

A THE CHAIRMAN, BOARD OF TRUSTEES  
COCHIN PORT TRUST

v.

M/S AREBEE STAR MARITIME AGENCIES  
PVT. LTD. & ORS.

B (Civil Appeal No. 2525 of 2018)

MARCH 07, 2018

[R. K. AGRAWAL AND DR. D. Y. CHANDRACHUD, JJ.]

C *Major Port Trust Act, 1963 – s. 2(o) – Liability of the consignee  
or steamer agent in respect of ground rent charges to be paid to the  
port trust – Determination of – Containers unloaded at port trust,  
but not cleared by the consignees or importers and refused to be  
de-stuffed by the Port, on the ground of inadequate storage space  
– Liability to pay ‘ground rent’, if can be imposed on the owners of  
D the vessel/steamer agents beyond the period of 75 days, fixed by  
the Tariff Authority of Major Ports – Held: In view of the  
inconsistencies in the decisions in \*Rowther-I, \*\*Rowther-II,  
\*\*\*Sriyanesh Knitters, \*\*\*\*Forbes-II and \*\*\*\*\*Rasiklal as regards on  
E whom the Port Trust has to fasten the liability for payment of its  
charges, matter referred to the larger Bench – Reference to larger  
Bench.*

F **Synthetic woolen rags were imported in containers. The  
said containers were destuffed in the Cochin Port Trust premises  
to facilitate Customs examination. The destuffed-unloaded cargo  
occupied much larger space and was not promptly cleared by the  
consignees due to certain reasons. The goods were lying idle in  
the Port premises for quite long. The port trust charged ground  
rent from the steamer agents/owners of the containers. The same  
was challenged. The question arose before the High Court that  
G whether the liability to pay ‘ground rent’ on containers unloaded  
at Cochin Port, but not cleared by the consignees/importers and  
refused to be de-stuffed by the Port, on the ground of inadequate  
storage space, can be imposed on the owners of the vessel/  
steamer agents beyond the period of 75 days, fixed by the Tariff  
Authority of Major Ports. The High Court held that there was no  
H justification for the Port Trust to collect ‘ground rent’ charges in**

respect of the containers indefinitely; and that the Port Trust could demand 'ground rent' only for a maximum period of 75 days, under the orders issued by Tariff Authority of Major Ports. Hence the present appeals by the appellant-Port Trust. A

Referring the matter to larger Bench, the Court

HELD: 1.1 The decisions in \*Rowther- I, \*\*Rowther- II, \*\*\*Sriyanesh Knitters, \*\*\*\*Forbes-II and \*\*\*\*\*Rasiklal do not seem to follow a consistent line about whom the Port Trust has to fasten the liability for payment of its charges. B

(ii) The Constitution Bench judgment in Rowther-I holds that when Port Trust takes charge of the goods from the ship-owner, the ship-owner is the bailor and the Port Trust is the bailee. While the Bench of two Judges in Sriyanesh Knitters holds that there comes into existence the relationship of bailor and bailee between the consignee and the Port Trust, the decision in Forbes-II disagrees with this view of Sriyanesh Knitters. Rasiklal opines that enquiry into such relationship is irrelevant in determining the right of a Port Trust to recover its dues. C D

(iii) While the decision in Sriyanesh Knitters was based on the interpretation of the term "owner" under Section 2(o) of the Major Port Trust Act, 1963, the judgment in Forbes-II and Rasiklal do not find the question of interpretation of the term "owner" to be relevant. E

(iv) While Forbes-II relies upon the Constitution Bench decision in Rowther-I to come to its conclusions, Rasiklal does not find Rowther-I to be an authority for the proposition that until the title in goods is passed to the consignee, the liability to pay various charges payable to a Port Trust, for its services in respect of goods, falls exclusively on the steamer agent. F

(v) In Rowther-II, it was held that once the goods are handed over to the Port Trust by the steamer and the steamer agents have duly endorsed the bill of lading or issued the delivery order, their obligation to deliver the goods personally to the owner or the endorsee comes to an end. The decision in Rasiklal, which has been delivered after the reference of Forbes-I was disposed of, takes a contrary view that in cases where the consignee does G H

A not come to take delivery of goods, the position of law laid down by Rowther-II would result in a situation that the Port Trust would incur expenses without any legal right to recover such amount from the consignor, with whom there was no contractual obligation.

