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Union of India and Another Vs Central Gulf Steamship Corporation and Another

Court: Calcutta High Court

Date of Decision: July 19, 1978

Acts Referred: Contract Act, 1872 â€" Section 230

Citation: 83 CWN 75

Hon'ble Judges: Pratibha Bonnerjea, J

Bench: Single Bench

Advocate: Goutam Chakraborty and Gopal Law, for the Appellant; S. Majumdar, for the Respondent

Final Decision: Dismissed

Judgement

Pratibha Bonnerjea, J.
The facts of this case in short is that the defendant No. 1 agreed to carry 793 bundles of steel plates consisting of

7676 pieces from the Port of Detroit to the Port of Calcutta for the plaintiffs on the terms inter alia freight prepaid. The said 793 bundles were

shipped on board the vessel S.S. ""Green Wave"" and the defendant No. 1 issued four Bills of Lading Nos. 63, 124, 213 and 388 respectively and

all dated 4.11.84 containing description of the goods and the number of packages. The plaintiff No. 1 is the owner of the said goods and the

plaintiff No. 2 is the consignee in respect of the said 793 packages. It is an admitted fact that during the transit, the defendant No. 1 had cut open

the packages and at Singapore had transshipped 2975 pieces of steel places to the vessel S.S. ""Green Point"", the plaintiffs" case in the plaint is that

the defendant No. 1, in breach of the terms of the contract of carriage, had cut open the bundles without their knowledge and consent. In terms of

the Bills of Lading, the defendant No. 1 was to carry the goods in bundles and unload the same at the Port of Calcutta in the same condition. It is

also admitted that the goods being unloaded in loose condition, the Port Commissioners and the customs authorities, at first, could not deliver the

goods to the plaintiffs as the same did not tally with the description in the bills of Lading, manifest filed and delivery-orders issued by the defendant

No. 2 who was acting as the local agent of the defendant No. 1. It is the plaintiffs case that on account of the delay in delivery of the goods, the

Port Commissioners charged the plaintiffs a total sum of Rs. 78,105.99 p by way of wharf rent. In the present suit the plaintiffs are seeking to

recover the said sums from the defendants on the ground that the plaintiffs have suffered loss and or damages to the extent of the said sum on

account of the breach of contract by the defendants in cutting open the bundles and unloading the same in loose condition contrary to the terms

contained in the Bills of Lading and for causing delay in delivery by not taking timely steps for delivery of the goods in pieces. In the written

statement, it was alleged, that the plaint did not disclose any cause of action against the defendants in as much as the defendants had performed the

contract by unloading the goods at the Port of Calcutta, and the plaintiff had accepted the performance of the contract by the defendants by taking

delivery in pieces. It was further alleged that the defendants were entitled to cut open the bundles under the contract. In any event by taking

delivery in pieces, the plaintiffs represented to the defendants that they would forego their claims, if any, and as such they were estopped from

claiming damages. The suit did not lie against the defendant No. 2 as it was acting as the agent of the defendant No. 1.

The following issues were raised at the trial :--

ISSUES

1. (a) Was there any delay in delivery of the consignments on board the vessels Green Wave'' and ''Green Point''

(b) If so, was the defendant No. 1 responsible for such delay ?

2 Did the plaintiff pay to the Calcutta Port Authorities a sum of Rs. 55,962.31 paise in respect of Green Wave and a sum of Rs. 22,143.68 paise

in respect of Green Green Point as wharf rent ?

3. Are the defendants liable to pay to the plaintiff the said sum of Rs. 55,962.31 paise and Rs 22,143.68 paise ?

4. (a) Did the plaintiff represent that if delivery was effected piece by piece, the plaintiff would forego their claim, as alleged in paragraph 19 (e) of

the Written Statement ?

(b) If so, what is the effect of such representation ?

5. Does the plaint disclose any cause of action ?

6. To what relief, if any, the plaintiff is entitled ?

The plaintiff examined two witnesses. There was no oral evidence on behalf of the defendants.

Issue No. 5.

2. The defendant''s counsel pressed this preliminary issue first. He relied on Section 230 of the Indian Contract Act, in Support of his submission,

that no suit would lie against the agent, the defendant No. 2, as the facts of this case did not come under the exceptions mentioned in that Section.

