
The Board of Trustees of the Port of Bombay Vs Ramanlal Mohanlal Parikh of Bombay Inhabitant carrying on business in the name and style of Parikh and Co. as the sole Prop. and Venkat Industrial Corporation

Writ Petition No. 6321 of 1987

Court: Bombay High Court

Date of Decision: Aug. 8, 2002

Acts Referred:

Constitution of India, 1950 " Article 227#Limitation Act, 1963 " Section 30#Major Port Trusts Act, 1963 " Section 58, 60, 67A

Citation: AIR 2004 Bom 44 : (2003) 1 CivCC 521 : (2004) 163 ELT 22 : (2003) 4 MhLj 689

Hon'ble Judges: A.M. Khanwilkar, J

Bench: Single Bench

Advocate: U.J. Makhija, instructed by Mulla and Mulla and Coagle Blunt and Cargo, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

A.M. Khanwilkar, J.

This writ petition under Article 227 of the Constitution of India takes exception to the Judgment and Decree passed

by the Small Causes Court at Bombay dated 17th Feb., 1986 in Regular Suit No. 914/1182/1999. That suit was filed by the Petitioners against

the Respondents to recover a sum of Rs. 7055.67ps. with interest thereon at the rate of 10 per cent per annum from the date of the suit till

realization with rests and professional charges. The background in which the said suit came to be filed has been neatly articulated by the Trial Court

in Para 2 of the impugned Judgment. The same reads thus:

The facts are mostly admitted and they may be stated as under-The dispute relates to a assignment of 27 drums UTX 100 Yellow per S.S.

Treneglas under I.G.M. No. 1837, Item No. 441, dated 6.4.1974. The second defendants were holders of an Import Licence No.

P/S/1763444416 dated 20.8.1973 issued by the Joint Chief Controller of Imports, Kanpur. It is against this licence that the first defendants

imported the above 27 drums. The general landing date of cargo from the said vessel was 10.4.1974 and the last free date for clearance of the

goods was 17.4.1974. At the time of landing, out of 27 drums, three drums were found short. It is not in dispute that out of the remaining 24

drums, one was destroyed in fire and one was sold by public auction. The first defendant sought clearance of the goods but the Deputy Collector

of Customs by his order dated 18.3.1976 confiscated the goods. The order of the Deputy Collector of Customs was received by Bombay Port

Trust on 23.4.1976. After the receipt of the confiscation order, Bombay Port Trust by their letter No. C/2A-210/99A/of 76.77 dated 28.4.1976

informed the defendants that the consignment has been confiscated and the defendants should clear the Port Trust charges from the date of landing

till the date of confiscation. It is stated that the first defendants clearing agent M/s. Sagle Transport Services by their letters dated 17.3.1978 and

24.5.1978 informed that they had already demanded Port Trusts charges amounting to Rs. 7057.12. The correct charges however, are 7053.67

and suit is filed to recover these charges from the defendants.

2. The sole question that arises for consideration in the present case, which has been found against the Petitioners by the Trial Court, is:

Whether the suit filed by the Petitioners in the backdrop of the above said facts can be said to be barred by limitation?

The Trial Court has taken the view that having regard to the purport of Article 113 of the Limitation Act, 1963 the suit as filed was barred by

limitation. According to the Trial Court, the amount towards damages which were sought to be recovered in the present suit were liable to be paid

on day to day basis till the liability of the Respondents ceased by virtue of the confiscation ordered by the Customs Authorities on 18th March,

1976. The Trial Court, therefore, held that any claim pertaining to the period 3 years prior to 16.4.1979, i.e. the institution of the suit was clearly

barred by limitation.

3. The Petitioners have directly approached this court against the above decision by way of present writ petition instead of filing a statutory appeal.

This Court while admitting the writ petition, however, had kept the question of maintainability of the writ petition open to be decided at the time of

final hearing. In so far as that objection is concerned, the learned counsel contends that this Court having admitted the writ petition as back as in

1987, the petition should not be thrown out on such technical plea at this distance of time. He further submits that the Petitioners had consciously

approached this Court in writ jurisdiction because the Trial Court while rejecting the Petitioners' plea has adverted to a decision of this Court in the

case of Board of Trustees of Port of Bombay v. N.A. Noormohomed and Company and Anr. in Suit No. 798 of 1969 decided on 8th Sept.

1980. He submits that in fact this decision has no application: but, in any case, the question of application and purport of that decision will arise for

consideration and, if the Petitioners were to prefer appeal before the Appellate Bench of the Small Causes Court, that would not be fruitful- as

even the Appellate Court would prefer to rely on the same reasoning adopted by the trial Court. He submits that the Petitioners are really

interested in getting the question of law authoritatively decided and have no intention to pursue the proceeding against the Respondents. Because

the question involved in this case is a recurring one.