(vi) The Bench of two Judges in Rasiklal opined that it agrees with the conclusions recorded in Rowther-II and Forbes-II that a Port Trust could recover the rates due, either from the steamer agent or the consignee. However, the holding in Rowther-II finds only the consignee to be liable. [Para 14] [212-B-C]

C 1.2 In view of the inconsistencies in the judgments delivered after the pronouncement by the Constitution Bench in Rowther-I, the following issues need to be resolved by a larger Bench:

D (a) Whether in the interpretation of the provision of Section 2(o) of the MPT Act, the question of title of goods, and the point of time at which title passes to the consignee is relevant to determine the liability of the consignee or steamer agent in respect of charges to be paid to the Port Trust;

E (b) Whether a consignor or a steamer agent is absolved of the responsibility to pay charges due to a Port Trust, for its services in respect of goods which are not cleared by the consignee, once the Bill of lading is endorsed or the delivery order is issued;

F (c) Whether a steamer agent can be made liable for payment of storage charges/demurrage, etc. in respect of goods which are not cleared by the consignee, where the steamer agent has not issued a delivery order; if so, to what extent;

(d) What are the principles which determine whether a Port Trust is entitled to recover its dues, from the steamer agent or the consignee; and

G (e) While the Port Trust does have certain statutory obligations with regard to the goods entrusted to it, whether there is any obligation, either statutory or contractual, that obliges the Port Trust to de-stuff every container that is entrusted to it and return the empty containers to the shipping agent. [Para 15] [213-D]

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THE CHAIRMAN, BOARD OF TRUSTEES COCHIN PORT TRUST v. 199  
M/SAREBEE STAR MARITIME AGENCIES

*Forbes Forbes Campbell and Co. Ltd. v Board of Trustees, Port of Bombay [Forbes- I] (2008) 4 SCC 87 ; The Trustees of the Port of Madras v K P V Sheik Mohamed Rowther & Co. [1963] Suppl. 2 SCR 915 ; [Rowther- I] Trustees of the Port of Madras v K P V Sheikh Mohd. Rowther & Co. Pvt. Ltd. [Rowther- II] (1997) 10 SCC 285 ; Board of Trustees of the Port of Bombay and Others v Sriyanesh Knitters (1999) 7 SCC 359 : [1999] 3 SCR 1238 ; Forbes Forbes Campbell & Co. Ltd. v Board of Trustees, Port of Bombay (2015) 1 SCC 228 : [2014] 12 SCR 337 ; Rasiklal Kantilal & Co v Board of Trustee of Port of Bombay [Rasiklal] (2017) 11 SCC 1 – referred to.*

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C

**Case Law Reference**

<b>(2008) 4 SCC 87</b>	<b>referred to</b>	<b>Para 7</b>	
<b>[1963] Suppl. 2 SCR 915</b>	<b>referred to</b>	<b>Para 9</b>	D
<b>(1997) 10 SCC 285</b>	<b>referred to</b>	<b>Para 10</b>	
<b>[1999] 3 SCR 1238</b>	<b>referred to</b>	<b>Para 11</b>	
<b>[2014] 12 SCR 337</b>	<b>referred to</b>	<b>Para 12</b>	
<b>(2017) 11 SCC 1</b>	<b>referred to</b>	<b>Para 13</b>	E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2525 of 2018.

From the Judgment and Order dated 27.09.2011 of the High Court of Kerala at Ernakulam in Original Petition No.21041 of 1999 (E)

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WITH

Civil Appeal Nos. 2526, 2527, 2530, 2529, 2528, 2531, 2532, 2533, 2534 and 2535 of 2018.