The plaintiffs had full knowledge that the defendant No. 2 was an agent, as all letters written by the defendant No. 2 were written in their capacity

as an agent of the defendant No. 1. He pointed out the pages 13, 18, 25, 31, 32, 34 and 35 of the admitted brief of document being "Ext. A". On

behalf of the plaintiffs, it was submitted, that the agency agreement between the two defendants would show the extent of liability of the defendant

No. 2 as an agent. This document was Suppressed from the Court. Moreover, the plaintiffs, by their letter dated 16.1.64 (page 17 Ext. A) gave

notice to the defendant No. 2 that it would be liable for all damages caused to the plaintiffs for delay in delivery. The defendant No. 2 did not deny

the said liability and accepted the said position.

Section 230 of the Indian Contract is as follows:--

In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he

personally bound by them.

Such a contract shall be presumed to exist in the following cases:---

(1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad :

(2) Where the agent does not disclose the name of his principal :

(3) where the principal, though disclosed, cannot be sued.

3. It is clear, that the facts of this case, do not come under any of the three exceptions mentioned therein and are completely covered by the first

half of the Section. The opening words ""In the absence of any contract to that effect"" do not refer to the contract of agency between the principal

and agent as submitted by the plaintiffs" counsel. It refers to the contract between the plaintiff and the agent on which the suit is filed. If contract in

suit fastens any liability on the agent, then a suit will lie against the agent otherwise not Under the Contract in the present suit, the defendant No. 2

has no personal liability. In the premises, the suit against the defendant No. 2 is not maintainable.

4. The defendants" counsel has submitted that contract of carriage has been fully performed. The Port Commissioners has been acting as the bailee

for the plaintiffs and delivery to the Port Commissioners is delivery to the plaintiffs. It has been further submitted that plaintiffs have accepted

performance by taking delivery of goods in pieces. There is no allegation in the plaint about any short delivery or damages to the goods. The

question of wharf rent is a dispute between the plaintiffs and their bailees the Port Commissioners. The defendants have nothing to do with this

dispute. The plaint therefore, does not disclose any cause of action against the defendant No. 1 and the suit is not maintainable.

5. It was submitted on behalf of the plaintiff that delay in delivery was caused on account of the cutting open of the bundles and unloading the

goods in loose condition. The defendant No. 1 not entitled to cut the bundles under the contract as alleged in the written statement. Unloading of

the goods in pieces was in breach of the terms of the contract of carriage evidenced by the said four Bills of Lading. Delivery was accepted by the

plaintiff after reserving their right to claim damages against the defendants as would be clear from the letters dated 9.1.64, 10.1.64, 16.1.64,

24.2.64, 7.3.64 and 19.11.64 written by the plaintiffs to the defendants. In fact two bills were also sent to the defendant No. 2 (Pages 29 and 30

Ext ("A").

6. From the admitted facts, it is clear, that the goods were unloaded in pieces and were treated as unmanifested goods connected with the Bills of

Lading concerned and as such the Plaintiff No. 2 as the consignee, was unable to take delivery within the free period allowed by the Port

Commissioners. The position was mat at the time of the unloading, the owner or the consignee of these unmanifested goods was unknown to the

Port Commissioners. This argument on bailment by the defendant''s counsel was probably based on Section 112 of the Calcutta Port Act although

he did not mention about the same during hearing. Under the circumstances, the Port Commissioners could not be treated as the bailee for an

unknown cosignee. The principal of bailment will apply when the ""bailor"" and the ""bailee"" are both ascertained persons. If one of them is absent or

unknown, the said jural relationship cannot arise. No authority has been cited on behalf of the defendants, that even in such circumstances the Port

Commissioners could be regarded as the bailee for the unknown owner. If the principle of bailment be extended to this type of cases, then it would

lead to a serious anomalous position. The Port Commissioners can be regarded as the statutory bailee for the smuggler of goods unlawfully and

surreptitiously brought to the port and unloaded at the destination as unmanifested goods. This aforesaid submission of the defendants'' counsel,

therefore, cannot be accepted. The defendants have failed to prove that they were entitled to cut open the bundles in terms of the contract. The

unloading and delivery of the goods were, therefore, subject to all liabilities that might have arisen on account of the breach of contract committed

by the defendant No. 1 during transit by cutting open the bundles. Hence the suit is maintainable as against the defendant No. 1 and the issue No.

5 is answered accordingly.

