
(2001) 09 CAL CK 0028
In the Calcutta High Court

Case No : Appeal No. 323 of 1988 and Suit No. 1010 of 1979

Shaw Wallace and Co. Ltd.

APPELLANT

Vs

Nepal Food Corporation and Others

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Evidence Act, 1872 — Section 3

Citation : (2001) 3 CALLT 429

Hon'ble Judges : Ashok Kumar Mathur, C.J; Girish Chandra Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.C. Gupta, J.—This appeal is directed against a decree passed against " Shaw Wallace & Co. Ltd. in Suit No. 1010 of 1979. Another appeal being Appeal No. 323 of 1988 arising out of a decree also passed against Shaw Wallace & Co. Ltd. in suit No. 922 of 1979 Involving almost identical facts and circumstances has been dismissed by us by a separate Judgment wherein we have exhaustively dealt with the submissions made by the learned counsel appearing on either side.

2. The undisputed facts of this case, as was the case in Suit No. 922 of 1979, are that Shaw Wallace and Co. Ltd. is the agent of the owner of the ship being defendant No. 1. The plaintiff is the shipper. Pursuant to a contract dated 7-12-1977 the plaintiff shipped 3434.291 metric tones of rice per vessel Eastern Grand. A Letter of Credit had already been opened in favour of the plaintiff shipper by the foreign buyer Ngoh Hang Hong (Pte) [NHH for brevity). The last date for operation of the Letter of Credit was 15-1-1979. The loading of the goods was completed on 29-1-1978. The vessel sailed away from the Port of Calcutta on 30-12-1978. The Mate's receipts were issued to the plaintiff-shipper on 29-12-1978. The Bills of Lading were however not released by Shaw Wallace & Co. Ltd. until after the expiry of the validity of the Letter of Credit. The validity of the Letter of Credit expired on 15-1-1979 and Shaw Wallace & Co. Ltd. released the Bills of Lading on 28-1-1979. The plaintiff-shipper in the

circumstances was disabled from realising the value of the goods by operating the Letter of Credit. It is in these circumstances that the Suit was filed. Facts and circumstances in this Suit *mutatis mutandis* are the same as those in Suit No. 922 of 1979. In both the cases release of the Bills of Lading was withheld on the purported ground that the shipper was liable to pay demurrage and/or dead freight and unless the shipper secured the same by Issuance of Bank guarantee both the principals of Shaw Wallace & Co. Ltd. had Instructed not to release the Bills of Lading. Curiously enough the Bill of Lading in both the cases were released without insisting upon furnishing any Bank guarantee or securing the alleged claim for demurrage or dead freight by any other mode after expiry of the validity period of the Letter of Credit.

3. Relevant portions of the Judgment of the learned trial Court which remained unassailed before us by the learned counsel appearing on behalf of the appellant may be quoted :

".....It is clear to my mind after looking into the facts of this case, even more, so, that Shaw Wallace went out of their way in order to assist the purchaser/charter, even to the extent of defeating the very realisation of the entire value of the goods, by encashment of the Letter of Credit, by the plaintiff.

"Mr. Nandi's evidence is that Shaw Wallace did not supply the blank forms of the bills of lading until 17th January, 1979. To this the counsel for the defendant No. 3 submitted that the bills of lading in this case are in the uniform bills of lading forms approved by the documentary council of the Baltic and international maritime conference, to be used in case of charter party. The defendant No. 3 relied on the evidence of Mr. Puri that such blank forms were supplied even prior to the commencement of the loading on the ship. First of all Mr. Puri does not say that he himself handed over such blank forms of bill of lading to the representative of Asian Agency. Secondly if such blank forms were there, why should Asian Agency not present the filled in forms, immediately after getting the mate's receipts. I have no hesitation in believing and accepting the evidence of Mr. Nandi that he made demands for blank forms of bills of lading from Shaw Wallace after the completion of the shipment i.e. on and from 30-12-1978. The letter of Shaw Wallace dated 2-1-1979 as also the fact that Shaw Wallace were acting as agent for purchaser/ charterer party, explain that Shaw Wallace did not want to issue even the blank forms of the bills of lading to Asian Agency. To my mind, there could have been no plausible reason, why Asian Agency should not go to demand the blank forms to enable them to fill in the same and to present the same along with the mate's receipt for signatures of Shaw Wallace. If the blank forms would have been with them since prior to commencement of shipment, they could present the filled in forms. I am unable to accept the argument that Asian Agency failed to discharge their normal duty of demanding blank bills of lading forms or bills of lading for no reason or no motive and simply out of lethargy. Simply because a clerical job of typing blank bills of lading, is unusually taken over by the shipper or his agent, for the sake of expedition or convenience,

