

(1989) 04 CAL CK 0002

Calcutta High Court

Case No: Appeal from Original Order No. 34 of 1984

Steel Authority of
India Ltd.

APPELLANT

Vs

Bangladesh Shipping
Corporation and
Others

RESPONDENT

Date of Decision: April 12, 1989

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 86

Citation: (1990) 27 ECC 248 : (1993) 46 ECR 85

Hon'ble Judges: Padma Khastgir, J; Ajit Sen Gupta, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Padma Khastgir, J.

In a suit filed by the Steel Authority of India Ltd. against Bangladesh Shipping Corporation and others, an application was taken out by Bangladesh Shipping Corporation for an order that the plaint filed in Suit No. 703 of 1981 be rejected and/or taken off the file and the suit against the defendants be dismissed. In the said application, Bangladesh Shipping Corporation the defendant No. 1 stated that the vessel "M.V. Bangladesh Maitri" belonged to Bangladesh Shipping Corporation which was under the Ministry of Communication of the Government of People's Republic of Bangladesh. The said government being a government of a foreign state and the petitioner being of such foreign State the petitioner was entitled to foreign immunity, as such, this Court had no jurisdiction to hear and/or proceed with the suit, without the necessary permission of the Central Government as contemplated u/s 86 of the Civil Procedure Code.

2. The plaintiff filed the instant suit on account of loss and damages suffered by it for nondelivery/short delivery and/or delivery in damaged condition of diverse

goods carried by Bangladesh Shipping Corporation on board their vessel "Banglar Maitri" (hereinafter referred to as the said vessel). The said vessel touched the Port of Calcutta in September, 1979 and discharged its cargo between November, 1979 and December, 1979 and thereafter left the Port of Calcutta on March 12, 1980 and obtained a certificate to that effect from the Calcutta Port Trust. The petitioner relied upon the provisions of Hague Rules which have been incorporated in the Contract of Carriage into India by and between the parties as evidenced by the bill of lading and submitted that all the liabilities of the petitioner stood extinguished as no claim had been preferred within one year from the date when the said vessel left the Port of Calcutta and as such the plaintiff had no subsisting cause of action upon which the said suit could be instituted.

3. Mr. Justice Dipak Kumar Sen (as he then was) allowed the application by directing that the name of the defendant No.1 be struck off and deleted from the cause title of the plaint and dismissed the suit against the defendant No. 1. The plaintiff had filed the suit against the defendant No. 1 Bangladesh Shipping Corporation as the owner of the vessel Banglar Maitri. The defendant No. 1 as a common carrier had been sued whereas the defendant No. 2 acted as an agent (of the defendant No. 1) and was entrusted with the handling of the cargos discharged at Calcutta by the said vessel. By five several bills of lading the defendant No. 1 acknowledged to have received in apparent good condition on board the vessel from London various machinery equipment and machine parts to be carried safely by the defendant No. 1 to Calcutta and be delivered to the plaintiff under various terms and conditions as agreed upon by and between the parties. After the vessel arrived at Calcutta in September, 1979 in the course of and during unloading of the goods and the cargo, the said vessel caught fire as a result whereof a portion of the cargo was destroyed and/or damaged. Between November and December, 1979 the remaining portion of the consignment were landed at the Calcutta Port. After payment of the customs duty and loading charges the said goods were stored at the warehouse of the defendant No. 3, the Bengal Bonded Warehouse Association at the instance of the defendant No. 1 and 2. On behalf of the plaintiff the said consignment was inspected, surveyed in the presence of the representative of the defendant Nos. 1 and 2. The plaintiff filed a suit for damages caused to the said goods. By letter dated 9th September, 1980 the defendant No. 2 on its own behalf as also on behalf of the defendant No. 1 requested the plaintiff to pay the rent and/or the godown charges including loading and unloading charges and on 19th of September, 1980 the defendant No. 2 for self and on behalf of the defendant No.1 handed over to the plaintiff delivery order to enable the plaintiff to take the delivery of the goods, but upon tender of such document and the charges the defendant No. 3 refused to deliver the said goods to the plaintiff. By letter dated 24th November, 1980 the defendant No. 2 for its own behalf and on behalf of the defendant No. 1 acknowledged their liability in writing to deliver the said goods covered under the said bills of lading to the plaintiff and also expressed their inability to deliver the