Issue No. 1 (a) and (b)

7. The vessel S.S. Green Wave arrived on 8.1.64 carrying 4701 pieces of steel plates in loose condition. The defendant No. 2 had issued delivery

orders and filed manifest in accordance with the Bills of Lading showing the goods in bundles. The loose goods could not be connected with the

aforesaid documents. On 9.1.64 the plaintiff"s by a letter (page 34 Ext A) requested the defendant No. 2 to modify the delivery order and obtain

approval of the customs for taking delivery in pieces subject to the defendant"s liability for shortage, if any. In reply dated 10.1.64 (page 13 Ext A)

the defendant No. 2 informed the plaintiff that they would do the needful and demanded freight from the plaintiffs. It would be noted, that the Bills

of Lading showed that freights were prepaid. By letter dated 10.1.64 (page 14 Ext A) the plaintiffs again informed the defendant No. 2 that

customs Authorities warned an application for delivery in pieces and was not willing to act on the previous application of the defendant No. 2

dated 9.1.62. The plaintiff demanded survey of the goods and reserved their right to damages for shortages if any. By letter dated 15.1.64 (page

16 Ext A) the plaintiff"s again informed the defendant No. 2 that the goods were lying in the Dock for a considerable time and requested the

defendant No. 2 to comply with the requirements or the Fort Commissioners immediately. Thereafter by another letter dated 16.1.64, (page 17

Ext. A) addressed to the defendant No. 2, the plaintiffs recorded, that no effective step had been taken by the defendant No. 2 in spite of

plaintiffs" letters dated 9.1.64, 10.1.64, and 15.1.64. By that letter the plaintiffs reserved the rights to claim damages against the defendants for any

extra expenses that might be incurred by them on account of the defendant"s failure to give delivery in accordance with the contract of carriage in

bundles. It appears that the defendant No. 2, thereafter finalised the matter, and the plaintiffs were able to take delivery of the goods carried by S.

St Green Wave from 19.1.64. The evidence of plaintiff"s witness T.K. Bhattacharjee was that the delay in getting delivery of the goods was also

due to the reasons that subsequently another vessel had arrived and was berthed in the shed where plaintiffs goods were lying and the goods

unloaded from that ship were dumped over the plaintiff"s goods. The time taken for delivery was from 19.1.64 to 7.3.64. If the defendant No. 2

had co-operated earlier, the plaintiff could have removed the goods before the other vessel arrived (Bhattacharjee Q. 31). According to the

plaintiff, the second vessel unloaded its goods over the plaintiff"s goods lying in the dock and this intervening act of the third party was an event

dependent on the situation created by the aforesaid wrongful acts of the defendants. The entire loss suffered by the plaintiff, due to delay in delivery

of goods, was therefore, recoverable from the defendants. On the other hand, the defendant''s counsel submitted, that the delay in delivery was

due to an independent intervening event unconnected with the defendants'' acts and as such no damage could be awarded against them on the

basis of the principle of remoteness of damages.

8. It has to be seen, whether the plaintiff''s in the present case, are also entitled to recover from the defendant No. 1 the loss suffered by them on

account of the delay in getting delivery caused by the second vessel''s unloading its cargo on the plaintiff''s goods. The leading case on this point is

Hadley vs. Baxenadle (1854) 9 Exc. 341. The two rules established by this decision are as follows:--

(1) where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such

breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things,

from such breach of contract itself.

(2) where such damage may reasonably be supposed to have been in the contemplation of both the parties at the time they made the contract, as

the probable result of the breach of it. If the special circumstances under which the contract was actually made were communicated by the plaintiffs

to the defendants and this was known to both the parties, the damages resulting from the breach of such a contract, which they would reasonably

contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances as known

and communicated.

9. There has been modern restatements of the aforesaid two rules in Victoria Laundry vs. Newman (1949) 2 K.B. 528 (C.A.). The facts of this

case was that the plaintiff launderers and dyers claimed damages for loss of general business profits from the defendants'' delay in delivering the

boiler he sold to them. The defendant knew the nature of the business carried on by the plaintiff and that they intended to put the boiler into use in

the shortest possible time. In granting these damages Asquith L.J. put the matter so clearly that Mayne & Mogregor on Damages 12th Edn. page

124 observed ""it deserves full quotation"". In the view of the Court, the proportions which emerged from the authorities as a whole were these:--

(1) It is well settled that the governing purpose of damages is to put the party whose rights have been violated in the same position, so far as money

can do so, as if his rights have been observed. This purpose, if relentlessly pursued, would provide him with a complete indemnity for all loss de

facto resulting from a particular breach, however improbable, however unpredictable. This, in contract at least, is recognised as too harsh a rule.