it cannot be said that the obligation to issue bills of lading itself is shifted from the ship owner or his agent to the shipper. I therefore held that M/s. Asian Agency did demand for blank forms of bills of lading from Shaw Wallace on and from 30th December 1978 and Shaw Wallace did not supply such blank forms to Asian Agency until 17th January, 1979. The supply of the blank forms on 17th January, 1979 is also significant. The letter of the 15th January, 1979 of Shaw Wallace for the first time quantified the amount of the bank guarantee. After 15th January, 1979 the said purchaser/charterer was totally saved from payment of any price because the letter of credit expired and could not be encashed. Further it appears from Exhibit "M" that the said M.V. Eastern Grand was unloaded at Port of destination by 16th January, 1979. So the goods had also been discharged from the ship before 17th January, 1979 and by that time all objectives of the said Hong Hang, the principals of Shaw Wallace had been achieved. It is to be noted that in the earlier case relating M.V. Plchit Samut the bills of lading were made over unconditionally to Asian Agency on 28th January, 1979."

".....Shaw Wallace wilfully and deliberately withheld the issuance of the bills of lading to the plaintiffs forwarding agent Their obligation to issue the bills of lading to the plaintiffs forwarding agent commenced immediately on issuance of the mate's receipt after completion of shipment on 28th and 29th December, 1978 and in my opinion they refused to do so on 30th December, 1978 and on 1st January, 1979 even before the alleged instructions from the owners came. The said bills of lading were documents of title to the goods, belonging to the plaintiff. In my opinion neither the defendant No. 3 Shaw Wallace & Co. Ltd. nor the defendant No. 1 had any right power to withhold the bills of lading and/or the issuance thereafter the completion of the shipment. I further hold that the bills of lading were the documents of title, of the plaintiff and the plaintiff and/or its forwarding agent was entitled to Immediate possession thereof, on first demand. In my opinion such demands were in fact made on and from 30th December, 1978. It is highly improbable that the holders of mate's receipt will delay in demanding bills of lading even for a single day. In normal course, such bills of lading are required for the purpose of encashment of letters of credit and for realisation of the value of the goods. There was no reason whatsoever for Asian Agencies to make delay the matter of demanding bills of lading. The demand for blank bills of lading on and since 30th December, 1978 was the first step, by Asian Agencies towards obtaining the bills of lading and both the parties know the purpose for which such blank forms were required by them. Shaw Wallace & Co. Ltd. did refuse to hand over blank form of bills of lading with full knowledge of the consequences involved,"

4. Learned counsel appearing on behalf of the appellant submitted before us that the only distinguishing feature between this case and the Suit No. 922 of 1979 is that in this case the Mate's receipt together with filled in forms of the Bills of Lading were surrendered for signature and return to Shaw Wallace & Co. Ltd. on 19-1-1979 whereas the validity of the Letter of Credit expired on 15-1-1979. He

submitted that in those circumstances there was no occasion for Shaw Wallace & Co. Ltd. to refuse to release the Bills of Lading prior to expiry of the Letter of Credit not could It be said that for any omission on the part of Shaw Wallace & Co. Ltd. to release the Bills of Lading the plaintiff had suffered any loss or damages.

