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Court : Kolkata

Decided On : Aug-29-1977

Reported in : AIR1978Cal84

Judge : Monjula Bose, J.

Acts : Calcutta Port Act, 1890 - Sections 113(2) and 142

Appeal No. : Suit No. 404 of 1967

Appellant : Hindusthan Cables Ltd. and anr.

Respondent : Great Eastern Shipping Co. Ltd. and anr.

Advocate for Def. : S. Ukil, Adv. (for No. 1) and ;A. Ghosh, Adv. (for No. 2)

Advocate for Pet/Ap. : Lahiri, Adv.

Disposition : Suit dismissed

Judgement :

ORDER

Monjula Bose, J.

1. In this suit the plaintiffs have claimed a sum of Rs. 19,003.65 P. against the defendants or either of them as compensation for loss and damages suffered by reason of non-delivery or short delivery of 22 pieces of copper wire bars. Hindusthan Cables Ltd., the plaintiff No. 1, it is alleged inter alia purchased 3955 pieces of Electrolytic Copper wire bars and the same were made over to the Great Eastern Shipping Co. Ltd. the defendant No. 1 at Tacoma, Washington, U.S.A. on board their vessel 'Jag Ratna' for carriage to the Port of Calcutta against a Bill of Lading dated Nov. 30, 1965 endorsed in favour of the plaintiff No. 1. The vessel 'Jag Ratna' is alleged to have arrived at the Port of Calcutta on Feb. 22, 1966 and the said goods discharged at the port of Calcutta by March 1, 1966. Twenty-two pieces out of the said consignment, it is alleged were not received by the plaintiff No. 1 at all. In the premises, the plaintiff No. 1 alleges to have suffered loss and damage which is assessed at Rs. 19,003.65 P. The plaintiff No. 2, the insurer of the said goods it is further alleged has since paid off the claim of the plaintiff No. 1, who in turn has issued a letter of subrogation assigning all rights, title and interest under the policy of Insurance in favour of the plaintiff No. 2. It is contended that the plaintiff's cause of action did not arise until Dec. 14, 1966, and as such its claim is not barred under Section 142 of the Calcutta Port Act, 1890.

2. The defendant No. 1 has filed its written statement wherein it alleges that the entire cargo under the bill of lading was duly landed at the Port of Calcutta, and acknowledged by the defendant No. 2 in the latter's 'Out-turn report', and its landing receipt. In the premises it is alleged that the responsibility of the defendant No. 1 in respect of the said cargo was fully discharged.

3. Commissioners of the Port of Calcutta the defendant No. 2 herein, also filed a written statement and admitted that landing receipts were granted for the entire manifested quantity but alleges that the same was issued by mistake, and that subsequently it was discovered that delivery was short landed by 22 pieces. The plaintiff's lack of knowledge of loss till Dec. 14, 1966 was denied and it is also disputed that the plaintiff's cause of action did not arise earlier than the said date. It is further denied that the plaintiff No. 1 suffered any loss or damage, and it is contended that the claim of the plaintiffs against the defendant No. 2 is barred under Section 113 (2) as also under Section 142 of the Calcutta Port Act, 1890,

hereinafter referred to as the said Act.

4. The following issues were accordingly raised and settled at the trial:--

1 (a) Was the entire cargo covered by the bill of lading duly landed from the vessel?

(b) If so, was a landing acknowledgement granted by defendant No. 2 and was the defendant No. 1's liability discharged thereby as alleged in paragraph 8 of the written statement of Great Eastern Shipping Co. Ltd.?

(c) If not, was the landing receipt for the entire manifested quantity granted by mistake as alleged in paragraph 5 of the written statement of the Commissioners for the Port of Calcutta?

2. Did the plaintiff not know until 14th December, 1966 that 22 pieces had not landed at all?

3. Have the defendants or either of them any liability for the sum of Rupees 19,003.65 p. to the plaintiffs as alleged in paragraph 10 of the plaint?

4. Is the claim of the plaintiffs against the defendant No. 2 barred under Section 113 (2) and under Section 142 of Calcutta Port Act, 1890?

5. To what relief, if any, are the plain-tilt's entitled?

5. By consent, formal proof of the documents disclosed by the parties were dispensed with and copies thereof in the brief of documents prepared for the use of the court were tendered as exhibits 'A', 'I' and 'OI'. At the hearing, the Invoice in respect of the said goods, the Bill of Lading dated November 30, 1965, the Bill of entry dated March 15, 1966, a Wharf Receipt Bill dated March 18, 1966, a letter dated March 26, 1966 from the plaintiff No. 1 to the plaintiff No. 2, a letter from the plaintiff No. 1's agent Arora & Shegal Private Ltd., to the Administrative Officer Lal Bazar Police Station Calcutta dated March 28, 1966; the 'Out-turn Report' dated March 1, 1966 and the Deposit Import Delivery Challan dated March 17, 1966 were tendered as Exhibits 'B', 'C', 'D', 'E', '2', '3' and 'O2' respectively.