Hence,

(2) In cases of breach of contract the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the

contract reasonably foreseeable as liable to result from the breach.

(3) What was at that time reasonably so foreseeable depends on the knowledge then possessed by the parties, or, at all event, by the party who

later commits the breach.

(4) For this purpose, knowledge "possessed" is of two kinds; one imputed, the other actual. Everyone, as a reasonable person, is taken to know

the "ordinary course of things, and consequently what loss is liable to result from a breach of contract in that ordinary course. This is the subject

matter of the "first rule" in Hadley v. Baxendale. But to this knowledge, which a contract-breaker is assumed to possess whether he actually

possesses it or not, there may have to be added in a particular case knowledge which he actually possesses, of special circumstances outside the

"ordinary course of things," of such a kind that a breach in those special circumstances would be liable to cause more loss. Such a case attracts the

operation of the "second rule" so as to make additional loss also recoverable.

(5) In order to make the contract-breaker liable under either rule it is not necessary that he should actually have asked himself what loss is liable to

result from a breach. As has often been pointed out, parties at the time of contracting contemplate not the breach of the contract, but its

performance. It suffices that, if he had considered the question, he would as a reasonable man have concluded that the loss in question was liable

to result.

(6) Nor, finally, to make a particular loss recoverable, need it be proved that upon a given state of knowledge the defendant could, as a reasonable

man, foresee that a breach must necessarily result in that loss. It is enough if he could foresee it was likely so to result. It is indeed enough. If the

loss (or some factor without which it would not have occurred) is a "serious possibility" or a "real danger". For short, we have used the word

"liable" to result. Possibly the colloquialism "on the cards" indicates the shade of meaning with some approach to accuracy.

10. It should be noted that the first rule of Hadley v. Baxendale ""damages arising naturally according to the usual course of things"" was re-stated as

loss actually resulting as was at the time of the contract reasonably foreseeable by the parties"". This ""reasonable foresee-ability"" is in fact

knowledge"" of the parties of the usual course or event or ""serious possibility of happening of something"" and this knowledge can be ""actual"" or

imputed"". The scope of the expression ""reasonably foreseeable"" has been explained by Lord DU Farcq in Monarch Steamship Co. Limned v.

Karlshamns Oljefarbriker (1949) A.C. 196 at 233:--

Damage arises ""according to the usual course of things"" if in the circumstances existing at the date of the contract, both parties to it, supposing

them to have considered the probable effects of a breach of the contract, with due regard to events which might reasonably be expected to occur,

must be assumed as reasonable man to have foreseen such damages as at least a serious possibility"". In that case the defendant failed to provide a

seaworthy ship for carriage of plaintiffs" cargo to the Swedish destination as agreed. The agreement was entered into in April May 1939 when

outbreak of the war between Great Britain and Germany was a serious possibility. Due to the condition of ship, the voyage was delayed and due

to outbreak of the Second World War, the ship was ordered by the Admiralty to Glasgow. The costs of transhipment of the cargo was held to be

a consequence of the breach of contract since the outbreak of the world war was such a possibility that the defendant could have anticipated it.

It had been argued on behalf of the plaintiff in that case, that if the defendant had not taken so unduly long a time the ship would have arrived at the

destination long before the outbreak of war and the hire of the three additional ships for transhipment would have been unnecessary. Lord Porter,

in his judgment at 215 of the aforesaid case, held:--""Where, however the basis of liability is delay, it is, as I think, the reasonable anticipation which

matters.

