

(1982) 06 CAL CK 0024

Calcutta High Court

Case No: None

Steel Authority of India
Ltd

APPELLANT

Vs

Bangladesh Shipping
Corpn. Ltd. and Others

RESPONDENT

Date of Decision: June 7, 1982

Hon'ble Judges: Dipak Kumar Sen, J

Bench: Single Bench

Judgement

1. Steel Authority of India Limited, the plaintiff, instituted this suit in September, 1981 against Bangladesh Shipping Corporation, Himalaya Shipping Co. Limited and the Bengal Bonded Warehouse Association, impleading them respectively as the defendant Nos. 1, 2, and 3 claiming, inter alia, the following reliefs: -

(a) Specific delivery of consignments covered by five bills of lading.

(b) In addition, damages at the rate of Rs. 550/- per day from the 20th September, 1980 till delivery of possession thereof.

(c) Alternatively, an enquiry into damages and a decree for the sum found due thereon.

(d) In the event specific delivery of the said consignments cannot be had, decree for Rs. 11,14,244.15 or alternatively further enquiry into damages.

(e) Further interest and costs.

2. The case of the plaintiff is that the defendant Nos. 1 and 2 are common carriers and carry on business of carriage of goods by sea for hire. The defendant No. 2 is the agent of defendant No. 1 India and, inter alia, is responsible for handling of cargo in the Port of Calcutta carried in the vessels of the defendant No. 1.

3. Under an actual user's licence the plaintiff imported from London divers machinery and parts consisting, inter alia, of gears, vibrators, oil filters and bearings (hereinafter referred to as the said goods) for use at its Durgapur steel plant. The said goods were shipped on board the vessel S. S. "Banglar Maitri" (hereinafter referred to as the said vessel) owned by the defendant No. 1.

4. The defendant No. 1 issued five bills of lading, two dated the 17th May, and three dated the 18th May, 1979 recording that the said goods had been shipped in good order and condition from London. The said bills of lading were endorsed and made over to the plaintiff. The plaintiff claims to be the owner of the said goods and also the holder of the said bills of lading for value.

5. The said vessel arrived at the Port of Calcutta in or about September, 1979. While unloading, the said vessel caught fire and a portion of the cargo on board was destroyed or damaged. The balance cargo was unloaded in November and December, 1979.

6. Upon payment of custom duty and landing charges the balance cargo were taken to or stored at the warehouse or godown of the defendant No. 3 at Metiaburuz, Calcutta by or at the instance of the defendant Nos. 1 or 2.

7. On or about the 9th August, 1980 the balance cargo was inspected and surveyed and on the 1st September, 1980 the plaintiff presented the said bills of lading and called upon the defendant No. 2 to issue delivery orders to enable the plaintiff to take delivery of the said goods. The defendant No. 2 informed the plaintiff that rent or godown charges for storing the said goods at the godown of the defendant No. 3 would be at the rate of Rs. 36 per ton or a part of a ton per month or part of a month after the 31st May, 1980.

8. On or about the 19th September, 1980, the defendant No. 2 acting on behalf of the defendant No. 1 issued to the plaintiff a delivery order. The plaintiff tendered the said delivery order to the defendant No. 3 with rent charges in respect of the said goods but the defendant No. 3 wrongfully refused to deliver the said goods and has continued to detain the same.

9. The plaintiff contends that it is entitled to compensation for damages, if any, caused to the said goods. It is further contended that the defendant no. 3 is not entitled to claim any rent in respect of the said goods after the 19th September, 1980.

10. It is alleged that the said goods are not easily obtainable in the market, are of special value and interest to the plaintiff and non-delivery thereof cannot be adequately compensated in money. It is alleged that the defendants in breach of their duties and obligations had failed to give delivery of the said goods which are urgently required by the plaintiff.

11. The total weight of the said goods is 5 m.t. Rent or warehouse charges of the said goods would be Rs. 848/- only from the 1st June to the 19th September, 1980. This had

been duly tendered to the defendant No. 3.

12. In this application made on a notice dated the 25th September, 1981 the plaintiff prays for the following orders: -

(a) A Receiver over the said goods.

(b) Direction on the Receiver to make inventory of the said goods forthwith to keep the same in a separate godown allow the plaintiff. Inspection of the same and have the same surveyed by an independent surveyor.

(c) Direction on the Receiver to hand over the said goods to the plaintiff unconditionally or on terms and conditions as this Court may think fit and proper.

(d) If necessary, direction on the defendant Nos. 1 and 2 to deposit godown rent or hire charges in respect of the said goods for the period subsequent to the 20th September, 1980.

(e) An injunction restraining the defendant Nos. 2 and 3 from removing or opening or dealing with or disposing of the said goods in any manner.