5. We have already noticed above the finding of the learned trial Judge. The learned trial Judge upon appreciation of evidence has come to the finding that the blank formats of the Bills of Lading were requested to be Issued as far back as on 30-12-1978 but the defendant No. 3 Shaw Wallace & Co. Ltd. refused to Issue the same. Unless the blank forms of the Bills of Lading were Issued the filled in forms of the Bills of Lading together with Mate's receipt could not have been surrendered by or on behalf of the plaintiff. The learned counsel appearing for the appellant has not made any serious effort to show as to how or in what respect the learned trial Judge went wrong in arriving at the finding which we have noticed above in the absence of any Justifiable reason to take a contrary view we are unable to say that the finding of the learned trial Judge, that the blank forms of the Bills of Lading were not Issued by Shaw Wallace & Co. Ltd. and thereby the plaintiff was precluded from submitting the same within the validity period of the Letter of Credit, is wrong.

6. There are some additional reasons why we are unable to take a contrary view on this question. Those reasons are as follows :-

(a) The learned counsel appearing for the appellant in his oral submissions as also in his written notes of submissions contended before us as follows:

".....Bills of lading were not withheld by SWC on the contrary, the failure of the plaintiff and its agent to surrender the Mate's receipts and to demand the filled in Bills of Lading until 19th January, 1979, when the Letter of Credit had expired, was responsible for the delay in the release of Bills of lading."

7. The submission of Mr. Mitra is diametrically opposed to the case made out in paragraph 8 of the written statement which reads as follows:

With references to paragraph 9 of the plaint this defendant states that as the plaintiff failed to furnish the required Bank guarantee as Instructed by the principals of this defendant the relative Bills of lading were not issued."

(b) Our attention has not been drawn to any piece of evidence laid by or on behalf of Shaw Wallace & Co. Ltd. to show that the blank forms of Bills of Lading were in fact issued to the agent of the plaintiff prior to 15th January, 1979 when the Letter of Credit expired. No one from the side of Shaw Wallace & Ltd. has come to give evidence that he made over the blank forms of the Bills of Lading to the plaintiffs agents prior to 15-1-1979.

(c) in the absence of any definite evidence to show that the blank forms of the Bills of Lading were in fact issued to the plaintiffs or its agent prior to 15-1-1979 we are unable to say that there was negligence or laches on the part of the

plaintiff in surrendering the Mate's receipt together with filled in forms of the Bills of Lading prior to 15-1-1979.

(d) The learned trial Judge had the benefit of watching the demeanour of witnesses who appeared to give evidence before him. Therefore, his finding cannot lightly be disturbed only on the basis of the submission that the blank formats of the Bills of Lading are like Railway Reservation Slips and can be obtained across the counter.

(e) Our attention has been drawn to the relevant portion of the deposition of Mr. Puri who came to give evidence on behalf of Shaw Wallace & Co. Ltd. The said Mr. Puri in answer to question No. 302 stated that he had been told by Mr. Dose that one Mr. Banerjee on behalf of the plaintiff's agent came to collect the blank formats of Bills of Lading. The Said Mr. Bose has not been called to give evidence. It would be extremely hazardous to record a finding on the basis of such a hear-say evidence of Mr. Puri.

8. We, therefore, conclude that the plaintiff and/or its agent were precluded from surrendering the Mate's receipt along with the filled in forms of the Bills of Lading prior to 17-1-1979 due to omission on the part of Shaw Wallace & Co. Ltd, to issue the blank formats of the Bills of Lading. In the ultimate analysis the result is that Shaw Wallace & Co. Ltd. omitted to release the Bills of Lading within the validity period of the Letter of Credit. No other point of fact was placed before us by the learned counsel appearing on behalf of the appellant. As a matter of fact he adopted all his submissions made while dealing with Appeal No. 323 of 1988 arising out of suit of 922 of 1979 which has already been dealt with by us in our Judgment delivered in Appeal No. 323 of 1988 which shall mutatis mutandis govern this case.

Accordingly, the appeal falls and is dismissed. There will be no order as to costs.

A.K. Mathur, C.J.

9. I agree. Later:

10. The Court : The prayer for stay of operation of this Judgment is considered and rejected.

However, in spite of dismissal of appeal it will be open for the plaintiff-respondent to withdraw the amount deposited by the appellant in pursuance of the order passed by this Court on 27th February. 1990.

Xerox certified copy of this Judgment be supplied to the parties expeditiously.

11. Appeal dismissed