4. At the outset. I shall deal with this aspect of the matter, before I proceed to advert to the other contentions raised by the Petitioners on merit. To

my mind, there is force in the plea of the Petitioners that it would be appropriate and in the interest of justice to decide the question of law raised in

the present writ petition. But, I am inclined to do so on the assurance given by the Petitioners that the Petitioners shall not pursue the matter further

against the Respondents even if they were to succeed in this petition; because the claim set up against the Respondents in the subject suit is only for

a sum of Rs. 7055.67ps. And as observed by the Trial Court, the Petitioners have already recovered sum Rs. 3000/- out of the said amount,

which was required to be adjusted. Indubitably the question of law raised by the Petitioners is of substantial importance and is a recurring one. In

the circumstances, I would proceed to decide the present writ petition on merit.

5. In so far as the merit is concerned, the learned counsel for the Petitioners contends that the Trial Court has completely overlooked the scope of

Section 58 of the Major Port Trusts Act. Section 58 of the said Act reads thus:

Time for payment of rates on goods, Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in

respect of goods to be removed from the premises of a Boar, or to be shipped or export, or to be transhipped shall be payable before the goods

are so removed or shipped or transhipped.

According to the learned counsel, the purport of this provision is that it is only when the Customs Authority confiscated the goods which are in the

custody of the Petitioners that the Respondents became liable to pay the rates of goods; as is the claim set up in the present suit. He further submits

that, in the present case, the Petitioners were apprised about the order passed by the Customs Authority dated 18.3.1976 only on 23.4.1976 and

it from this date that knowledge of such order can be ascribed to the Petitioners. If that be so, the right to sue for recovery of suit claim would arise

on and from that date and the suit having been filed on 16.4.1979, therefore, is well within limitation. he submits that Article 113 of the Limitation

Act which is a residuary clause, provides that the suit for which there is no prescribed period provided elsewhere in the Schedule and, suit for such

relief is to be filed, the period of limitation is within 3 years from the date when the right to sue accrues. He therefore, submits that on such

interpretation of Article 113 read with Section 58 of the Major Port Trusts Act, the inescapable conclusion is that the suit instituted by the

Petitioners is within limitation.

6. This Petition was in fact listed for hearing on 12.7.2002. Although the respondents have been served and Respondent No. 1 has entered

appearance through V.L. Punjwani Advocate, none appeared when this writ petition was taken up for hearing on 12.7.2002. On that day, the

appearance of counsel for the Respondent No. 1 was duly notified on the board issued by the Registry. The matter, however, remained part-heard

on that day and further hearing was deferred till 19.7.2002. Once again matter was shown on the board on 19.7.2002 when none appeared for

the Respondents inspite of the name of the counsel for Respondent No. 1 was duly notified on the board. The matter was kept for further hearing

on 29.7.2002. Again on that day none appeared for the Respondents. In the circumstances, hearing of writ petition was concluded on that day and

the matter is kept today i.e. on 8.8.2002 for Judgment. Even today none appeared for the Respondents when the matter was called in the morning

session and therefore, it was kept again at 2.45p.m. and again at 4.00p.m. Accordingly, I have no option but to proceed to decide the matter as

exparte against the Respondents.

7. On giving serious thought to the contentions raised on behalf of the Petitioners, I have no hesitation in taking the view that the approach of the

Trial Court is completely amiss: whereas, the issue of limitation ought to have been answered in favour of the Petitioners. I shall presently record

the reasons for taking this view. We have already made reference to the provisions of Section 58 of the Major Port Trusts Act. On plain language

of the said provision, to my mind, it is an enabling provision-which enables the Petitioner-Bombay Port Trust to claim recovery of the payment of

rates of goods on happening of certain events specified therein. It provides that the liability of payment of rates commences immediately on the

landing of the goods and till the same are to be remove from the premises of a Board or to be shipped for export, or to be transshipped. However,

the rates ""become payable"" before the goods are so removed or shipped or transhipped. In that sense, the right to sue to recover rates of goods

would accrue to the Port Trust on the date the goods are to be removed from its premises even if the liability of payment of rates would commence

on day to day basis on the landing of the goods. What is relevant to note is that the Legislature has employed expression ""removed from the

premises of a Board"". The expression ""removed"" would clothe the situation where the Port Trust becomes incapable of exercising control over

those goods. That could happen because the goods are physically removed from its premises or even on account of confiscation by the Customs

Department. The consequence of confiscation, in law, is that the Port Trust is disrobed of its right to exercise control over those goods. To put it

differently, an act of confiscation is akin to one of "asportation", which is de jure removal of the goods from the Port Trust who had lien over those

goods and of vesting of ownership thereof in the Customs Authority, though the goods may not have been physically removed from the premises of

the Port Trust as such. In other words, on the issuance of confiscation order by the Customs Authority, the ownership of such goods, in law, vest

forthwith in the Customs Authority and, from that date the Port Trust is denuded of this authority to charge demurrage charges thereon or to deal

with those goods in any manner. This is one inevitable consequence of the confiscation order. Indubitably, on and from the date of confiscation by

the Customs Authority, the Port Trust becomes disentitled to recover further damages in spite of non clearance of the goods from the Port Trust. A

priori, in law, as soon as the confiscation order is passed by the Customs Authority the goods are removed from the control of the Port Trust. In

such a situation the rigour of Section 58 would come into play- on account of which the right to recover amount towards the payment of rates of

such goods would immediately get crystallized so as to give cause of action for the Port Trust to recover that amount.

