(1958) 09 MAD CK 0002

In the Madras High Court

Case No : Civil Revision Petition No. 115 of 1957

The Great Eastern Shipping Co. Ltd. APPELLANT

Vs

S. Mohammed Samiullah Saheb and Co. and Another RESPONDENT

Date of Decision : 10-09-1958

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 115
Contract Act, 1872 — Section 151, 152, 161

Citation : AIR 1959 Mad 367 : (1959) 72 LW 129 : (1959) 1 MLJ 149

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : King and Partridge, for the Appellant; P.S. Raman, V.V. Raghavan and V.P. Raman, for the Respondent

Judgement

Ramachandra Iyer, J.—This revision petition arises under the following circumstances. The first respondent is a firm of merchants carrying

on business at Madras. 101 bundles of buffalo skins were shipped from Calcutta through the Great Eastern Shipping Co., Ltd, the petitioner in

March 1953 for being delivered to the first respondent. The goods were brought by the petitioners by a steamship S.S. Jal Ganga and in due

course the goods arrived at Madras.

The second respondent, the Port Trust of Madras, toot delivery of the goods and delivered only 97 bundles to the first respondent. Thereupon the

first respondent filed a suit for recovery of a sum of Rs. 1153, Rs. 1048 being the value of the four bundles not delivered and Rs, 105 being

towards damages. . The claim for damages was, however, given up at the stage of the trial. The petitioner resisted the claim of the first respondent

mainly on two grounds, (1) that the suit was barred as ''he consignee did not file a claim with them within the time limited by the bill of lading, and

(2) that the shipping company was discharged from its liability as it had delivered the goods to the Madras Port Trust, the second respondent.

The second respondent pleaded that the first respondent had no cause of action against the Fort Trust and that as the goods were short delivered

by the shipping master of he ship the claim against them was not maintainable. They also pleaded that the claim was barred u/s 40(2) of the Port

Trust Act. The later defence was not, however, pressed during the trial. The learned trial Judge as well as the Judges of the full bench who heard

the new trial application held, that the second respondent was not liable but that the petitioner was. They held that although the tally sheets

prepared by the officials of the Port Trust when they took charge of the goods from the steamer showed that the entire quantity of 101 bundles had

been received, but that it could not discharge the liability of the petitioner for the short delivery of the goods.

In that view a decree was passed against the petitioner. The petitioner has filed the present civil revision petition against the decree of the lower

court. The question whether the entries in the tally sheets in which the entire quantity of goods was shown as received by the Port Trust offered a

complete answer to the claim against the shipping company has been the subject of a decision of the learned Chief Justice of this court in the Great

Eastern Shipping Co. Ltd. v. Govindaswami, 1957 2 Mad LJ 987: 70 Mad LW 511.

It was held in that case that when the Master of a ship lands the goods and leaves them in charge of the Port Trust, the legal effect is as if the

Master representing the shipping company had delivered the goods to the consignee for whom the Port Trust must be deemed to be the agent.

It was also held that the liability of the Port Trust was that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act and that they

would be liable in the absence of proof that they look as much care as of the goods taken charge of by them as a man of ordinary prudence would,

in similar circumstances. Following this decision I would hold that the decree against the petitioner could not be sustained. It is accordingly see

aside.

2. Mr. P.C. Parthasarathi Iyengar, learned counsel for the first respondent, contended that the first respondent would be entitled to a decree

against the Port Trust, the second respondent. Both the courts below, no doubt, have negatived the liability of the second respondent on the

ground that the petitioner was liable. As it is now held that the petitioner is not liable the question would arise-whether the second respondent, the

Madras Port Trust would be liable for the loss.

It is admitted that the Port Trust received all the goods that the Master of the ship delivered and had entered in the tally sheet prepared by their

Officials that the entire goods had been received. Such being the case when they delivered only 97. bundles to the plaintiff they should account

satisfactorily as to what happened to the remaining four bundles.

There is neither a plea nor proof in the present case that they took such care as was required of them. In these circumstances I am of opinion that a

decree against the Port Trust should follow. Mr. V.V. Raghavan learned counsel for the second respondent contends that this being a civil revision

petition there is no jurisdiction in the court to pass a decree against the second respondent as the first respondent has not filed any independent civil

revision petition against the second respondent.

3. In AIR 1925 154 (Nagpur) it has been held that Order 41 Rule 33 C.P. Code would apply to civil revision petitions as well. Even apart from

that authority I would hold that as jurisdiction is given to this court u/s 115 C.P.C. as an appellate jurisdiction the procedure followed by this Court

in regard to appeals would be attracted and therefore Order 41 Rule 33 C. P. C. would apply to civil revision petitions and that there is no

impediment in passing a decree against the second respondent for the amount in respect of which the first respondent is held entitled to.

The result is that there will be a decree in favour of the first respondent against the second respondent, namely, the Madras Port Trust for a sum of

Rs. 1048 with interest at the rate of six per cent per annum from this date and the decree against the petitioner will stand vacated. The petitioner

will be entitled to its costs from the first respondent. No further order as to costs.