13. Pasupati Nath Roy, a Director and the Honorary Secretary of the defendant No. 3 has affirmed an affidavit on the 18th November, 1981 which has been filed in opposition to the petition. It is, inter alia, alleged in this affidavit that the defendant No. 2 as the agent of the said vessel informed the defendant No. 3 that they had been instructed by the defendant No. 1 to store the entirety of the said cargo damaged or undamaged except tea, jute and whiskey at the warehouse and open space belonging to the defendant no. 3, at Metiaburuz. The tea was to be stored at the warehouse of the defendant No. 3 at strand Road, Calcutta.

14. It is alleged that under the aforesaid arrangement and /or agreement the defendant No. 3 stored divers quantity of materials. The defendant No. 2 from time to time made payments to the defendant No. 3 on account of storage charges. A sum of Rs. 24,10,820,98 remains outstanding on such account from the defendant No. 2.

15. Inspite of demands and inspite of time given, the defendant No. 2 was unable to pay such outstanding dues of the defendant No. 3. On or about the 10th July, 1981 the defendant No. 3 made an application before this Court for winding up of the defendant No. 2. The said application is pending.

16. It is alleged that since September, 1980 no payment has been received on account of storage of the said cargo and a large quantity of cargo are still lying at the warehouse or godown of the defendant No. 3 occupying about 70.000 sq. ft. The monthly rent on account of storage of the said cargo is about Rs. 2 lakhs. The defendant No. 3 is unable to remove the said cargo and has been prevented from earning any income or rent for the

said storage space.

17. It is contended that until the entire amount outstanding due and payable by the defendant No. 2 to the defendant No. 3 is paid the defendant No. 3 is entitled to refuse delivery of the said cargo to any person. Under the Bengal Bonded Warehouse Association Act, 1838 it is contended that the defendant No. 3 has a lien over the said goods. It is contended that the plaintiff without paying all outstanding charges of the defendant No. 3 cannot claim specific delivery of the said goods. The other allegations in the petition have been denied and contentions disputed.

18. Dilip Kumar Roy Chowdhury the Secretary of the defendant No. 2 has affirmed an affidavit some time in January, 1982 which has also been filed in opposition to the petition. It is, inter alia, alleged in this affidavit that the defendant No. 3 was obliged to deliver the goods to the petitioner and the refusal of the defendant No. 3 to do so is wrongful and illegal. It is further alleged that several letters including one dated the 24th November, 1980 had been written by one Subroto Bose, an exemployee of the defendant No. 2 without any authority from either the defendant No. 1 or the defendant No. 2 wrongly acknowledging liability of the alleged claims of the defendant No. 3. It is alleged that the defendant No. 3 procured the said letters from the said Subroto Bose. It is alleged that the defendant Nos. 1 and 2 have since instituted proceedings in respect of the said purported letters. It is alleged that after the issue of the delivery order, the defendant Nos. 1 and 2 ceased to have any liability in respect of the said goods. It is alleged that the defendant Nos. 1 or 2 are not concerned in any way with the detention of the said goods and have no liability in respect of such detention. It is further alleged that the defendant Nos. 1 and 2 have been impleaded in this suit wrongly and the plaintiff has no cause of action or right against them.

19. Jogindar Pal Goswami, the Chief Transport and Shipping Officer of the plaintiff, has affirmed an affidavit on the 19th March, 1982 which has been filed in reply to the aforesaid affidavits of pasupati Nath Roy and Dilip Kumar Roy Chowdhury. It is, inter alia, alleged in this affidavit that the plaintiff is not liable to pay any rent or charges claimed by the defendant no. 3 subsequent to the 19th September, 1980 and that the plaintiff is also not interested in all the goods which are lying stored at the warehouse of the defendant No. 3. It is further alleged that rent or warehouse charges have been claimed by the defendant No. 3 on the basis of number of packages and area occupied. It is possible for the defendant No. 3 to make a separate calculation of rent claimed by them for storage of the said goods which the defendant No. 3 failed to do. The plaintiff is not concerned with the other goods stored by the defendant No. 3 and is not liable for the rent in respect thereof.

20. It is denied that the defendant No. 2 is not bound by the acts of Subroto Bose. It is stated that inspite of the ad interim order passed in this application the Receiver appointed for the purpose could not make inventory of the said goods. The officers of the defendant No. 3 alleged that there was no handling equipment available. Even inspection

of the goods could not be taken by the Receiver.