G

V. Giri, Prashant Singh Pratap, A.K. Panda, Sr. Advs, V.K. Monga, Senthil Jagadeesan, Vikas Mehta, Ms. Sunita Rani Singh, Ajai Singh, M.P. Vinod, Arvind Kumar Sharma, M.T. George, B. Krishna Prasad, O.P. Gaggar, Advs for the appearing parties.

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A The Judgment of the Court was delivered by

**DR. D.Y. CHANDRACHUD, J.** 1. Leave granted.

B 2. These proceedings have arisen from a judgment dated 27 September 2011 of a Division Bench of the Kerala High Court in a batch of writ appeals and original petitions, preferred by various shipping agents.

C 3. The question before the High Court was whether the liability to pay ‘ground rent’ on containers unloaded at Cochin Port, but not cleared by the consignees/importers and refused to be de-stuffed by the Port, on the ground of inadequate storage space, can be imposed on the owners of the vessel/steamer agents beyond the period of 75 days, fixed by the Tariff Authority of Major Ports<sup>1</sup>, a statutory body constituted under Section 47A of the Major Port Trust Act<sup>2</sup>, 1963.

D 4. The facts of the case are summarized in the following extract of the judgment of the High Court:

E “The sequence of events that led to the stalemate refers to the incidents which happened in 1998 when there (sic) imports synthetic woollen rags (in containers) in the Cochin Port Trust premises. The said containers were destuffed to facilitate Customs examination and to return the empty containers to the Steamer Agents. The destuffed cargo occupied much larger space and was not promptly cleared by the consignees in view of the hurdles placed by the Customs stating that the cargo actually did not constitute old woollen rags as declared, but mostly were brand new clothes which could not have been cleared. The ‘modus operandi’ of the consignees/importers attracted wide attention of all concerned and taking note of the probable extent of liability to be imposed by the Customs Department, and the liability to be satisfied to the Port and others concerned, the consignees did not turn up to clear the goods and they were lying idle in the Port premises for quite long.”

G The Port Trust charged ‘ground rent’ from the Steamer Agents/owners of the containers.

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H <sup>1</sup> TAMP

<sup>2</sup> MPT Act

5. The case revolves around the interpretation of the provisions of the MPT Act. The Act makes provision for the constitution of port authorities in whom it vests administrative control and management of ports. Section 3 authorises the Central Government to constitute a Board of Trustees (“Board”<sup>3</sup>) in respect of any major port. Under Section 5, every Board is to be a body corporate. Section 35 empowers the Board to execute works within or without the limits of the port and provide any such appliances for the port as it “may deem necessary or expedient”. Section 43 places responsibility on a Board for the loss, destruction or deterioration of goods of which it has taken charge.

6. Section 2(o) defines an “owner”, in relation to goods, to include “any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods”; and in relation to any vessel or any aircraft making use of any port, to include “any part-owner, charterer, consignee, or mortgagee in possession thereof”. Section 42 authorises the Board to undertake certain services. Sub-section (2) of Section 42 provides that a Board may, if requested by the owner of the goods, take charge of the goods for the purpose of performing services. Section 42(7) provides that after goods have been taken charge of and a receipt given for them under the Section, no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given or to the master or owner of the vessel from which the goods have been landed or transhipped.

Chapter VI of the Act provides for imposition and recovery of rates at ports. The right to prescribe the scale of rates for services performed by the Board or other persons and to prescribe the statement of conditions under which the premises of the Board can be used, was vested earlier, mainly under Sections 48 and 49, with the Board of Trustees of the Port. Later, with an amendment of the Act in 1997, Section 47A was inserted by which TAMP was created. The power to prescribe a scale of rates now vests with TAMP.

Under Section 59(1), a lien on goods is created in favour of the Board (in respect of any service rendered for such goods). The Board is empowered to seize and detain the goods until its rates and rents are fully paid. Section 60 provides for the Ship-owner’s lien for freight and

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<sup>3</sup>“Board” and “Port Trust authority” have been used interchangeably.

