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FORBES FORBES CAMPBELL and Co. Ltd. Vs. THE BOARD OF TRUSTEES, PORT OF BOMBAY

2008 SCC 87

-Anushka Dutta[1]

FACTS OF THE CASE

The Major Port Trust Act of 1963 created the statutory entity that is the plaintiff. Seven cartons of ball bearings that had been transported by the vessel "S.S. President Madison" and had arrived in the Port of Bombay on May 5, 1972, were shipped to One Metal Fabs India Pvt. Ltd. Also referred to as Defendant No. 1. The products in question were last able to be cleared on 10.2.1972. American President Lines Ltd. was a foreign corporation, who was the owner of the ship "S.S. President Madison." The second defendant served as the said American President Lines Ltd.'s steamers representative. Given that the goods were uncleared for more than two months after their arrival, during which time the plaintiff was not aware of the name and location of the owner. the plaintiff asked defendant No. 2 to provide the name and location of the consignee because the goods were uncleared for more than two months following the date of landing and the plaintiff was at that time ignorant of it. Because defendant No. 2 did not respond to this letter, the plaintiff served defendant No. 2 with a notification of sale and asked that it be delivered to the final consignee via R.P.A.D. in a subsequent letter dated 12.10.1974. Because defendant No. 2 did nothing, the plaintiff again warned the second defendant in a notice dated 11.5.1975 that the products were uncleared in the warehouse and would be sold at public auction if they were not cleared within 10 days of the notice. After further correspondence and no action from defendant No. 2, the complainant sold the items at a public auction on September 9, 1976, and received Rs. 62,000 as the proceeds of the sale. The plaintiff

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discovered that an amount of Rs. 4752/- was still owed and payable to after deducting the required sum, such as port fees, customs tax, etc.

ISSUES

1. Is the defendant no. 2 liable to pay the deficit in the sale?
2. Was the steamer agent liable to pay demurrage charges?

JUDGMENT

Though the defendant No. 1 consignee did not dispute the lawsuit, a written declaration was submitted on behalf of defendant No. 2 in that case. In this written declaration, it was argued, among other things, that the second defendant was not responsible for clearing the landed goods and did not care if they remained uncleared as was claimed. It was further argued that the plaintiff had acted negligently by delaying the sale for 4 years instead of promptly auctioning the goods. It was asserted that defendant number one, the shipper, was the only defendant who was obligated to pay the plaintiff's claim. Both sides testified at the trial, and the trial court dismissed the plaintiff's lawsuit against defendant No. 2 by judgement and decree based on the evidence presented on record. On November 7, 1989, the plaintiffs' appeal before the Court of Small Causes' full bench was granted. After hearing both sides, the Apex Court noted that “neither side had contested that the facts and legal issue raised in the appeal” were addressed by the Apex Court's decision in “Trustees of the Port of Madras through its Chairman v. K.P.V. Sheikh Mohd. Rowther & Company Pvt. Ltd and Anr., and that the High Court had not taken this decision into consideration when it made its order on April 18, 1999. As a result, the Apex Court reversed the High Court's ruling and remanded the case for further consideration in accordance with the law.” The parties were instructed to draw the High Court's attention to the aforementioned Supreme Court ruling. In this manner, the case is being brought up before this court for a new hearing. “It was argued on behalf of defendant No. 2 that defendant No. 2 was not the owner of the goods that had been landed in Mumbai in accordance with Section 2(o) of the Major Port Trust Act,1963 and could not be held responsible for paying any amount due in respect of the said goods”, including “wharfage, demurrage, custom duty, or any other dues that would arise in respect of the said goods”. 3 In addition to the meaning of "owner," “the Single Judge of the Calcutta High Court's decision in the case of Seahorse Shipping and Shipmanagement Private Ltd. and Anr. v. The Board of Trustees for the Port of Calcutta was relied upon.” “Trustees of the Port of Madras through its Chairman v. K.P.V. Sheikh Mohd. Rowther and Co. Pvt. Ltd. and The Board of Trustees of the Port of Bombay v. Sriyanesh

Knitters" were two cases in which the Apex Court rendered decisions on which the attorney for defendant No. 2 also relied. After listening to both parties, the single judge of the court, Justice R.S. Mohite respectfully concurred in Suit No. 2026 of 1981. However, he explained why he had decided to agree with the Single Judge of the Calcutta High Court and disagree with the Single Judge in the case of Seahorse Shipping and Shipmanagement Pvt. Ltd. and Anr. v. The Board of Trustees for the Port of Calcutta. CHAPTER V - REASONING OR ANALYSIS "On behalf of the defendant No. 2 it was contended that defendant No. 2 was not the owner of the goods which had been landed in Mumbai. Trustees of the Port of Madras through its Chairman v. K.P.V. Sheikh Mohd. Rowther and Co. Pvt. Ltd. and The Board of Trustees of the Port of Bombay v. Sriyanesh Knitters were two cases in which the advocate for defendant number two cited decisions from the Apex Court." It was argued on behalf of the original plaintiff that a judgement and order issued by the Single Judge of this court rendered the problem raised by defendant No. 2 to be no longer relevant. The Single Judge further ruled that the steamer agent in that instance was responsible for paying demurrage fees. However, it was attempted to be argued that the Single Judge rendered the aforementioned judgement without taking into account the Major Port Trusts Act, 1963, or citing the pertinent judgements of the Apex Court that were relevant to the problem. Any agent who had custody of the goods at any moment in time or an agent hired to load or unload those goods would also be considered an owner under the Act's definition of the term. 4 This justification led to the steamer agent being held responsible for paying the demurrage fees owed to the harbour trust. By themselves, the phrase "agent for the sale, custody, loading, or unloading of such products" designates different types of owners. If the lawmakers intended to limit the term owner to representatives of the consignor, consignee, or shipper, this could have been made clear through express language or by inserting the word "their" after the word "or". According to Section 42(2), "the Port Trust is required to provide a receipt indicating the receipt of the goods while taking charge of them in the prescribed proforma. Once the goods have been taken charge of and a receipt provided for them, no person to whom the receipt has been provided is liable for any loss or damage." Sections 61 and 62 of the aforementioned Act then give the directors of the Port Trust the authority to sell the goods in the two circumstances described in the aforementioned sections. On the basis of the circumstances, the ruling rendered by the Apex Court in Board of Trustees of the Port of Bombay and others v. Sriyanesh Knitters (cited above) is also distinguishable. There was no steamer representative present in that situation. "The Apex Court determined that the contract was between the Port Trust and the holder of the bill of landing, in this instance the consignee, because a receipt had been issued under Section 42(2) in favour of the consignee."

CONCLUSION

The ruling of the Supreme Court in the matter of Trustees of the Port of Madras through its Chairman n v. K.P.V. Sheikh Mohd. Rowther & Co. Pvt. Ltd. and Anr. has been cited by both parties (cited supra). It is evident from reading the facts of that case that the facts of the current case can be used to differentiate it. Since the steamer agent in the case before the Apex Court had in fact issued a delivery order, the Apex Court ruled that "once the goods were turned over to the Port Trust by the steamer agent and the steamer agent had duly endorsed the bill of landing or issued the delivery order, the steamer agent was no longer required to deliver the goods personally to the port trust." When feasible, the Port Trust should take action under Sections 61 or 62 of the Act if the debts or goods are not paid. In this interpretation of the situation, Rule is absolved. There won't be an expense allocation schedule.