

FORBES FORBES CAMPBELL & CO. LTD.

v.

BOARD OF TRUSTEES, PORT OF BOMBAY
(Civil Appeal No. 2134 of 2006)

DECEMBER 03, 2014

[**RANJAN GOGOI AND R.K. AGRAWAL, JJ.**]

Major Port Trust Act, 1963 – s.42, 2(o), 40, 43, 60 – Goods brought into the port and warehoused by the Port Trust Authority – Consignee of the goods not attempted to clear bill of lading and also not responded to the notices issued – Payment of demurrage and port charges to the Board of Trustees of a Port – Held: Agent of the ship owner liable to pay demurrage and port charges.

Dismissing the appeals, the Court

HELD: Once the bill of lading is endorsed or the delivery order is issued it is the consignee or endorsee who would be liable to pay the demurrage charges and other dues of the Port Trust authority. In all other situations the contract of bailment is one between the Steamer Agent (bailor) and the Port Trust Authority (bailee) giving rise to the liability of the Steamer Agent for such charges till such time that the bill of lading is endorsed or delivery order is issued by the Steamer Agent. Sections 61 and 62 of the major Port Trusts Act, 1963 enables the Port Trust authority to proceed against the goods within its custody to recover the charges which may be payable to the Port Trust authority. Ordinarily and in the normal course if resort is made to the enabling provisions in the Act of 1963 to proceed against the goods for recovery of the charges payable to the Port Trust authority there may not be any occasion for the said authority to sustain any loss or even suffer

A any shortfall of the dues payable to it so as to initiate recovery proceedings against the ship owners. On facts, the orders of the High Court are upheld. [Para 11, 12] [345-B-H]

B *Trustees of the Port of Madras Through Its Chairman Vs. K.P.V. Sheikh Mohd. Rowther & Co. Pvt. Ltd. and Another (1997) 10 SCC 285; Board of Trustees of the Port of Bombay and Others Vs. Sriyanesh Knitters 1999 (3) SCR 1238:(1999) 7 SCC 359; The Trustees of the Port of Madras by Its Chairman Vs. K.P.V. Sheik Mohamed Rowther & Co. and Others (1963) Supp. 2 SCR 915 – referred to.*

Case Law Reference:

	(1997) 10 SCC 285	Referred to	Para 3
D	1999 (3) SCR 1238	Referred to	Para 6
	(1963) Supp. 2 SCR 915	Referred to	Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2134 of 2006.

E From the Judgment & Order dated 16.12.2005 of the High Court of Bombay at Bombay in Writ Petition No. 1732 of 1990.

WITH

F C.A. Nos. 7088, 7092 & 7094 of 2002, 802 of 2005, 10719 of 2014.

G S.K. Bagaria, T.R. Andhyarujina, Parag P. Tripathi Atul Yeshwant Chitale, Vikas Mehta, V.K. Ramabhadran, Siddharth Kaushik, K. Ajit Singh, Srinivas Vijay Kumar, Amitava Majumdar, Siddharth Dave, Aditya Krishnamurthy, Jemtiben, Senthil Jagadeesan, Priya Puri, Sandeep Narain, S.K. Das, Ashok Bannidinni, S. Narain & Co., Aniruddha Deshmukh, Mohit D. Ram, A.V. Rangam, Buddy A. Ranganathan, Soumik Ghoshal, Nirnimesh Dube, Shubham Jaiswal, Vaishnavi Rao,

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Shalini Kumar, B. Krishna Prasad, Indra Sawhney, C.V. Subba
Rao, B.V. Balaram Das, Ritin Rai, V.K. Monga, Fereshte D.
Sethna, Sukhmani, B. Vijayalakshmi Menon for the appearing
parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted in SLP(C) No.
4221 of 2012.

2. The common question of law that arises in these
appeals, though in different facts and circumstances, is with
regard to the liability of the agent of a ship owner (hereinafter
referred to as the "Steamer Agent") to pay demurrage and port
charges to the Board of Trustees of a Port (hereinafter referred
to as "the Port Trust Authority") in respect of goods brought into
the port and warehoused by the said authority. Before
proceeding to answer the aforesaid question it will be
convenient to take note of the core facts in each of the appeals
under consideration.

Civil Appeal No. 2134/2006 and Civil Appeal arising out of
SLP(C) No. 4221/2012

3. The consignee of the goods not having either cleared
the same or having responded to any of the notices issued, the
goods were sold by public auction by the Port Trust authority
after almost four years of receipt thereof. The amount fetched
in the auction fell short of the total charges payable which led
the said authority to file a suit against the Steamer Agent for
the balance amount. The suit was dismissed. In appeal, the High
Court reversed the decree holding the Steamer Agent to be
liable. In doing so, the High Court held that the ratio of the law
laid down by this Court in *Trustees of the Port of Madras
Through Its Chairman Vs. K.P.V. Sheikh Mohd. Rowther
& Co. Pvt. Ltd. and Another*¹ (hereinafter for convenience
referred to as 'the 1997 judgment') to be not applicable to the

1. (1997) 10 SCC 285 = AIR 1995 SC 1922.