11. Coming back to the facts of the present case, it would be clear, that the defendant No. 1, as the carrier, and the defendant No. 2 as its local

agent, were fully acquainted with the usual course of event and/or day to day activities at the Port of Calcutta. Vessels arriving and unloading their

goods in the dock is a frequent and common event. If cargoes of one vessel remain long in the dock, the chances of unloading of cargoes over it by

another vessel arriving subsequently is a serious possibility. Taking into consideration the usual course of events, the delay in giving delivery of the

goods lying in the dock could be further delayed by unloading of cargoes over it by other vessels could have been reasonably foreseen by the

defendants in this case, when the contract was entered into. Both these defendants also could reasonably foresee that if the goods shown in the

Bills of Lading in bundles, were unloaded in loose condition as unmanifested goods, delivery to the consignee would be bound to be delayed unless

immediate steps would be taken for giving delivery in loose conditions by complying with all the formalities necessary. Any delay in the matter

would result in the cargo remaining in the dock with the risk and possibility of other cargo being unloaded over them by incoming vessels. All these

consequences were reasonably foreseeable at the time of the contract. The payment of the wharf rent by the plaintiffs'' could be avoided if

unloading or the cargoes were in bundles in accordance with the terms of the contract of carriage if immediate steps for giving delivery in pieces

were taken by the defendant No. 2, when the goods were unloaded as unmanifested goods. The defendant No. 1 committed breach of contract

by cutting open the bundles and transhipping a portion of the good''s to the S.S. Green Point and the defendant No. 2, as its agent, wrongfully

failed to make timely arrangements for giving delivery of the goods in pieces within the free period granted by the Port Commissioners. The

aforesaid breaches of contract resulted in the consequential payment of wharf rent by the plaintiff. In the premises the defendant No. 1 is liable to

pay the entire loss suffered by the plaintiff to the extent of Rs. 55,962. 31p.

12. The vessel S.S. ""Green Point"" was due to arrive on 10. 2. 64 carrying 2975 pieces of steel plates transhipped by the defendant No. 1. The

defendant No. 2 refused to issue delivery order unless freight was paid. The plaintiff, by its letter dated 7.2.64, (page 19 Ext A) reminded the

defendant that freight was pre-paid as shown in the relevant Bills of Lading. By that letter, the plaintiff requested the defendant No. 2, to issue

delivery orders and assured them that, if by any chance, freight remained unpaid, the plaintiff would pay the same. There was a planning meeting on

10. 2. 64 for delivery of plaintiffs'' goods from S.S. Green Point (page 20-21 Ext A). At the said meeting, the representative of the defendant No.

2, Sri Ghatak, admitted that the-manifest already issued by them, showed the goods in bundles and that required correction by showing the goods

in pieces. He assured that arrangement for delivery in pieces would be made under the supervision of the defendant No. 2. By a letter dated

11.2.64, (page 22 Ext A) the plaintiff requested the defendant No. 2 to advise the Port Commissioners to deliver the goods in pieces. The vessel

S.S. Green Point arrived on 15.2.64. By letter dated 27.2.64 (page 27 Ext A), addressed to the defendant No. 2, the plaintiff requested them to

fulfil the requirements of the Port Commissioners for giving delivery of goods. By another letter to the defendant No. 2, dated 7.3.64 (page 28 Ext

A), the plaintiff put on record as follows :--

.....Although a portion of the materials, out of the above shipment, were lightened at Singapore and subsequently carried on per S.S. Green

Point, you did not mention the quantity property as per original Bill Lading carried by the letter vessel nor did you arrange with the Port

Commissioners to deliver the materials earlier in spite of requests made under this office letter No. S/523/B1, 3 Green Point/12/63 dated 11.2.64

As a result the Administration had to wait till the outturn Report of the former vessel was completed when the cargo of the later vessel (transhipped

cargo) incurred considerable amount of rent.

Please note that you are liable for your failure to deliver the materials in accordance with the Bill of Lading and rent and other incidental charges

accused on the above consignment originally shipped per S.S. Green Wave and part thereof transhipped per S.S. Green Point and this office will

submit Bill in due course.

13. There was no reply to this letter by the defendant No. 2. In the premises, the plaintiff could take delivery only from 2.3.64 and completed the

same on 12.3.64, although S.S. Green Point had arrived on 15. 2. 64. On account of the delay, the plaintiff had to pay Rs. 22143.68 by way of

wharf rent to the Port Commissioners and the debit vouchers are Ext. C in the present suit. The plaintiff submitted its bill for Rs. 22143.68 to the

defendant No. 2 on 22.7.64. The defendant No. 2 tried to deny the said liability by its reply dated 19.11.64 (page 32 Ext. A) alleging as follows:--

The manifest of this vessel was filed on 3rd February, advice of arrival of cargo was sent on 4th February and the delivery order was issued on the

same day. The vessel arrived at Calcutta on 15th February, 11 days after the issue of the delivery order.