A other charges.<sup>4</sup> Under Sections 61 and 62, such seized/detained goods can be sold by the Board by public auction or in any other manner, subject to the conditions and procedures prescribed in those provisions.

B Though the term ‘ground rent’ is not defined in the MPT Act, the source of authority to levy it is in Section 49(1) (d)<sup>5</sup> of the Act. The scheme of the MPT Act appears to be silent with regard to the persons from whom ‘ground rent’ and other charges could be collected.

C 7. During the course of submissions before the High Court, it was pointed out that the question whether a “Steamer Agent” can be construed to be the “owner” of the goods carried in the vessel belonging to its principal, in view of the definition in Section 2(o) and whether the “Steamer Agent” can be made liable for the payment of storage charges/demurrage in respect of the goods, which are uncleared by the consignee, has been referred by a Bench of two learned Judges of this Court to a larger Bench in **Forbes Forbes Campbell and Co. Ltd. v Board of Trustees, Port of Bombay**<sup>6</sup> [Forbes- I]. This Court had then framed the following questions of law of public importance:

- D
- a) 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;
  - E b) Whether a steamer agent can be made liable for payment of storage charges/demurrage in respect of goods, which are uncleared by the consignee, even where the steamer agent has not issued a delivery order; and

F <sup>4</sup> Section 60(1) provides: (1) “if the master or owner of any vessel or his agent, at or before the time of landing from such vessel any goods at any dock, wharf, quay, stage, jetty, berth, mooring or pier belonging to or in the occupation of a Board, gives to the Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the ship-owner, to an amount to be mentioned in such notice, such goods shall continue to be liable to such lien to such amount.”

G <sup>5</sup> Section 49(1) (d) provides: [(1) The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder]:-

...

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

H <sup>6</sup> (2008) 4 SCC 87

- c) In the event that a steamer agent is held liable, to what extent is he liable and whether it absolves the Port Trust from acting promptly under Sections 61 or 62 of the Act? A

In view of the above reference, the High Court did not deal with these specific issues. However, the High Court observed that the reference did not cover: B

- (i) The scope and the power of TAMP (with effect from 9 January 1997) to prescribe the scale of rates and conditions, as specified under Sections 48 and 49 of the MPT Act; and  
(ii) Whether various TAMP orders limiting the entitlements of the Port Trust to realize the 'ground rent' was in tune with the mandate of Sections 61/62 of the MPT Act. C

The High Court restricted the scope of consideration in the batch of petitions and appeals to the scheme of the MPT Act and the effect of the TAMP orders with regard to fixation of and the extent of liability upon the Steamer Agents to pay the 'ground rent'. D

8. The High Court held thus:

"Nowhere has it been specified in the statutes or elsewhere that the Steamer Agents have a duty or liability to clear the goods from the custody of the Port, which in fact is the onus of the Consignee/their agents. This is more so since, as per the Bills of Lading Act, the ownership and title to the goods are vested on the Consignee or an endorsee of the Bill of lading. Once the goods are landed in the Port premises, the same cannot be cleared by the Owners of the Vessel/Steamer Agents and their rights stand confined 'only to the lien' for freight and other charges to be exercised in conformity with S. 60(1) of the Major Port Trusts Act which of course is having priority in the matter of satisfaction/appropriation in the event of sale of the goods, as provided; on pursuing the course stipulated under Section 61/62 of the Major Port Trusts Act or such similar course as contemplated under Section 48 of the Customs Act. In both the cases, the Shippers' lien gets precedence and priority over any other dues/lien including the lien of the Port Trust or the amounts payable to the Customs/Government or under such other heads, except the expenses for the sale proceedings, which is the mandate under Section 63 of the MPT Act and Section 150 of the Customs Act." H

A The High Court came to the conclusion that the scheme of the statute does not contemplate a liability to be fulfilled by the vessel owners except to the extent as specified and the freight and other charges payable to them get priority over other dues payable to the Government and also to the Port, if the lien is exercised in the manner specified under Section 60(1).

