

(1970) 03 KL CK 0015

High Court Of Kerala

Case No: A.S. No. 451 of 1964

Central Gulf Steamship
Corporation

APPELLANT

Vs

Sorabji and Company Private
Limited

RESPONDENT

Date of Decision: March 25, 1970

Acts Referred:

- Carriage of Goods by Sea Act, 1925 - Article 3

Citation: (1971) KLJ 275

Hon'ble Judges: T.S. Krishnamoorthy Iyer, J; M. Madhavan Nair, J

Bench: Division Bench

Advocate: P.K. Kurien, K.A. Nayar and K. Sukumaran, for the Appellant; K.P. Abraham, K.R. Pathrose, George Kurien and K.K. Poullose, for the Respondent

Final Decision: Dismissed

Judgement

T.S. Krishnamoorthy Iyer, J.

The defendant in O.S. No. 26 of 1962 on the file of the Sub Court, Cochin has filed the appeal against the decree allowing the plaintiff's claim for recovery of Rs. 44,480.58 from the defendant being the damages on account of short delivery of 66 bales of American Raw Cotton. 205 bales of high density compressed cotton were consigned as per bills of lading, Exs. P2 to P6 dated 31-1-1961 on board the defendant's steamer "S. S. Hassel" to be conveyed by them as carriers from the port of Corpus Christi, Texas, U.S.A. to the Port of Cochin to be delivered to the order of the Bank of India Limited on account of Dhanrajmal Gobindram, Bombay, according to the terms and conditions of the Bills of Lading. The plaintiff is the agent of Dhanrajmal Gobindram. The Bills of Lading and the other shipping documents were endorsed to the plaintiff by the Bank of India Limited to take delivery of the goods from the Cochin Port. The plaintiff got delivery of only 139 bales and there was short delivery of 66 bales of cotton. He, therefore, claimed the invoice value of the goods

short delivered, namely, Rs. 43608.42 and interest thereon at 6% from 30-11-1961, the date when the claim was made.

2. The defendant raised two contentions, (1) they are not answerable for the invoice value of the goods; they are answerable for the value of the goods at the time and place of shipment and they are not liable for any further charges or interest claimed by the plaintiff; (2) the suit is barred by limitation.

3. The learned Sub-Judge on the first question found that the plaintiff is entitled to claim the invoice value of goods as damages and also entitled to claim interest, because of the custom of trade, We have been taken through the evidence and we find no reason to differ from the conclusion of the learned Sub Judge.

4. The important point argued before us was the plea of limitation. Ext. X2, carriage sheet maintained by the Port authorities shows that the Steamer reached Cochin Port at 8.45 a.m. on 27-3-1961 and left the Port at 6.15 a.m. on 28-3-1961. The suit was filed on 28-3-1962. The plea of limitation has to be decided on the basis of clause (3) of paragraph 6 of Article III of the Carriage of Goods by Sea Act XXVI of 1925. The said provision reads:

In any event the carrier and ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

The defendant's counsel would contend that since 139 bales were discharged in the Port on 27-3-1961 and the Steamer left the Port at 6.15 a.m. on 28-3-1961, the period of one year has to commence from 27-3-1961. The alternative argument was that even if the one year" has to be calculated from 28-3-1961, the date 28-3-1962, on which the suit was instituted, is not within one year and, therefore, the suit is barred.

5. In [The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar](#), their Lordships of the Supreme Court while holding that clause 3 of paragraph 6 of Article III in the Schedule of the Act is not merely a rule of limitation, but provides for the extinction of the right of compensation, interpreted the words "date when the goods should have been delivered" in the clause thus:

We have therefore come to the conclusion that whatever be the proper mode of ascertaining the date when delivery "ought to be made" under Art. 31 of the Limitation Act--whether that be the reasonable time for delivery in the circumstances of the case or the date when after correspondence the carrier intimates its inability to deliver or the date of the final repudiation of the claim on a claim for compensation having been made or in the case of part delivery the date when the bulk of the consignment was delivered--the date when the goods should have been delivered for the purpose of the Third Clause of the 6th paragraph of Art. III of the Act is the date when the ship by which the goods were contracted to the

carried has left the port at which delivery was to be made.

In accordance with the above interpretation we have to hold that the goods in question should have been delivered on 28-3-1961 when the steamer left the port.

6. But the counsel for the defendant would contend that since most of the goods were discharged on 27-3-1961 and there was no further discharge of the goods by the steamer at the port on 28-3-1961, it must be taken that there was a discharge of all the goods on 27-3-1961, and, therefore, the period of one year must commence from the said date. We are unable to accept this contention. The entire goods were admittedly not discharged on 27-3-1961. It was possible for the parties to have expected that the remaining goods would be discharged at any time before the steamer actually left the port and that happened only on 28-3-1961 and the goods should have been discharged only on that date when the steamer left the port. In the decision in *Ladhubhai v. New Dholera Steamship* AIR 1952 Sau 104 cited by the learned counsel for the defendant it was observed thus:

The goods were for all purposes finally delivered by the Company on 12-1-1948 as they were no longer liable in respect thereof subsequent to the discharge of these goods from the steamer. The period of one year under clause 6 of the Article therefore began from the date of the delivery to the Port Commissioner and this would be so irrespective of the question whether he was the appellants' agent or not.

The observation was made on the facts of the particular case. It cannot help the counsel for the defendant in the matter of finding out "the date as to when the goods should have been delivered" occurring in the relevant provision.

7. The next contention of the learned counsel was that even if the period of one year is reckoned from 28-3-1961, the suit instituted on 28-3-1962 will not be within one year and is, therefore, out of time. The learned counsel for the plaintiff pointed out that the words in clause (3) of paragraph 6 of Appendix III to the effect "unless the suit is brought within one year after the delivery of the goods" will show that in reckoning one year, the date on which the goods should have been delivered has to be excluded. He emphasised the word "after" occurring in the clause. We find considerable force in this contention. By way of analogy he cited the decision in *Manjuli v. Civil Judge* where their Lordships of the Bombay High Court had to interpret the words "within 15 days after the date of the declaration of the result of election" in section 15 (1) of the Bombay Village Panchayats Act (3 of 1959). Their Lordships observed thus:

On the plain reading of this section, it appears that the election is permissible to be challenged within 15 days "after" the date of declaration of the election result. The date of the declaration of the result is therefore, to be excluded because 15 days contemplated are after that day.

Applying the same principle, we hold that 28-3-1961 has to be excluded for the purpose of reckoning the one year contemplated by the relevant clause. If so, the suit is not barred by time. In the result, the appeal is devoid of merit. We dismiss the same with costs.