

(1964) 11 MAD CK 0003

In the Madras High Court

Case No : Second Appeal No. 1253 of 1961

Swastik Agency, Madras

APPELLANT

Vs

The Madras Port Trust and Another

RESPONDENT

Date of Decision : 13-11-1964

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161

Income Tax Act, 1961 — Section 33

Land Acquisition Act, 1894 — Section 18

Madras Port Trust Act, 1905 — Section 39, 39(3), 40, 40(1), 40(2)

Citation : AIR 1966 Mad 130 : (1965) 2 MLJ 113

Hon'ble Judges : Ramamurti, J

Bench : Single Bench

Judgement

(1) Messrs Swastik Agency, Madras, the appellant in this second appeal, is the plaintiff in the suit, O.S. 125 of 1958 on the file of the City Civil

Court, Madras. The appellant imported 80 drums of coconut oil from Singapore, which arrived at Madras port per S. S. Rajula on 9-7-1957. The

shipping documents were entrusted by the appellant to the clearing agent. The consignment was detained in the Port Trust shed by the customs

authorities for test purposes till 12-8-1957. On 13-8-1957 the clearing agent cleared the consignment, and it was noticed that 7 drums out of the

said consignment had been tampered with and the oil contained therein had been stolen through holes made in the drums. At the request of the

clearing agent a survey of oil from the 7 drums was noticed and those drums were taken delivery of on 21-8-1957. It was found that the total

weight of the oil lost was 1494 pounds, the value of which came to Rs. 899-07, calculating the price at Rs. 1348 per ton. The plaintiff claimed in

all, a total sum of Rs. 1198-54 representing the value of oil lost, customs duty

and excise duty etc. The plaintiff issued a notice to the Port Trust authorities on 24-8-1957 claiming damages from the Port Trust.

(2) The first defendant in the suit is the Madras Port Trust and the second defendant is the clearing agent of the plaintiff. The trial Court found that

the Port Trust authorities had not taken sufficient care of the goods in question, that they were guilty of negligence, and that the theft or the pilfering

of the oil was due to the carelessness and negligence of the Port Trust Authorities. It also found that the clearing agent had done his duty, and he

was not therefore liable for any portion of the plaintiff's claim. In the end a decree was passed against the Port Trust in favour of the plaintiff for a

sum of Rs. 1198-54 with subsequent interest from the date of the decree. The suit against the second defendant was dismissed.

(3) The Port Trust took up the matter in appeal and the appellate court came to a contrary conclusion for the reasons which shall be dealt with

later. The appeal was allowed and the plaintiff's suit was dismissed. At the same time the appellate court agreed with the finding of the trial court

that the Port Trust was guilty of negligence in not having taken proper care of the goods while they were in the custody of the Port Trust

authorities. It also accepted the finding of the trial court that no case of negligence had been made out as against the second defendant. In this

connection it may be mentioned that the plaintiff did not prefer any appeal or memorandum of cross-objections with regard to the dismissal of the

suit by the trial Court as against the second defendant. The plaintiff has preferred this second appeal claiming a decree against the Port Trust as

well as the clearing agent. Mr. V. Rathnam assisted the Court as amicus curiae on behalf of the clearing agent and placed all the relevant decisions.

(4) From the arguments advanced by learned Counsel for the parties following points arise for determination: (1) Whether the plaintiff's suit is

barred under S. 40(2) of the Madras Port Trusts Act on the ground that the notice of loss or damage had not been given to the Port Trust within

one month of the date, of the receipt of the goods under S. 39(3). (2(a)) Whether bye-law No. 31 which provides that the Port Trust will not be

answerable for any loss or deficiency unless ascertained, pointed out to and acknowledged by the Traffic Manager before the goods are removed

from the Port Trust premises has been complied with in this case. (2(b)) Whether

failure to comply with the requirement of bye-law No. 31 would

operate as a bar to the maintainability of the suit. (2(c)) Whether the bye-law is ultra vires and in excess of the power conferred under S. 95(4) of

the Port Trusts Act. (3) Whether a decree can be passed against the second defendant inasmuch as the plaintiff allowed the decision of the trial

Court dismissing the suit as against the second defendant to become final and did not prefer any appeal therefrom.