A present case inasmuch as in the 1997 case the Steamer Agent had endorsed the bill of lading in favour of the consignee thereby transferring the property in the goods to the consignee whereas in the present case the consignee had not attempted to clear the bill of lading and had also not responded to the notices issued.

4. The facts in Civil Appeal arising out of SLP(C) No. 4221/2012 are largely identical with what has been stated above.

C Civil Appeal Nos. 7088/2002, 7092/2002, 7094/2002 and 802/2005

D 5. In all these cases a Resolution of the Board of Trustees for the Port of Calcutta dated 21.10.1982 was challenged by which it was, inter alia, resolved that rent on cargo transported in containers may be recovered from the marine account of the Steamer Agent from the 16th day from the date of landing of the container if de-stuffing thereof is not done within the free time of 15 days. The challenge to the aforesaid Resolution by the Steamer Agent before the High Court having been negatived the appeals in question have been preferred before this Court.

F 6. On behalf of the appellants it has been argued that under the provisions of the Major Port Trust Act, 1963 (hereinafter referred to as "the Act of 1963"); the byelaws of the Port Trust authority and the schedule of rates framed by such authority no liability is cast either on the ship owner or his agent for payment of demurrage and port charges. The liability to pay all rates/rents/port charges being statutory, in the absence of a statutory empowerment, the liability sought to be fastened on the Steamer Agents is without authority of law. Referring to the definition of "Owner" in Section 2(o) of the Act of 1963 it is contended that neither the ship owner nor his agent comes within the ambit of the said definition of "Owner". Specifically,

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it is contended that the "Shipper" mentioned in Section 2(o) is not a "Ship Owner"; a Shipper is a mere courier to whom the consignor hands over his goods for dispatch and delivery to the consignee. A "Shipper" is also known as a slot charterer/ slot hirer. The agent referred to in the first part of definition of "Owner" in Section 2(o) (i) is an agent of the shipper and not that of the ship owner. The provisions of Section 42 of the Act of 1963 have also been relied upon to contend that once the goods come in to the custody of the Port Trust authority, there is a relationship of bailor and bailee between the consignee and the Port Trust authority and there is no such relationship between the ship owner or his agent on the one hand and the Port Trust on the other. The decision of this Court in *Board of Trustees of the Port of Bombay and Others Vs. Sriyanesh Knitters*² is referred to and relied upon for the above proposition. It is further contended that the remedy of a ship owner or his agent by way of lien against the goods is of a limited operation; it is only qua the freight charges and other charges payable to the ship owner. The said lien under Section 60 of the Act of 1963 will not extend to demurrage or port charges. Section 60 of the Act of 1963 therefore does not provide for recompense of demurrage or port charges in the event the same are to be paid by the Steamer Agent to the Port Trust authority, as held by the High Court.

7. It has been specifically argued that the liability of a ship owner or his agent for payment of demurrage charges and port rent etc. stands concluded by the 1997 judgment. There is no such liability in law. It is submitted that the fact of endorsement of the bill of lading in favour of the consignee in the above case, as distinguished from the present case, would not have the effect of confining the ratio of the judgment only to situations where the bill of lading has been endorsed or the delivery order has been issued by the Steamer Agent. This is because by operation of Section 2(o) of the Act of 1963 "Owner" includes a consignee but not a Steamer Agent. Therefore, endorsement

2. (1999) 7 SCC 359.

A of the bill of lading or delivery order is not determinative. The
 above stand has been further sought to be fortified by referring
 to the approval by this Court of the view expressed by the High
 Court of Madras that making a Steamer Agent liable for
 demurrage charges/port rent would be "imposing a too onerous
 B and unexpected responsibility on the steamer which is only a
 carrier" and further that if Steamer Agents "are submitted to such
 a responsibility, in most cases where the goods are detained
 without delivery in the hands of the Port Trust at the instance of
 the customs the steamer or steamer agent have to pay towards
 C storage or demurrage charges amounts quite disproportionate
 to the freight they collect for the carriage of the goods." It is,
 therefore, submitted that the absence of liability of Steamer
 Agents for demurrage charges/port rent was decided on certain
 broader principles and propositions and not on the basis of the
 mere endorsement of the bill of lading or issuance of a delivery
 D order by the Steamer Agent.

8. Learned counsel for the appellants has also referred to
 the decision of the Constitution Bench in *The Trustees of the
 Port of Madras by Its Chairman Vs. K.P.V. Sheik
 E Mohamed Rowther & Co. and Others*³ (hereinafter for
 convenience referred to as 'the Constitution Bench decision')
 and has sought to explain the seemingly contradictory views
 with regard to liability of the Steamer Agents on the basis that
 the said liability was on account of charges incurred by the Port
 F Trust authority for engagement of labour made at the request
 of the Steamer Agent and the service rendered was before the
 goods had come into the custody of the Port Trust authority. The
 view expressed with regard to the liability of a Steamer Agent,
 therefore, is in a different context, it is contended.

G 9. On behalf of the respondent Port Trust authority it is
 contended that the decision of this Court in the 1997 case has
 to be understood to be confined to situations where the bill of
 lading had been endorsed or delivery orders had been issued

H 3. (1963) Supp. 2 SCR 915.