balance and promised that the goods would be delivered to the plaintiff. But inspite of such acknowledgement and/or undertaking the goods could not be delivered by 30th November, 1980 or at all. The plaintiff apart from its claim for damages for non-delivery of the goods had made an alternate claim that in the event specific delivery of the goods were not made the plaintiff made a claim against the defendants for wrongful conversion of the plaintiffs goods. In the letter dated 24th of November, 1980 addressed to the Steel Authority of India Ltd. Himalayan Shipping Co. Ltd. as agents of Bangladesh Shipping Corporation Ltd. expressed their regret that inspite of best efforts they had not been able to resolve the dispute with the Bengal Bonded Warehouse Authorities and also admitted that due to that there had been inordinate delay in effecting the delivery of the goods and also kept on record that such delay in delivery would not in any way affect the claim of the plaintiff against the defendant for non-delivery of the goods. In the said letter also they pleaded for time up to 31st November, to arrange for the delivery of the goods within that period.

4. The appellant totally denied that the defendant No. 1 was under the Port & Shipping Division of the Ministry of Communication of the Government of the Peoples Republic of Bangladesh and as such could not claim the immunity of a sovereign State. The plaintiff also denied that the provision of Article III Rule 6 of the Hague Rules had been incorporated in the contract by and between the parties and hence, it was not binding on the parties. Under the circumstances and/or otherwise the plaintiffs claim did not become barred and/or stood extinguished within one year from the date when the vessel is stated to have left the Port of Calcutta. The Hague Rules incorporated in the Carriage of Goods by Sea Act, 1925 provided that the carrier and the ship shall be discharged from all liability in respect of the loss and damage unless the suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered. Even after the goods had been discharged, the goods remained in the custody of the defendant Nos. 1 and 2 stored at Bengal Bonded Warehouse. Under the circumstances, even if the said Hague Rules applied, in view of the fact that the goods were not delivered, which fact would be evident from the letters written by the defendant No. 2 for self and on behalf of the defendant No. 1, the clause that the ship owner shall be discharged from liability in one year after the delivery of the goods or the date when the goods should have been delivered, does not extinguish the liability of the ship owner till such delivery had been effected. More so in the instant case when by letter they have extended the period of delivery and until and unless the goods so destroyed by fire is surveyed and the damages are assessed the question of giving delivery did not arise.

5. The averments made in the plaint do not indicate the date when the ship after discharging the cargo had sailed off from the Port of Calcutta. While considering the rejection of the plaint under Order VII Rule II, the Court will take into consideration the averments made in the plaint. If a suit appears from the statement made in the

plaint to be barred by any law, the plaint should be rejected inter alia on that ground. From the averments made in the plaint it did not appear that the plaintiffs relief against the defendant was barred by the lay of limitation. Apart from the plaintiffs claim, the suit was not for recovery of damages only for non- delivery of goods, but there was also a claim for conversion against the defendants. True, ultimately whether the suit will succeed in favour of the plaintiff will depend on many factory including the question of limitation and/or whether the Hague rules were applicable to the facts and circumstances of this case and these aspects will be determined and considered finally upon evidence, both oral and documentary. But at the stage when such application was taken for rejection of the plaint the averments made in the plaint would be taken to be correct. The learned Judge could not rely upon the Certificate stated to have been given by the Calcutta Port Trust indicating the date of sailing away of the vessel "Banglar Maitri" which was annexed to the affidavit-in-reply. In such an application on a point of demurrer the court will have to proceed on the basis that the averments made in the plaint are true and correct and the applicant praying for rejection of the plaint will have to establish that the plaint ex facie does not disclose any cause of action or is barred by any law including limitation.

6. Under the circumstances, this Court is of the view that the impugned order and judgment should be set aside, and the appeal is accordingly allowed. All interim order are vacated. Liberty granted to the appellant Steel Authority of India Ltd. to take such steps as they are entitled to in accordance with law. There will be stay of operation of this order for one week.

A. Sengupta, J.

7. I agree.