(5) Mr. V. V. Raghavan, learned Counsel for the Port Trust, the first respondent, did not and could not canvass the correctness of the concurrent

findings of the courts below that the Port Trust was guilty of negligence and did not take proper care of the drums of oil when the consignment was

cleared. The finding arrived at by the courts below is supported by sufficient evidence and I therefore accept the said finding.

(6) I shall now take up for consideration the several aspects covered by point No. 1. Section 39 of the Port Trust Act (II of 1905, (hereinafter

referred to as the Act) deals amongst other things with the services to be rendered by the Board (meaning the trustees of the Port of Madras) in

relation to receiving, removing, storing or delivering the goods carried by a steamer. S. 39(3) which is the relevant provision in the instant case runs

as follows:

The Board shall, if required, take charge of the goods for the purpose of performing the service and shall give a receipt in the form and to the

effect prescribed from time to time by the (Central Government).

After any goods have been taken charge of and a receipt given for them under this section, no liability for any loss or damage which may occur to

them shall attach to any person to whom a receipt shall have been given or the master or to the owner of the vessel from which the goods have

been landed or transhipped.

Section 40 runs as follows:

(1) The responsibilities of the Board for the loss, destruction or deterioration of goods of which it has taken charge shall, subject to the other

provisions of this Act and subject also in the case of goods received for carriage by railway to the provisions of the Indian Railways Act, 1890, be

that of a bailee under Ss. 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words "in the absence of any special contract" in S.

152 of the last mentioned Act. Provided that, till the receipt mentioned in sub-section (3) of S. 39 is given by the Board the goods shall be at the

risk of the owner. (2) The Board shall not be in any way responsible for the loss of or damage to goods of which it has taken charge, unless notice

of such loss or damage shall have been given within one month of the date of the receipt given for the goods under sub-section (3) of S. 39.

In this case the Port Trust took charge of the goods on 9-7-1957 as evident from the tally ship acknowledgment. Calculating one month from that

date, the notice of the loss or damage should have been given by 9-8-1957 under S. 40(2). But as observed earlier the first notice of loss or

damage to the Port Trust was given only on 24-8-1957. From the facts mentioned above, it will be seen that the goods were in the custody of the

Port Trust authorities till 12-8-1957 for purposes of scrutiny and verification by the customs authorities and at the earliest the plaintiff or its clearing

agent got real effective access to the goods only on 13-8-1957. It is only then when the goods were taken delivery of that the pilferage or theft of

oil was or could at all be noticed. The plaintiff or its clearing agent had no knowledge, nor could they know or ascertain the loss till the goods were

taken delivery of from the Port Trust. It is not the contention of the Port Trust authorities that the plaintiff had knowledge of the loss or damage to

the goods earlier than 13-8-1957. Obviously the Port Trust authorities could not advance any such contention as they themselves became aware

of the loss only when the claim was made by the plaintiff, with the result that the instant case has to be dealt with on the distinct basis that the

plaintiff became aware of and could have known about the loss or damage to the goods only on 13-8-1957. The question therefore arises whether

the failure to issue a notice within the period of one month from 9-7-1957, that is within 9-8-1957, as specified in S. 40(2) operates as bar to the

present claim.

(7) Learned counsel for the Port Trust contended that S. 39(3) and S. 40(1) and (2) should be read together, and that the period of one month

and the date of commencement specified in S. 40(2) are absolute and do not admit of any variation or extension. Learned Counsel urged that the

obligations, rights and the duties of the Port Trust authorities are mainly governed by the provisions of the special statute, Madras Port Trusts Act of

1905 and that S. 40, while declaring that the liability of the Port Trust is that of a bailee under Ss. 151, 152 and 161 of the Contract Act has at the same time provided the period within which the claim for loss or damage should be made. Learned Counsel urges that the special provision fixing a time limit of one month has been made to avoid delay in the settlement of claims and at the same time provide against Port Trust authorities being harassed by belated claims, when by lapse of time evidence would be lost as to how the loss or damage occurred while the goods were in the custody of the Port Trust.

(8) On behalf of the appellant it is contended that S. 40(2) cannot apply to a case like the present one where the party became aware of the loss for the first time more than one month after the receipt of the goods under S. 39(3) of the Act was passed by the Port Trust. He contended that if the goods were in the custody of the Port Trust authorities for a period exceeding one month and the party becomes aware of the loss of the goods only when he takes delivery of the goods it would work gross injustice, that his claim for damages should be held to be not maintainable because he had not given the requisite notice within one month when admittedly he had no knowledge of the loss during that period. It was also urged that in such a situation either S. 40(2) would not apply or the time limit of one month specified in S. 40(2) would commence only from the time when the party aggrieved becomes aware of the loss of damages to the goods. I am free to confess that the question involved is not free from difficulty and on a careful consideration of all the aspects of the matter I am inclined to accept the contention urged by learned Counsel for the appellant.