B The High Court held that there is no justification for the Port Trust to collect ‘ground rent’ charges in respect of the containers indefinitely. The High Court held that the authority and power to prescribe the scale of rates and conditions under Sections 48 and 49 of the MPT Act stands vested exclusively with TAMP with effect from 9 January 1997. It held that the Port Trust can demand ‘ground rent’ only for a maximum period of 75 days, under the orders issued by TAMP. The High Court rejected the contention of the Port Trust, that there was no obligation cast upon it, to have destuffed the goods when the containers landed.

D 9. Relevant to the present context, there is a line of judicial precedent. In 1963, a Constitution Bench in **The Trustees of the Port of Madras v K P V Sheik Mohamed Rowther & Co.**<sup>7</sup> [Rowther- I] upheld the power of the Board to collect rates/charges from the steamer agent:

E “There is no doubt that the shipowner is the bailee of the shipper, the consignor, and that he is responsible for the delivery of the goods to the consignee or a transferee according to the terms of the bill of lading. This duty the ship-owner discharges only when he has delivered the goods to the consignee or such person who is entitled to take delivery in accordance with the endorsements on the bill of lading. Delivery to the Board is not delivery to the consignee or such person, both because the delivery is to be on the presentation of the Bill of lading and because the Act contains no provision which would constitute the Board an agent of the consignee for the purpose of taking delivery of the goods.”

G The case revolved around the question whether the Board acted as an agent of the consignee. The Constitution Bench held that the Board takes charge of the goods on behalf of the ship-owner and not on behalf of the consignee. The contention that the Board acted an agent of the consignee was rejected:

H <sup>7</sup>(1963) Supp. 2 SCR 915

“Section 40 [of Port Trust Act 1905] 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 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 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. 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 a bailee. The provisions of ss. 39 and 40, therefore, further support the contention that the Board takes charge of the goods on behalf of the shipowner 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.”

10. A decision of a three-Judge Bench of this Court in **Trustees of the Port of Madras v K P V Sheikh Mohd. Rowther & Co. Pvt. Ltd.**<sup>8</sup> [Rowther- II] dealt with the question “whether the demurrage charges, harbour dues etc. payable to the Port Trust of Madras were to be recovered from the consignee of the goods or from the steamer agent”. In this case, the goods remained in the custody of the Port Trust for a long time till they were ultimately confiscated by the Customs authorities. It was held that only the consignee was liable to pay the demurrage charges. The learned Judges approved the reasoning of the Madras High Court that:

“Once the goods are handed over to the Port Trust by the steamer and the steamer agents have duly endorsed the bill of lading or issued the delivery order, their obligation to deliver the goods personally to the owner or the endorsee comes to an end... Even

<sup>8</sup>(1997) 10 SCC 285

A            though the consignee is not a party to the contract of carriage once the property in the goods had passed to him, he becomes liable to pay the storage or demurrage charges as owner of the goods to the shipowner.”

B            This Court also agreed with the conclusion of the High Court that the provisions of the MPT Act cannot be so construed as to hold that the steamer agent has undertaken the responsibility for the safety of the goods till they are cleared by Customs and taken delivery of by the consignee. The facts in **Rowther II** were distinguished from those in **Rowther I**.

C            **Rowther-I** was distinguished in **Rowther-II** on the ground that while the charges in the former case related to services rendered by the Port Trust at the time of the landing of the goods and their removal thereafter to its custody those charges being for services provided for the benefit of the steamer, **Rowther-II** related to demurrage charges after the goods were landed and taken charge of by the Board and after the steamer agent had endorsed the Bill of lading or issued a delivery order for effecting delivery to the consignee, that is, after the property in the goods had passed to him.