6. The only witness for the plaintiffs was one Monoranjan Chakraborty, an employee of the Claim and Clearance Department of the plaintiff No. 1. He stated that the plaintiff No. 1 did not receive the 22 pieces of copper bars and the plaintiff had repeatedly instructed their clearing agents to locate the said goods. The plaintiff No. 1 came to know from the police report for the first time that the said 22 pieces had not been landed from the vessel, in answer to questions from the Court, however he admitted that prior to Dec. 14, 1961 the plaintiff No. 1 knew that the goods were lost but they were assured by the Port Authorities repeatedly that the missing goods would be available upon search. He admitted further that by the letter dated March 26, 1966 part of Exhibit 'A' the plaintiff No. 1 informed the Insurance Company that '22 pieces of copper bars are missing from the port'. His evidence appears to be that plaintiff No. 1 knew of the loss as far back as March 26, 1966, but in the absence of appropriate documents no claim could be made.

7. The defendants did not choose to adduce any oral evidence and relied on the documentary evidence tendered as Exhibits in the case.

8. Mr. S. Ukil, learned counsel, for the defendant No. 1 has submitted that the evidence of the plaintiff is not that goods were short landed, in which case liability of loss would lie on the shippers but that the goods were pilfered, or lost from the shed of the Port Authorities and consequently short delivered to the plaintiff No. 1. The documentary evidence particularly Ext. 4 showed that the goods arrived at the Port of Calcutta and were duly discharged from the vessel.

9. Under the Commercial Documents Evidence Act of 1939 he contended that the Out-turn Report may be presumed to be correct. This report he submits did not indicate that any part of the goods were short landed. From the wharf rents bill Ext. 'E' it would appear that on March 18, 1966 delivery was taken of the goods and payment was received in respect of the entire quantity shipped, namely 3955 pieces of Copper wire bars.

10. In the letter dated July 18, 1966 (part of Ext. A) the defendant No. 1 states

'we have to advise you that we have received 'nil' Out-turn report from the Calcutta Port Authorities in respect of your above cargo. This would mean that as per the

record of the Calcutta Port Authorities the full cargo was discharged from the vessel into their custody. Since as per the out-turn report of the Calcutta Port Commissioners no cargo was discharged short from the vessel we regret we are unable to entertain your claim for the alleged loss'.

In its letter dated March 26, 1966 (part of Ext. A) addressed to its Insurers the plaintiff categorically states

'we understand from our Calcutta office that 22 pieces of Copper Wire bars against the above consignment are missing from Port'

and registered a claim on that basis. The plaintiff's agents stated in their letter dated March 28, 1966 that

'22 pieces of copper 'bars have been pilfered from the docks for which police report No. 240 dated 6-3-66 has been issued.'

11. In the facts aforesaid and in view of the categorical documentary evidence before the Court which must be held to prevail over any oral evidence to the contrary, I am constrained to hold that the goods were not short landed and no liability attaches to the defendant No. 1.

12. This brings us to the question whether the defendant No. 2 is liable for the undisputed shortage of 22 pieces after the same was discharged from the vessel and landed on the premises of the Port Authorities.

13. Mr. A. Ghosh, learned counsel, appearing for the defendant No. 2 conceded that in the absence of any evidence from the Commissioners he could not substantiate that the entire manifested quantity was recorded by mistake in the landing receipt. On issues Nos. 2 and 4 Mr. Ghose however, made submissions. Relying on Section 113 (1) of the Calcutta Port Act, 1890, he submits the Commissioners are authorised to take charge of goods landed by them. Sub-section (2) of Section 113 of the said Act provides that goods stored by the Commissioners would remain at the risk and expenses of the owner if not removed within five clear working days of landing of goods at Port. It is not disputed that in this instant case the goods were unloaded between February 22,

1966 and March 1, 1966 (see Q. 148). This is supported also by the Out-turn Report dated March 1, 1966 (Ext. 4). Mr. Ghosh contends that the delivery of the goods however, was taken as late as March 18, 1966 as seen from the wharf rent bill (Ext. E). Mr. Ghosh cites *Prabhudas Mulji Doshi v. Governor General of India in Council* reported in AIR 1955 NUC (Cal) 1058 for the proposition that under Section 113 (2) of the Calcutta Port Act, 1890 after five clear working days goods remain with Port Commissioners at the owners' risk. Citing *Commr. for the Port of Calcutta v. Ghasiram Lachmi Narayan and Co.* reported in AIR 1955 NUC (Cal) 4501 Mr. Ghosh argues further, that although Section 114 (1) of the said Act requires the Commissioners to give a notice to the consignee to remove the goods within the time specified, nevertheless failure of the Port Commissioners to issue such a notice will not deprive the Commissioners of protection under Section 113 (2) of the said Act.