21. The title of the plaintiff to its goods has not been disputed by anybody. The only ground on which delivery of the goods is being withheld by the defendant No. 3 from the plaintiff is on the ground that large sums of money on account of storage charges of the entire cargo became due and owing from the defendant No. 2 and unless the same is paid in full the defendant No. 3 is entitled to refuse delivery of any part of the said goods. It is further alleged that under the Bengal Bonded Warehouse Association Act, 1838 the defendant No. 3 has a lien over the said goods.

22. At the hearing, learned Counsel for the defendant No. 3 could not cite any section from the Bengal Bonded Warehouse Association Act, 1838 under which any special lien can be stated to have arisen in favour of the defendant No. 3 on account of storage of the said cargo. Learned Counsel drew my attention to the principal conditions of storage of goods in the warehouse of the defendant No. 3 and the schedule of rates of rent. Such conditions appear to have come into effect from the 1st may, 1979 and the material conditions are as follows: -

(f) The defendant No. 3 under the provisions of the Act of its establishment cannot deliver the goods without realisation of rent thereof and under its bye-laws can sell all or sufficient quantity of packages for any outstanding rent of such goods remaining unpaid for a specified time.

(g) The warrant of storage receipts are invariably transferable. To make a transfer valid it is necessary for the transferor to forthwith inform the defendant No. 3 about the transfer with a confirmation by the transferee failing which the registered holder of the warrant will continue to be liable for all warehouse charges and other charges.

23. The schedule of rates of rent of the warehouse for storage of goods is in a printed form. There are separate rates for different cargo and different packings.

24. The said terms and conditions in my view also do not create any special lien in favour of the defendant No. 3 in respect of the said goods.

25. From the correspondence relied on by the defendant No. 3 in support of its case it appears that the same stated from the 21st September, 1979 and the last letter was dated the 9th April, 1981 from the Advocate of the defendant No. 2, to the Advocate of the defendant No. 3. The letters of the defendant No. 3 set out the rates for storage of cargo including machinery. By the letters dated the 21st September, 1979 and the 24th September, 1979 the defendant No. 3 recorded the terms and conditions of storage. The lien as now claimed by the defendant No. 3 has not been recorded in these letters nor was it recorded that no part of the cargo stored could be removed without payment of the storage for the entire cargo.

26. The cargo appears to have been delivered to the defendant No. 3 in different installments under different challans and not in one lot and it may be presumed that the defendant No. 3 has issued separate receipts of warrant in respect thereof.

27. There is no provision in the Act of the establishment of the defendant No. 3 that the defendant No. 3 is barred from delivering goods or any part thereof without realisation of the full rent. Thereof, the clause in this respect in the condition of storage of goods is nothing more than a statement on behalf of the defendant No. 3 and not a term of the contract.

28. The lien claimed by the defendant No. 3 has now to be examined in the background of the Indian Contract Act. The transaction between the parties is in the nature of bailment. The goods were delivered by the defendant No. 2 to the defendant No. 3 for the purpose of storage and meant to be returned. (see section 148).

29. The bailee is always entitled to be reimbursed for all necessary expenses incurred for the bailment whether provided or not (see section 158).

30. After the purpose is accomplished the bailee is bound to return the goods to the bailor or deliver the same according to the directions of bailor without demand (see section 160).

31. The India Contract Act provides particular liens in the case of: -

(h) finder of goods u/s 168.

(i) A pledgee or Pawnee u/s 173.

(j) An agent u/s 221.

32. Lien in favour of the bailee is created u/s 170, which provides as follows: -

Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them." This is a particular lien and not a general lien.

33. The Indian Contract Act also provides for a general for a general lien in the case of bankers, factory, wharfingers, Attorneys of a High Court and policy-brokers u/s 171 but the defendant No. 3 cannot claim to fall in such special category and claim a general lien.

34. Therefore, the defendant No. 3 at the most can claim by way of lien the storage charges in respect of the particular goods at the time of the return. Prima facie, in my view, the defendant No. 3 is not entitled to claim the entire storage charges for the entire cargo from the owners of a part of the cargo either under the terms and conditions of the

storage or under the general law or under any statute.

35. For the reasons above, the plaintiff succeeds in this application.

36. There will be an order as follows: -

Mr. M. K. Bose, Barrister-at-law, is appointed Receiver in terms of prayer (a) There will be a direction upon the Receiver in terms of prayers (b) and (g). The Receiver will also have the goods valued.

37. The Receiver will also act as a Special Referee and calculate the rent payable for storage of the said consignments to the defendant No. 3 at the rates mentioned in the letters dated the 21st and the 24th September, 1979 taking into account the schedule of rates of the defendant No. 3 produced at hearing.

The plaintiff will be entitled to have delivery of the said goods from the Receiver on payment of the amount of rent as determined and on undertaking to reimburse to the defendant No. 3 upto the value of the goods in the event the plaintiff fails in the suit etc.