D            11. In a subsequent judgment of this Court in **Board of Trustees of the Port of Bombay and Others v Sriyanesh Knitters**<sup>9</sup>, it was held that by virtue of the definition of the term “owner” under Section 2(o) of MPT Act and the relevant provisions of the Bills of Lading Act, the consignee of the goods named in the Bill of lading or every endorsee of the Bill of lading for the purpose of the MPT Act, is regarded as the owner of goods and it is from the owner that the recovery of charges under the MPT Act is provided in respect of such goods. It was held:

F            “It is the consignee which is the bailor with the Port Trust being the consignee (*sic* bailee).”

G            12. In **Forbes-I**, the Bench of two learned Judges of this Court doubted the correctness of the decision rendered in **Rowther- II** and referred it for consideration to a larger Bench. By an order dated 13 August 2014, a Bench of three judges did not see any inconsistency in **Rowther- II** and thus referred the matter back to the regular Bench for further hearing with the following observations:

H            \_\_\_\_\_  
<sup>9</sup>(1999) 7 SCC 359

“We have gone through the order whereby the matter has been referred to this Bench. A

We have noted the fact that no reason for not agreeing with the Judgment delivered by a three-Judge Bench has been assigned in the said order.

Moreover, upon going through the Judgment delivered in 1997 (10) SCC 285, we see no reason to disagree with the ratio laid down in the said Judgment. B

In these circumstances, we refer the matter back to the regular bench for further hearing as we do not see any inconsistency in the said Judgment.”

A Bench of two Judges of this Court thereafter heard the matter and in **Forbes Forbes Campbell & Co. Ltd. v Board of Trustees, Port of Bombay**<sup>10</sup> [Forbes-II] dealt with the liability of the Steamer Agent to pay demurrage and port charges to the Port Trust in respect of goods brought into the port and warehoused by the Port Trust Authority. This Court opined that: C

“[W]hile 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 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.” D E F G

<sup>10</sup>(2015) 1 SCC 228

A After examining the provisions of the MPT Act and the judgment of the Constitution Bench in **Rowther- I** and of a Bench of two Judges in **Sriyanesh Knitters**, the decision in **Forbes-II** concluded that:

B “[T]he 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.”

C The decision in **Sriyanesh Knitters** with regard to existence of a relationship of bailor and bailee between the consignee and the Port Trust instead of the Steamer Agent and the Port Trust authority was held to be a “mere conclusion” reached in the facts of the case.

D 13. In **Rasiklal Kantilal & Co v Board of Trustee of Port of Bombay**<sup>11</sup> [**Rasiklal**] while considering the scheme of the MPT Act, a Bench of two Judges of this Court observed that the Act is silent with regard to the persons from whom demurrage and other charges could be collected. Since services under Sections 49A to 50B are rendered only to the vessel, the Bench found it “reasonable to interpret that only the ship and its agents are liable to pay the rates for such services”. However, for services rendered to the goods, a lien is created under Section 59 (1) in favour of the Port Trust, and the Port Trust is entitled to seize and detain the goods until its charges are fully paid. While contrasting Section 42(2) which contemplates “taking charge” (not possession) of the goods by the Port Trust, and Section 59(1), which confers authority on the Port Trust to seize and detain goods of which charge is taken of, the Court identified a lack of clarity in the twin declarations in Section 59, but refused to “express any final opinion in this regard”.

E While addressing the issue about whom the Port Trust is entitled to collect charges from, the Court discussed **Rowther-I**, **Rowther- II** and **Forbes-II**. With reference to **Rowther- I**, this Court held:

F <sup>11</sup>(2017) 11 SCC 1

“Rowther-I is not an authority for the proposition that a Board could collect rates due for the services rendered to goods only from the steamer agent. Nor did this Court deal with the question whether the title in the goods is a relevant factor for determining a Board’s right to collect the rates... Rowther-I is no authority for the proposition that until the title in goods passed to the consignee the liability to pay various rates payable to a Board for the services rendered in respect of goods falls exclusively on the steamer agent.”

