

CASE NO.:
Appeal (civil) 2134 of 2006

PETITIONER:
Forbes Forbes Campbell & Co. Ltd

RESPONDENT:
Board of Trustees, Port of Bombay

DATE OF JUDGMENT: 14/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2134 OF 2006

H.K.SEMA, J

1. This appeal is preferred by the second defendant in the suit.

Brief Facts:

2. The appellant-defendant is a steamer agent of the vessel S.S.President Madison. The vessel was owned by a foreign company by the name American President Lines Ltd. One M/s Metal Fabs India Pvt. Ltd. (First Defendant) was a consignee of seven cartons of ball bearings which landed in the Port of Bombay on 5.2.1972 being carried by a vessel S.S. President Madison. The goods remained uncleared for a period of over two months from the date of landing. The Port Trust of Bombay (plaintiff) by a letter dated 10.10.1974 addressed to the appellant requested to furnish the name and address of the consignee. As no reply was received from the appellant, by a further letter dated 12.10.1974, the plaintiff (respondent herein) served a notice of sale upon the appellant with a request to issue the same to the ultimate consignee by R.P.A.D. As no action was taken, the respondent by its notice dated 11.5.1975 informed the appellant that the goods were lying uncleared in the warehouse and if the same were not cleared within 10 days on payment of charges thereof, the same would be sold in auction. As no action was forthcoming from the appellant despite notice and correspondences, as stated above, the plaintiff/respondent sold the goods in a public auction on 2.9.1976 and realized an amount of Rs.62,000/- as sale proceeds. The plaintiff found that after deduction of the due amount such as port charges, custom duty etc. an amount of Rs.4752/- was still due and payable to them.

3. The plaintiff filed R.C.S.No.2212/2911 of 1979 in the Court of Small Causes at Bombay for recovery of the aforesaid amount of Rs.4752/-.

4. Defendant no.1 consignee did not contest the suit though served. However, on being served the appellant (defendant No. 2) filed a written statement on 6.11.1979. In the written statement it was inter alia contended that defendant no.2 has no liability to clear the landed goods and that the second defendant was not concerned with the goods remaining uncleared, as alleged. It was further contended that the plaintiff has been negligent in not auctioning the goods immediately and waiting for four years before

completing the sale. It was further claimed that the liability to meet the claim of the plaintiff was only upon the consignee, namely, defendant no.1. It was further the case that defendant no.2 was not the owner of the goods and, therefore, defendant no.2 was not liable to pay the deficit in the sale proceeds.

5. Both the parties led evidence before the Trial Court and also produced relevant materials. The Trial Court after perusing the documents and evidence on record and after hearing the parties dismissed the suit against defendant no.2. The appeal filed by the plaintiff before the full Court of Court of Small Causes was allowed by the judgment and order dated 7.11.1989. In the interregnum writ petition came to be filed. A Special Leave Petition was filed before this Court and was remanded by this Court with which we are not concerned.

6. On the first blush since the amount towards the storage charges was only to the extent of Rs.4752/- we thought of dismissing the appeal with a question of law left open.

7. However, having regard to the questions of law of public importance involving in this appeal, which are of a recurring nature, the matter needs to be considered in depth.

8. The questions of law of public importance in this appeal are as follows:-

1. Whether a steamer agent can be construed as owner of the goods carried in his principal's vessel within the definition of owner in relation to goods under Section 2(o) of the Major Port Trusts Act, 1963?

2. Whether a steamer agent at all can be made liable for payment of storage charges/demurrage, which are uncleared by the consignee, even where steamer agent has not issued delivery order?

3. In the event a steamer agent is held liable, to what extent he is liable and whether it absolves the respondent from acting promptly under Section 61 of 62 of the Act?

9. On behalf of the appellant, Mr. R. Venketeshwaran, learned senior counsel, contended that the appellant was not the owner of the goods within the meaning of Section 2(o) of the Major Port Trusts Act, 1963 (in short the Act) and, therefore, the appellant could not be made liable to pay any amount due in respect of the goods. In this connection, reliance has been placed on the judgment rendered by a three-judge Bench of this Court in the case of Trustees of the Port of Madras through its Chairman vs. K.P.V. Sheikh Mohd. Rowther & Co. Pvt. Ltd. (1997) 10 SCC 285, wherein this Court while approving the judgment of the Division Bench of the High Court in M/s. K.P.V. Sheik Mohamed Rowthar vs. The Trustees of Port of Madras, ILR (1975) Vol. 1 Madras 59 held that the demurrage charges have to be collected by the Port Trust only from the consignee and not from the steamer agent. After reading the aforesaid judgment, we doubted the correctness of the said judgment and we are unable to persuade ourselves to accept the ratio laid down in the aforesaid judgment of this Court.

10. Per contra Mr. T.R. Andhyarujina, learned senior counsel, appearing for the respondent strenuously contended that the issues involved in the present case are squarely

covered by the judgment rendered by a Constitution Bench of this Court in the case of The Trustees of the Port of Madras by its Chairman vs. K.P.V. Sheik Mohamed Rowther & Co., 1963 Supp.(2) SCR 915.

11. In that case it was held by this Court that the steamer agent is liable to pay the charges. It may be pointed out that the said case was referred to before a three-judge Bench of this Court in Trustees of the Port of Madras through its Chairman (supra) and this Court distinguished the facts. It may also be pointed out here that the facts before the Constitution Bench, in our view, did not relate to payment of demurrage and it was for charges for shore labour ordered by the steamer agents themselves. Therefore, the decision rendered by the Constitution Bench, in our view, is distinguishable on facts with the facts of the present case.

12. Since, we have doubted the correctness of the decision rendered by a three-judge Bench of this Court in the case of Trustees of the Port of Madras through its Chairman (supra) and in view of the questions of law of public importance as framed above, involved in this appeal, this appeal may be referred to a larger bench, for an authoritative decision. Let the matter be placed before the Hon'ble Chief Justice of India for appropriate orders.