(9) In arriving at any true interpretation of S. 40, it must be borne in mind that after the Board (the Port Trust) passes a receipt under S. 39(3), the master and the owner of the ship are exonerated from any liability whatsoever in respect of any loss or damage which may occur to the goods. The liability or duty of the master or the owner of the vessel whether towards the foreign shipper or towards the consignee at the place of destination comes to an end, and under S. 40(1) the Board is made responsible for the loss, deterioration of the goods or their destruction, as that of a bailee under Ss. 151, 152 and 161 of the Contract Act. Section 40(1) also provides that there cannot be any contract to the contrary in derogation of

this liability that is imposed under the provisions of the Contract Act. The proviso to S. 40(1) to the effect that till the receipt mentioned in S. 39(3)

is given by the Board the goods shall be at the risk of the owner emphasises that after the receipt is passed the owner gets the protection and the

right to hold the Board as his bailee. Stopping there, it is clear that the owner of the goods would be entitled to hold the Board liable for damages

consequent upon the carelessness or negligence on the part of the Board to take care of the goods while in its custody as a bailee under the

provisions of the Contract Act. It stands to common sense that the owner cannot be expected to file a suit before he is given access to the goods

and also an effective opportunity to examine the goods and he becomes aware of the loss or damage which had occurred to the goods. To hold

that the period of one month specified in S. 40(2) would commence to run even before the owner of the goods became aware of the loss or

damage would result in absurd and startling results.

(10) It is true that the normal and ordinary rule of construction of any statute is to construe it according to the plain, literal and grammatical meaning

of the words used. But under exceptional circumstances with a view to avoid manifest absurdity, serious hardship and gross injustice, courts have

recognised certain exceptions where the plain, literal and grammatical meaning of the words used would render the statute of nullity creating a

situation of manifest contradiction of the very purpose of the enactment. The rule as to when the literal construction of a statute can be deviated

when the result of such a construction would lead to absurd or startling results opposed to the intention of the Legislature or would completely

frustrate the purpose of the statute was stated by Pollock C. B. In *Waugh v. Middleton*, (1853) 8 Exch 352 thus:

however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the

apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the

grammatical construction of a particular part of it.

The rule as to modification of the language of a statute is stated thus in *Maxwell on Interpretation of Statutes*, 11th Edition, at pages 221 and 222:

Where the language of a statute, in its ordinary meaning and grammatical

construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections or careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the Courts are very reluctant to substitute words in a statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense.

In this connection reference may also be made to the case of *Becke v. Smith*, (1836) 150 ER 724 where Parke, B. Observed thus at p. 727:

It appears to us, therefore, that the true construction of the clause is, that every voluntary assignment, made by one in insolvent circumstances, is

void, whenever made with intention to take the benefit of the Act. And this was the clear opinion of the Court of Common Pleas in the case of

Wainwright v. Miles (1833) 3 M & S 211, though the point was not fully argued. It is true, that upon the plaintiff's view of the case, in order to

give full effect to the intention of the legislature, and to embrace all cases of voluntary transfers, both before and after imprisonment, the language of

the clause (not very accurately drawn) must in one respect be understood, not according to its strict sense; and the words "within three months

before the commencement of the imprisonment," which, strictly construed, exclude the time of imprisonment must be read so as to include it, and

taken to mean "within a period commencing three months before the appointment;" otherwise one of the inconveniences above pointed out, as

necessary resulting from the defendant's construction, would follow, namely, that a conveyance after imprisonment, though voluntary, would be

protected, unless made with a view and intention of petitioning.

To obviate such an incongruity, common to both the constructions according to the strict grammatical sense, the words must be thus slightly varied.