The Court opined that it agreed with the conclusions laid down in **Rowther-II** and **Forbes-II**, that “a Board could recover rates due, either from the steamer agent or the consignee”. However, the Court held that the question of title of the goods and the point of time at which the title passes to the consignee is irrelevant for determining the authority of a Board to recover the amounts due to it. The Court held:

“As rightly opined in Forbes [II] case, there is no bailor and bailee relationship between the Board (the 1st respondent) and the consignee (the appellant); either voluntarily or statutorily compelled but such a relationship exists between the 1st respondent and the owner of the ship (through the steamer agent). It is possible in a given case where the consignee or any other person (such as the appellant herein) claiming through the consignor, eventually may not come forward to take delivery of the goods for a variety of reasons - considerations of economy or supervening disability imposed by law etc. Therefore, in such cases to say that merely because the bill of lading is endorsed or the delivery order is issued, the consignor or his agent is absolved of the responsibility for payment (of rates or rent for services rendered w.r.t goods) would result in a situation that the Board would incur expenses without any legal right to recover such amount from the consignor and be driven to litigation for recovering the same from the consignee who did not take delivery of the goods with whom the Board had no contract of bailment and consequently no contractual obligation to pay the ‘rates or rent’.”

It was further held that:

“Title to the goods is irrelevant even in the cases of a bailment arising under a contract. Any person who is capable of giving

- A physical possession of goods can enter into a contract of bailment and create bailment... The obligation of the bailee to return the bailed goods when the purpose of bailment is accomplished and the obligation of the bailor to pay the bailee “the necessary expenses incurred by him for the purpose of the bailment” in our opinion would attend not only a bailment by contract but every kind of
- B bailment... If the bailor has such an obligation to pay the bailee, any person claiming through the bailor must necessarily be bound by such an obligation unless the bailee releases such person from such an obligation. A consignee is a person claiming through the consignor (bailor).”
- C Dealing with the import of goods into India by ship, the Bench referred to Section 1 of the Indian Bills of Lading Act, 1856 and held thus:
- D “... the 1856 Act enacts a fiction that the consignee to whom the property in the goods shall pass shall be “subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself”. Bill of lading is evidence of a contract between the shipper (consignor) and the owner of the ship by which the owner of the ship agrees to transport the goods delivered by the consignor to a specified destination and deliver it to the consignee. Delivery of goods pursuant to a bill
- E of lading creates a bailment between the shipper and the owner of the ship. Obviously the legislature knew that a consignee under a bill of lading is a 3rd party to the contract but intrinsically connected with the transaction and thought it necessary to specify the rights and obligations of the consignee. Hence, the fiction under
- F the 1856 Act, that the moment the property in goods passes to the consignee, the liabilities of the consignee in respect of such goods would be the same as those of the consignor, as if the contract contained in the bill of lading had been made with the consignee.”
- G The Bench came to the conclusion that:
- H “The consequence is that the 1st respondent (sub-bailee) would be entitled to enforce its rights flowing from the Bailment between the shipowner and the 1st respondent against the consignee and recover expenses incurred by it in connection with the bailment from the consignee. The terms and conditions of the contract

between the consignor or person claiming delivery of the goods are irrelevant for determining the right of the 1st respondent to recover its dues. The obligations/liability of the consignee is determined by the statute. But the said obligation is not exclusive to the consignee. The consignor (bailor) is not relieved of the obligation to pay by virtue of Section 158 of the Contract Act the expenses incurred by the 1st respondent... At this juncture, we must point out that the declaration under Section 42(7) absolving the owner of the ship and his agents is limited only to the obligations owed by the bailor to the consignee not to the sub bailor like the 1st respondent.”

