract" on the part of the owner, master or crew of the ship need not arise necessarily from damage done to goods. In my judgment, the use of the two clauses "for any breach of duty" and "breach of contract" make it clear that the claim founded on "for any breach of duty" need not be based on a duty arising ex-contractu. The duty could be founded in contract, upon statute or, as has been pleaded, even upon the custom in the trade or business. I am of the view that the plaintiffs cannot be shut out, at this stage, from establishing that there was a duty upon the first defendants, as the ultimate carrier of the goods, to notify the Canara Bank or the plaintiffs as to the probable date of arrival of the ship in the port and the probable date of discharge so that the consignee of the goods could arrange to take delivery with due despatch. I find impossible to accede to the submission of the first defendants that the suit be dismissed at this stage because they contend that there is no such duty owed by them to the consignees.

14. Mr. Sen, the learned counsel for the plaintiffs, contended that the duty to notify would spring into existence, if not out of the contract between the parties, at least on the principles of bailment. He relied on the provisions of the Contract Act and the obligations of a bailee of goods, to support his contention. He also relied on the judgment of the Supreme Court in *Union of India (UOI) Vs. Amar Singh*, in support of his contention. In this case the goods were consigned from Quetta in Pakistan to New Delhi in India. The goods were carried by Pakistan Railway up to the Indian border after which the Indian Railway took over. The goods were lost in transit by the Indian Railway. There was no treaty between the countries regarding liability for loss of goods in case of through traffic. Upon the suit by the consignee for compensation for non-delivery at the station of destination, the Supreme Court took the view that it was possible to hold in favour of the consignee on the principle that Pakistan Railway, which had booked the consignment through to New Delhi, had implied authority as agent to appoint Indian Railway to act for the consignor during the period of the travel when the goods were passing through India. By the force of S.194 of the Contract Act, the Indian Railway would be an agent of the consignor. The Supreme Court also supported its conclusion on the alternate basis, namely, that a contract of bailment could be implied between the consignor and the forwarding Railway. It was pointed out that S. 71 of the Contract Act permits recognition of a contract of bailment implied by law under circumstances which are of lesser significance. If a finder of goods accepts the responsibility of the goods, he is placed vis-a-vis the owner of the goods in the same position as a bailee. Hence, the Supreme Court found no difficulty in holding that the Indian Railway as the Forwarding Railway could not deny the responsibility as bailee. This contention of the

plaintiffs also merits serious consideration. Whether M/s. Ceylon Shipping Corporation can be said to be the agents of the consignor of cargo with implied authority to appoint the first defendants as sub-contractor and thereby whether a direct contract of agency was established between the consignor and the first defendants, is an issue which has to be determined in the light of evidence. Whether, in the facts and circumstances, a contract of bailment can be said to have arisen, whether the first defendant vessel can be said to be a bailee of the goods carried by it and whether there was breach of obligations owed by it as bailee to the owner of goods, are issues which can be answered only on the basis of the facts proved. In either view of the matter, in my judgment, it would be premature to say that the suit must, at this stage, fail against the first defendants.

15. The learned counsel on both sides cited a number of authorities and referred to several passages from Carver on carriage of goods by Sea and Scrutton on Charterparties, in support of their respective contentions. In my view, it is unnecessary, at this stage, to go into all these authorities as I am not recording any finding with regard to the nature of the Bill of Lading or the obligations arising there- under. I am presently called upon to answer the issue as to whether the suit in the admiralty jurisdiction against the first defendant vessel as filed is not maintainable.

16. Mr. Venkateswaran, learned counsel for the first defendant vessel, vehemently contended that even assuming that the first defendants owed the duty to notify the consignee, as to the probable date of arrival of the goods, under the general terms of the contract of affreightment, or under the custom of the trade or the port, such a duty was expressly excluded by virtue of Cl. 27 of the terms of contract embodied on the reverse of the Bill of Lading issued by Ceylon Shipping Corporation. He pointed out that the Bill of Lading itself stated that in accepting the Bill of Lading the owners of the goods or the holder of the Bill of Lading expressly accept and agree to all the stipulations, exceptions and conditions as found on the reverse of the Bill of Lading. He contended that Cl. 27 excepted such duty to notify and, therefore, no liability could arise on the part of the first defendants for such failure to notify the probable date of arrival of the goods to the consignee. In my view, this argument is also misconceived. Since it is the contention of the first defendant that there is no privity of contract between itself and the plaintiffs, the first defendant cannot rely upon Cl. 27 of the Bill of Lading which is the contract with Ceylon Shipping Corporation, who could have pleaded this exception, assuming it was available to them. The first defendant, unless it accepts that it is bound by the obligation under the Bill of Lading, cannot be heard to plead this exception.

17. Looking at the matter from every perspective, I am of the view that the suit of the plaintiffs is maintainable in the admiralty jurisdiction and that it cannot be dismissed at this stage, nor the bail amount, deposited by the first defendant vessel, refunded to them at this juncture.

18. In the result, the notice of motion fails and is dismissed with costs.
19. Suit to be placed on board on 22nd April, 1991, for directions.
20. Order accordingly.