The question as to when a Court can deviate from a literal and mechanical construction of a statute came up for consideration before the Supreme

Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, which had to consider the scope of S. 18 of the

Land Acquisition Act. That section provides that any person interested who has not accepted the award of the Collector that the matter may be

referred for the determination of the Court. Proviso to S. 18 dealing with the question of limitation prescribes that every such application to the

Collector should be made within six months from the date of the award of the Collector. In that case even though the award was delivered by the

Collector on 25-3-1951 no notice of the award however was given to the party and it was only on 13-1-1953 that the party became aware of the

award and he filed the application under S. 18 on 24-1-1953. The Allahabad High Court held that the period of six months would commence from

the date of the award, regardless as to when the party became aware of the contents thereof. The Supreme Court reversing that decision held that

literal and mechanical way of construing the relevant clause was not justified in law, on the ground that the knowledge of the party affected by the

award either actual or constructive was an essential requirement of fair play and natural justice and therefore the expression "the date of the award

must be constructed as the date when the award is either communicated to the party or is known by him either actually or constructively. In taking

this view the Supreme Court approved of the principles which were adopted by this Court in *O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of*

Income Tax, dealing with S. 33-A(2) of the Indian Income Tax Act. There it was held that the time limit of one year under S. 33-A(2) would

commence to run not "from the date of the order" but from the date of the receipt of the order by the assessee on the ground that time should not

be computed to run from a date earlier than the one on which the aggrieved party actually knew of the order. That decision contains a reference to

other decisions of this Court in which the literal and mechanical construction of a provision of a statute was deviated from on the ground that time

should not commence to run against the aggrieved party till he becomes aware of the actual situation and facts entitling him to seek his remedy in a

court of law. The Supreme Court reversed the decision of the Allahabad High Court and applied the principle of the decision of this Court referred to above.

(11) This view was followed in the latter judgment of the Supreme Court in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, reiterating

the principle that the period of limitation prescribed for a party to seek redress in a court of law cannot commence before he becomes aware of the

circumstances entitling him to seek redress. Reference may also be made to the decision of this Court in *Swaminathan alias Chidambaram Pillai Vs.*

Lakshmanan Chettiar and Another, in which it was held that when the party filed a suit for compulsory registration of the document the period of

30 days ""after the making of the order by the Sub Registrar refusing registration"" should be computed not from the date of the order of the Sub

Registrar but when the same is communicated to the party. The argument that the words ""making of the order"" were plain and unambiguous and

did not admit of a construction making the notice of the order essential for the time to commence to run was not accepted. The ratio decidendi of

this case is also to the effect that limitation cannot commence to run unless the party becomes aware as to how he is affected prejudicially by any

act or order of a third party. The acceptance of the contention of the Port Trust would make a harmonious construction of Ss. 39(3) and 40(1)

and (2) altogether impossible and frustrate the very purpose for which the liability of the Board was declared as that of a bailee, at the same time

denying any right in the Board to enter into a contract to the contrary. The provision for the extinguishment of the liability of the master or the

owner of the vessel and the substitution therefore the liability of the Port Trust would again become meaningless. Take for instance a case in which

Port Trust after becoming aware of the loss of the goods denies access to the owner to remove the goods for more than a month thereby

preventing the owner obtaining knowledge of the loss of the goods. To say that in such a situation the owner would be barred under S. 40(2) after

the expiry of one month would enable the Board to take advantage of its own wrong, and escape its statutory liability as a bailee. In this connection

reference may be made to the statement of the law in Maxwell, page 202, where the learned author deals with cases in which courts have deviated

from the plain grammatical meaning of the words used in a statute for the purpose of avoiding injustice and impolicy of enabling a man to defeat or escape from his obligation by reason of wrongful act or otherwise profit by his own wrong.

(12) The matter can also be considered from another aspect, treating S. 40(2) as prescribing a period of limitation for a claim to be made against

the Port Trust. The principle which applies to the construction of the several articles in the Limitation Act, would equally apply to S. 40(2) of the

Port Trust Act. It is settled law that in construing the language of the third column of the several articles in the Limitation Act, they should be so

interpreted as to carry out the true intention of the Legislature by dating the cause of action from a date when the remedy is available to the party,

he having become aware of the circumstances under which the right had accrued to him. Undue emphasis should not be laid either on the first

column or the third column. If in a given case the facts fit in with the first column of a particular article but the third column is under the

circumstances inapplicable that Article should be altogether rejected. Equality if the first column is inapplicable, the case should be taken out of the

operation of that Article. In other words for a particular Article to govern, its first and third columns should be clearly applicable to the case. Vide