14. Mr. Ghosh next contends that in any event, the suit is liable to be dismissed as against the defendant No. 2 under Section 142 of the Calcutta Port Act, 1890. The section reads:

'No suit shall be brought against any person for anything done, or purporting or professing to be done, in pursuance of this Act, after the expiration of three months from the date on which the cause of action in such suit shall have arisen.'

15. Mr. Ghosh submits that letters of the plaintiff No. 1 and its authorised agent in Ext. 'A' show that the cause of action of the plaintiff arose on the 18th March, 1966 and/or when the plaintiff complained of not having received the full quantity of the goods and particularly referred the Court to a letter dated Aug. 24, 1966 from the Traffic Manager of the defendant No. 2 addressed to the plaintiff No. 1's agent Arora & Shegal Pvt. Ltd., denying liability for the said missing goods namely 22 pieces of Copper wire bars.

16. In the said letter the defendant No. 2 categorically refused to accept liability for the said 22 pieces and the suit having been filed more than three months after such denial he submits the plaintiff's claim is barred by limitation under Section 142 of the Calcutta Port Act, 1890.

17. Mr. Lahiri, learned Advocate for the plaintiffs submits that the plaintiffs are entitled to a decree against the defendant No. 1 and alternatively against the defendant No. 2. The goods despatched it is contended, had not been fully landed and no inference should be drawn from the out-turn report. He argues in the absence of any evidence from the defendants no such presumption arose.

18. Mr. Lahiri relies on paragraph 8 of the written statement of the defendant No. 1 wherein it is admitted that the entire cargo was duly landed. No landing receipt being produced nor tendered, Mr. Lahiri invited the Court to draw an adverse inference, in view of the documentary and oral evidence to the contrary as discussed above Mr. Lahiri's contentions cannot be accepted.

19. Mr. Lahiri next contended that Section 113 (2) of the said Act is not applicable to the facts of the case as there is evidence on record to show that goods were missing from the custody of the Port Authorities as early as March 6, 1966 and it would have been an empty formality to call upon the defendant No. 2 to deliver the entire amount by the time envisaged by the said section. The goods were discharged during the period Feb. 22, 1966 till March 1, 1966 and in the absence of any evidence as to how much was discharged on a particular day, the last date of discharge March 1, 1966 should be taken as the starting point for computing the period of limitation i.e., within 5 clear working days of landing. Calculating from the said date no liability could lie on the owner until March 7, 1966 and there was evidence to show that a complaint was lodged to the police on March 6, 1966 in respect of the said missing goods. He contends that on the receipt of the police report on Dec, 14, 1966 the plaintiff's cause of action arose.

20. Whilst I accept the submissions of Mr. Lahiri in so far as Section 113 (2) are concerned, I am unable to accept his other contentions. The defendant No. 2 admittedly obtained possession of the goods upon landing and/or discharge from the vessel in their statutory capacity and when a demand was made to them for delivery of goods, they were requested to act in the same capacity. As such Section 142 appears to be applicable to the facts of the case and the suit having been filed more than 3 months after the denial of liability on Aug. 24, 1966, it is patently barred by limitation as against the defendant No. 2.

21. On the basis of my findings above I answer the issues as follows:--

Issue No. 1 (a)-- Yes

Issue No. 1 (b)-- Yes.

Issue No. 1 (c)-- Not pressed by defendant No. 2.

Issue 2.-- No; the plaintiff knew as early as March 18, 1966 that entire quantity of 3955 pieces of goods landed and/ or discharged, but 22 pieces missing from Port premises, and in any event knew on March 25, 1966 and/or on March 28, 1966 that a complaint dated March 6, 1966 was lodged with the police authorities in respect of the said missing goods;

3. No; by reason of finding of no liability against defendant No. 1 and suit being barred against defendant No. 2.

4. Claim of the plaintiff not barred under Section 113 (2) tout barred under Section 142 of the Calcutta Port Act, 1890, against defendant No. 2.

5. None, for reasons aforesaid in answer to issues Nos. 3 and 4.

22. The suit is accordingly dismissed but in the facts and the circumstances of the case I direct each party to pay and bear their own costs.