The Bench opined that if the MPT Act authorises the Port Trust “to recover its dues by bailing the goods under bailment, in those cases where the consignee does not turn up to take the delivery of the goods within the time stipulated under Sections 61 or 62 of the Act, to deny the right to demand and recover the amounts due from the consignee when he seeks delivery of the goods under bailment would be illogical and inconsistent with the scheme of the Act” (sic):

“Such right, in our view, undoubtedly enables the 1st respondent to claim various amounts due to it, from any person claiming delivery of the goods either the bailor or a person claiming through the bailor for the services rendered w.r.t. the goods. (sic)”

14. Analysing the above judgments, the following position emerges:

- (i) The decisions in **Rowther- I**, **Rowther- II**, **Sriyanesh Knitters**, **Forbes-II** and **Rasiklal** do not seem to follow a consistent line about whom the Port Trust has to fasten the liability for payment of its charges;
- (ii) The Constitution Bench judgment in **Rowther-I** holds that when Port Trust takes charge of the goods from the ship-owner, the ship-owner is the bailor and the Port Trust is the bailee. While the Bench of two Judges in **Sriyanesh Knitters** holds that there comes into existence the relationship of bailor and bailee between the consignee and the Port Trust, the decision in **Forbes-II** disagrees with this view of **Sriyanesh Knitters**. **Rasiklal** opines that enquiry into such relationship is irrelevant in determining the right of a Port Trust to recover its dues;

- A (iii) While the decision in **Sriyanesh Knitters** was based on the interpretation of the term “owner” under Section 2(o) of the MPT Act, the judgment in **Forbes-II** and **Rasiklal** do not find the question of interpretation of the term “owner” to be relevant;
- B (iv) While **Forbes-II** relies upon the Constitution Bench decision in **Rowther-I** to come to its conclusions, **Rasiklal** does not find **Rowther-I** to be an authority for the proposition that until the title in goods is passed to the consignee, the liability to pay various charges payable to a Port Trust, for its services in respect of goods, falls exclusively on the steamer agent;
- C (v) In **Rowther-II**, it was held that once the goods are handed over to the Port Trust by the steamer and the steamer agents have duly endorsed the bill of lading or issued the delivery order, their obligation to deliver the goods personally to the owner or the endorsee comes to an end. The decision in **Rasiklal**, which has been delivered after the reference of **Forbes-I** was disposed of, takes a contrary view that in cases where the consignee does not come to take delivery of goods, the position of law laid down by **Rowther-II** would result in a situation that the Port Trust would incur expenses without any legal right to recover such amount from the consignor, with whom there was no contractual obligation; and
- D (vi) The Bench of two Judges in **Rasiklal** opined that it agrees with the conclusions recorded in **Rowther-II** and **Forbes-II** that a Port Trust could recover the rates due, either from the steamer agent or the consignee. However, the holding in **Rowther-II** finds only the consignee to be liable.
- E
- F
- G 15. Taking note of the above inconsistencies in the judgments which have been delivered after the pronouncement by the Constitution Bench in **Rowther-I**, we are inclined to the view that the following issues need to be resolved by a larger Bench:
- H a) Whether in the interpretation of the provision of Section 2(o) of the MPT Act, the question of title of goods, and the point of time at which title passes to the consignee is relevant to determine the liability of the consignee or steamer agent in respect of charges to be paid to the Port Trust;

- b) Whether a consignor or a steamer agent is absolved of the responsibility to pay charges due to a Port Trust, for its services in respect of goods which are not cleared by the consignee, once the Bill of lading is endorsed or the delivery order is issued; A
- c) Whether a steamer agent can be made liable for payment of storage charges/demurrage, etc. in respect of goods which are not cleared by the consignee, where the steamer agent has not issued a delivery order; if so, to what extent; B
- d) What are the principles which determine whether a Port Trust is entitled to recover its dues, from the steamer agent or the consignee; and C
- e) While the Port Trust does have certain statutory obligations with regard to the goods entrusted to it, whether there is any obligation, either statutory or contractual, that obliges the Port Trust to de-stuff every container that is entrusted to it and return the empty containers to the shipping agent. D

The larger Bench may deal with any additional issues relevant to the context, as it deems necessary.

16. We request the Registry to place the papers before the Hon'ble Chief Justice of India for such administrative directions as may be considered appropriate. E