Seetikutti v. Kunhi Pathumma, ILR Mad 1040 : AIR 1919 Mad 972 and Muthu Korakkai Chetty v. Madar Ammal, ILR Mad 185 : AIR 1920

Mad 1 . In this connection reference may also be made to the decision of the Bombay High Court in Ganpat Bhujang Shidhanti Vs. Hanamgouda

Shidagauda Patil, in which while the possession of the property was outstanding with a prior mortgage the mortgagor executed a second mortgage

in 1908. The mortgagor obtained possession of the property from the first mortgage only in 1917 and the second mortgagee filed the suit in 1924

to recover possession of the property from the mortgagor. On behalf of the mortgagor, it was contended that under Article 135 the period of

twelve years prescribed for the mortgagee to recover possession of the property would commence to run from the date of the mortgage, i.e. 1908.

This argument was not accepted by the Bench of the Bombay High Court Beaumont, C. J. delivering the judgment of the Bench held that in

construing Acts of limitation courts must always remember that the object of the Legislature is to induce people to be active in the assertion of their

rights and to penalise those who sleep upon those rights; and that courts should avoid construing statutes of limitation in such a manner which will have the effect of destroying a valuable right to sue even before the right had effectively arisen or accrued. Adopting this principle, S. 40(2) should be restricted to cases in which the party has knowledge of the loss which has occurred to the goods even on the day when the receipt was given under S. 39(3). If the knowledge of the loss of the goods and the date of the receipt do not synchronise, S. 40(2) would have no application, with the result that the liability of the Port Trust for its carelessness or negligence as bailee could be enforced within the period prescribed under the general law of limitation. The result therefore is that either the period of one month should commence to run from the date when the owner of the goods becomes aware of the loss or damage or S. 40(2) would not apply at all and the owner will be entitled to file a suit under the general law of limitation governing such statutes.

(13) Learned counsel for the respondent in the course of his argument relied upon certain observations of the Supreme Court in its recent judgment in Civil Appeals Nos. 187 to 191 of 1962 (SC). That case dealt with the question as to whether the Steamer agents at the Port of Madras are liable to pay certain charges described as E charges claimed by the Port Trust representing payment of idle allowance insisted upon to expedite the discharge of the cargo at the quay. The argument on behalf of the Steamer agents was that once the receipt is passed by the Port Trust under S. 39(3) of the Act, the Port Trust becomes a bailee of the consignee and that the charges should therefore be recovered only from the consignee and that all the services rendered by the Port Trust were all rendered only for and on behalf of the consignee. The Supreme Court did not accept this contention but held that the services rendered by the Port Trust were services rendered on behalf of the Steamer Agents. The observations contained in the judgment regarding the liability of the Port Trust should be understood in that context. I do not read those observations as holding that the consignee or the owner of the goods would not be entitled to hold the Port Trust liable for damages or loss caused to the goods on account of the negligence or carelessness on the part of the Port Trust while the goods were in their custody. The reference by the Supreme Court

to the Bench judgment of this Court in *Great Eastern Shipping Co. Ltd. v. Govindaswamy*, ILR (1957) Mad 840 shows that the decision of the

Supreme Court cannot be interpreted in the manner contended for by the learned counsel for the Port Trust.

(14) I shall then take up for consideration the points relating to bye-law 31. It is unnecessary to consider the question as to how far bye-law 31 is

in conformity with the power conferred upon the Board to frame bye-laws under S. 95 of the Act. The evidence discloses that arrangements were

made for the survey of the goods immediately after the customs authorities released the goods; the shed master of the Port Trust has himself

admitted that he was aware of the survey. The survey was held by an impartial and respectable surveyor and it was not suggested that there was

anything wrong or mala fides in the survey. I am of opinion that on the facts of the instant case there has been substantial compliance with bye-law

31, and the loss or damage of the goods had been brought to the notice of the Port Trust authorities immediately before the removal of the goods

from the harbour premises.

(15) The result therefore is that the judgment of the lower appellate court is set aside and that of the trial Court is restored. The plaintiff's suit is

decreed for Rs. 1198-64 against the first defendant with costs in this court and the Court below and subsequent interest from the date of the

decree. In this view, the suit is dismissed as against the second defendant but without costs. I am not expressing any opinion about the arguments

advanced regarding the liability of the second defendant. No leave.

(16) Appeal allowed.