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by the Steamer Agent. In all other situations i.e. where the bill of lading has not been endorsed, a relationship of bailor and bailee between the Steamer Agent and the Port Trust authority would come into existence by virtue of the provisions of Section 42 of the Act of 1963 and continue till the bill of lading is duly endorsed. This is because the goods come into the custody of the Port Trust from the ship owner by operation of the provisions of Section 42 of the Act of 1963. It is further contended that the views expressed in *Sriyanesh Knitters* (supra) with regard to the relationship of bailor and bailee between the consignee and the Port Trust authority was in a situation where the consignee had already appeared on the scene and taken delivery of the goods. Distinguishing the aforesaid two judgments it is contended that the issue arising is squarely covered by the decision of the Constitution Bench holding a Steamer Agent to be liable under the Act to payment of demurrage charges and other port dues.

10. While it is correct that the liability to pay demurrage charges and port rent is statutory, in the absence of any specific bar under the statute, such liability can reasonably fall on a Steamer Agent if on a construction of the provisions of the Act such a conclusion can be reached. Determination of the aforesaid question really does not hinge on the meaning of the expression "Owner" as appearing in Section 2(o) of the Act of 1963, as has been sought to be urged on behalf of the appellant though going by the language of Section 2(o) and the other provisions of the Act especially Section 42, an owner would include a ship owner or his agent. Otherwise it is difficult to reconcile how custody of the goods for the purpose of rendering services under Section 42 can be entrusted to the Port Trust authority by the owner as provided therein under Section 42(2). At that stage the goods may still be in the custody of the ship owner under a separate bailment with the shipper or the consignor, as may be. Even de hors the above question the liability to pay demurrage charges and port rent would accrue to the account of the Steamer Agent if a contract of bailment

A between the Steamer Agent and the Port Trust authority can be held to come into existence under Section 42(2) read with Section 43(1)(ii) of the Act of 1963. For the reasons already indicated the decision in *Sriyaneesh Knitters* (supra) with regard to existence of a relationship of bailor and bailee

B between the consignee and the Port Trust authority instead of the Steamer Agent and the Port Trust authority cannot be understood to be a restatement of a general principle of law but a mere conclusion reached in the facts of the case where the consignee had already appeared in the scene. In all other

C situations where the bill of lading has not been endorsed or delivery orders have not been issued and therefore the consignee is yet to surface, the following observations of the Constitution Bench in *K.P.V. Sheik Mohamed Rowther & Co. and Others* (supra) will have to prevail.

D *“Section 40 speaks of the responsibility of the Board for the loss, destruction or deterioration of the goods of which it has taken charge as a bailee under ss. 151, 152 and 161 of the Indian Contract Act. Section 148 of the*

E *Contract Act states that a bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the bailor and*

F *the person to whom they are delivered is called the bailee. It is clear therefore that when the Board takes charge of the goods from the ship-owner, the ship-owner is the bailor and the Board is the bailee, and the Board’s responsibility for the goods thereafter is that of a bailee.*

G *The Board does not get the goods from the consignee. It cannot be the bailee of the consignee. It can be the agent of the consignee only if so appointed, which is not alleged to be the case, and even if the Board be an agent, then its liability would be as an agent and not as*

H *a bailee. The provisions of ss. 39 and 40, therefore,*

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further support the contention that the Board takes charge of the goods on behalf of the ship-owner and not on behalf of the consignee, and whatever services it performs at the time of the landing of the goods or on their removal thereafter, are services rendered to the ship."

11. From the above, the position of law which appears to emerge is that once the bill of lading is endorsed or the delivery order is issued it is the consignee or endorsee who would be liable to pay the demurrage charges and other dues of the Port Trust authority. In all other situations the contract of bailment is one between the Steamer Agent (bailor) and the Port Trust Authority (bailee) giving rise to the liability of the Steamer Agent for such charges till such time that the bill of lading is endorsed or delivery order is issued by the Steamer Agent.

12. In the orders of the Calcutta High Court under challenge, it is mentioned that Section 60 of the Act provides a remedy to the Steamer Agent to recover the dues from the consignee. Section 60 of the Act of 1963 confers a limited lien on the ship owner "for freight and other charges payable to the ship owner" which expression does not extend to demurrage and other port charges. The High Court, therefore, does not appear to be correct in its conclusions. However, the said error would not be fundamental to the final conclusion reached by the High Court. In this regard we cannot help noticing the special provisions of Sections 61 and 62 of the Act which enable the Port Trust authority to proceed against the goods within its custody to recover the charges which may be payable to the Port Trust authority. Ordinarily and in the normal course if resort is made to the enabling provisions in the Act of 1963 to proceed against the goods for recovery of the charges payable to the Port Trust authority there may not be any occasion for the said authority to sustain any loss or even suffer any shortfall of the dues payable to it so as to initiate recovery proceedings against the ship owners.

A 13. In view of the foregoing discussion, all the appeals are dismissed and the impugned orders of the High Court of Bombay and Calcutta are affirmed.

Nidhi Jain

Appeals dismissed.

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