We, therefore, did, everything well in time. Under no circumstances, therefore, shall we accept any responsibility whatsoever for your failure to

clear the cargo.

Your claim bill is returned herewith.

14. It would be significant to note that at the Planning Meeting held on 10.2.64 (page 20-21 Ext A) the defendant No. 2''s had admitted that the

manifest already issued was in terms of bundles which needed correction. It is obvious that the manifest dated 3.2.64 and the delivery order dated

3.2.64 were prepared on the basis of the bills of lading showing the goods in bundles and they required correction showing the goods in pieces.

The documents referred to in the defendants'' aforesaid letter dated 19.11.64 were therefore all useless. This letter of 19.11.64 would clearly

prove that the defendant No. 2 did not take any further effective step in the matter after the meeting of 10.2.64 and did not keep the assurances

given in the said meeting as otherwise they would have mentioned about the same in that letter. Under the circumstances delivery of the goods from

S.S. Green Point could not be taken by the plaintiffs until the Outturn Report of Green Wave was completed as stated in the plaintiffs'' letter dated

7.3.64 (page 28 Ext A). The evidence of the plaintiffs'' witness that the delivery from S.S. Green Point was taken from 2.3.64 to 12.3.64 remained

unrebutted and unchallenged. The defendants were responsible for the aforesaid delay and as such the defendant No. 1 is liable to pay the loss

suffered by the plaintiff in the natures of payment of wharf rent to the extent of Rs. 22,143.68p. The answers to issue No. 1 (a) and (b) are

therefore ""Yes"".

Issue Nos. 2 and 3.

15. The plaintiffs'' witness Sri T.K. Bhattarcharya proved 43 debit vouchers issued by the Port Commissioner evidencing receipt of Rs. 55,962.31

from the plaintiff by way of wharf rent in respect of the goods carried by ""Green Wave"". These debit vouchers ore collectively marked as Ext. ""B

in this suit. He also proved another 10 similar debit vouchers showing receipt of Rs. 22143.68 by the Port Commissioners by way of wharf rent

from the plaintiff in respect of the goods brought by ""Green Point"". These are collectively marked as Ext. ""C"". Accordingly to the evidence of this

witness, the Port Commissioners allow 72 free hours for clearance of goods. On expiry of the period wharf rent becomes payable. The Port

Commissioners will not allow clearance until wharf rent is paid. The plaintiff had an Import deposit account with the Port Commissioners and a sum

of Rs. 20,000,00/- was kept in deposit with them and the wharf rent payable was debited from the said account by the Port Commissioners. This

evidence of T.K. Bhattacharya remained unrebutted. The defendants'' counsel submitted that after the formalities for giving delivery in pieces were

completed the Port Commissioners should have given allowance for 72 free hours and the wharf rent should not have been charged for free hours

and the damages should have been reduced accordingly. The said free hours started from the date of unloading only and expired before formalities

were completed by the defendant No. 2. There is no substance in this submission. The plaintiff has paid Rs. 55,962.31 and Rs. 22,143,68 to the

Port Commissioners by way of wharf rent and the defendant No. 1 is liable to compensate the plaintiffs in the said two sums. Issue Nos. 2 and 3

are answered in favour of the plaintiffs.

Issue No. 4(a) and (b)

16. The onus to prove this issue is on the defendant No. 1. There was no evidence, either oral or documentary, on behalf of the defendant No. 1 in

this suit. On the contrary, the plaintiffs'' letter dated 16.1.64 (page 17 Ext. ""A"") clearly proves that the plaintiff gave notice to the defendants that

they would be liable for all extra expenses incurred by the plaintiffs on account of delay in delivery of goods. Another similar notice was given by

the plaintiff to the defendants on 7.3.64 (page 28 Ext ""A""). The defendants have tailed to prove this issue and the aforesaid letter of the plaintiffs

clearly establish-that there was no representations by the plaintiffs to the defendant that they would forego their claims for damages as alleged by

the defendants. As a result, there will be a decree as against the defendant No. 1 for Rs. 78.105. 99, interim interest on the said sum at the rate of

6% per annum and interest on Judgment at the rate of 6% per annum until realisation and costs. The suit is dismissed with costs as against the

defendant No. 2, suit decreed against Deft. No. 1 and dismissed against deft. No. 2.