8. On the above reasoning, limitation would ordinarily start in running the present case on 18.3.1976 when the order of confiscation was passed. In

that case, the suit as filed by the Petitioners on 14.4.1979 would be barred by limitation having been filed beyond 3 years. However, in this case,

the learned counsel contends that the right to sue would accrue to the Petitioners on acquiring knowledge of the existence of confiscation order,

when they were apprised about that order on 23.4.1976. In other words, it is contended that it is on and from 23.4.1976 that the right to sue

accrued or got crystallized in favour of the Petitioners. In support of this contention, reliance is placed on the decision of the Apex Court reported in

Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, . In that case the Apex Court has observed that making of

the order "must mean either actual or constructive communication of the said order to the party concerned". Relying on this decision, it is

contended that since the confiscation order was admittedly communicated to the Petitioners on 23.4.1976, the limitation would start on and from

that date and the suit having been filed within 3 years therefrom i.e. on 16.4.1979, the same will have to be held within limitation. I find force in this

submission.

9. Reverting to the aspects which weighed with the Trial Court, the Trial Court has relied on the decision of this Court in Suit No. 798/1969

between the Board of Trustees of the Port of Bombay v. N.A. Noormohomed and Company and Anr. decided on 8th Sept.1980. However, to my

mind, this decision is of no avail. The question which has been considered in this decision is essentially as to the application of Section 30 of the

Limitation Act, 1963. That question has been answered against the Petitioners on the premise that the cause of action to institute suit in that case

had arisen after coming into force of Limitation Act, 1963. No doubt, in Para 15 of that decision, it is observed that the parties are agreed that if

the claim of the Plaintiffs is confined to the period from 17.8.1966 till 8.1.1968, the amount of demurrage and surcharge for this period comes to

Rs. 27,530.06ps. However, that does not mean that, this court was called upon to consider the question which arises for consideration in the

present case. As observed earlier, that decision is limited to the issue as to whether provisions of Section 30 of the Limitation Act, 1963 had any

application to the said suit.

10. The next aspect which has weighed with the Trial Court is the decision of the Supreme Court reported in *The Trustees of the Port of Madras*

Vs. Aminchand Pyarelal and Others, . Even that decision is not on the question which arises for consideration in the present case. As rightly

pointed out by the learned counsel for the Petitioners, only two questions have been addressed by the Apex Court, as is evident from the

observations in Para 9 of that decision. The first question considered was whether the scale of fees under which the appellants charge demurrage is

void as being unreasoning and as being beyond their powers? The second question considered is: whether the first Respondent is liable to pay the

demurrage claimed by the Port Trust? Understood thus, the question as to when the right to sue accrues to the Port Trust, having regard to

language of Section 58 of the Major Port Trusts At, was not in issue before the Apex Court. No doubt, Section 60 of the Madras Port Trusts Act

has been adverted to in the said decision as observed by the trial Court; but the Apex Court has not and in fact had no occasion to consider the

efficacy and purport of that provision. If this be so, then this decision has no application to the present case. The Court below has mainly

proceeded to decide the matter only on the above basis which, to my mind, is improper. The Trial Court has observed that right to sue accrued to

the Petitioners everyday from the landing of the goods on 10.4.1974 and therefore, the suit for recovery of the amount could be confined only for

the period of 3 years prior to the institution of the suit. That reasoning clearly overlooks the correct purport of Section 58 of the At, as discussed

above.

11. The learned counsel for the Petitioners has rightly relied on the decision of this Court in Suit No. 194 of 1976 in the case of *The Boards of*

Trustees of the Port of Bombay v. Carvan Hosiery Factory and Ors. In that case of the contention raised on behalf of the Defendants was that the

claim of the Port Trust for Warf age and demurrage charges for the period from 28.9.1972 to 27.8.1973 was barred by limitation as the suit was

filed only on 13.1.1976. In that decision, analyzing the rival contentions, the Court proceeded to answer the issue against the Defendants by

observing that actual amount payable to the Port Trust could be ascertained only after adjudication proceeding by the Customs Authorities are

completed. Applying that principle, the Court held that the suit filed on 13.1.1976 for the recovery of amount towards Warf age and demurrage

charges for the period between 28.9.1972 to 27.8.1973 was within limitation because the confiscation order was passed on 20.8.1973.

12. Mr. Makhija for the Petitioners has also placed reliance on the decision of this Court reported in The Trustees of the Port of Bombay Vs.

Jayantilal L. Gandhi, . However, to my mind that decision is on the interpretation of Section 67A of the Bombay Port Trust Act.

13. In the circumstances, this petition would succeed and the impugned order is set aside. It is however, mace clear that although the impugned

order is set aside, the Petitioners will not be entitled to pursue the matter against the Respondents/defendants as the only surviving claim was Rs.

4000/- and I have entertained this writ petition only to answer the question of law that has been raised herein and not to permit the Petitioners to

precipitate the matter against the Respondents-Defendants- for- that would neither be in the Public interest.

14. Petition disposed of in the above terms.