

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 446/2003

% Reserved on : 27.08.2008
Date of decision:22.09.2008

M/s CENTRAL WAREHOUSING CORP. & ANR. APPELLANTS

Through: Mr.K.K.Tyagi, Advocate.

Versus

M/s BHARTIYA PLASTIC UDGYOG & ORS RESPONDENTS

Through: Mr. Kamal Mehta, Advocate for R-1 and R-2.
None for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

SANJAY KISHAN KAUL, J.

1. The refusal by the appellant to deliver the subsequent consignment to respondent nos.1 and 2 on account of a dispute about the non payment of warehousing charges for the first consignment had given rise to the present litigation. It is an undisputed fact that there was no controversy of any alleged dues in respect of the second consignment. A connected question arising for consideration is whether such detention was possible even

if the consignment was warehoused without the consent of the consignee to the warehousing corporation.

2. The respondent no.1 imported acrylic scrap in pursuance to a bill of entry dated 29.10.1992 in three containers of a declared value of USD 240 per metric ton. However, on their import into India, the custom authorities assessed the price of the goods at USD 475 per metric ton resulting in notices being issued by custom authorities for adjudication. The goods were not cleared and were warehoused with the appellant. It is during the pendency of this dispute that a second consignment of respondent no.1 vide a bill of entry dated 06.09.1993 was received in India. The bill of entry was presented for home consumption and on inspection of the goods, the custom authorities assessed the total duty of Rs.5,41,016/- which was duly deposited on 17.09.1993. The delivery of the goods was, however, not given to the petitioner by the appellant on the ground that a sum of Rs.1,60,000/- was due to the appellant as warehousing and insurance charges in respect of the first consignment as on 17.09.1993. The same was the fate of yet another consignment imported by the respondent no.1 vide a bill of entry dated 03.08.1993.
3. These actions of the appellant resulted in filing of WP(C)4480/1993 by respondent nos.1 & 2, respondent no.2 being the Managing Director of respondent no.1.
4. In the proceedings of the said writ petition, interim orders were passed on 05.11.1993 on account of the Court observing that prima facie it was of the view that the

respondent nos.1 was not liable to pay the storage charges of the appellant, but respondent no.1 agreed to furnish the bank guarantee for the amount claimed by the appellant. The second consignment was thus directed to be released by the appellant without payment of any further charges. Insofar as the third consignment was concerned, a direction was passed that respondent no.1 could get it cleared on payment of the custom duty (which was stated to have been paid) and warehousing charges till date of delivery. Respondent no.1 took delivery of the four containers covered by the second consignment, but insofar as the third consignment was concerned, respondent no.1 was not agreeable to pay the warehousing charges on the ground that the goods were not warehoused by the respondent no.1 but were detained by the appellant of their own because of non payment of warehousing and insurance charges of the first consignment. It is in this context that the question arose whether the appellant at all could have detained the third consignment even assuming that they were entitled to detain any subsequent consignment on account of the previous non payment.

5. Learned Single Judge vide the impugned order dated 29.04.2003 allowed the writ petition and directed the release of the consignment imported vide bill of entry dated 03.08.1993 without claiming any warehousing or insurance charges from respondent no.1. It is this judgment which is sought to be challenged by the appellant. The appeal was finally admitted on 22.09.2003 and interim directions

were passed for the respondent nos.1 and 2 to pay the insurance charges, handling charges and entry fee, but no directions were made for payment of the warehousing and service tax. The interim application was finally disposed of on 21.05.2004 when the learned ASG appearing for the appellant submitted that the appellant was prepared to release the goods, but the parties would ultimately abide by the decision of this Court and this was acceptable to learned counsel for respondent nos.1 and 2. Thus, the appellant was permitted to withdraw the amount deposited by respondents on release of goods.

6. Learned counsel for respondent nos.1 and 2 conceded before the learned Single Judge that there was absence of any provisions in the Indian Customs Act, 1962 ('the Customs Act' for short) entitling the custom officers to prohibit the owner of the space, where the imported goods have been stored from levying the demurrage charges. In such an eventuality, the levy of demurrage charges for non delivery of the goods would be as per the terms and conditions of contract and thus a valid levy. However, it was simultaneously pleaded that if the goods are illegally detained which prevented the importer from getting the goods released, it is the custom authorities which would be bound to bear the demurrage charges in the absence of any provision in the Customs Act as there was nothing in the Customs Act which absolved the custom authorities from the liability to make such a payment. The plea in sum and substance was that since such goods were illegally

detained by the Warehousing Corporation without there being any authority in them to detain the same for non payment of warehousing charges of the first consignment, respondent nos.1 and 2 were not liable to pay the warehousing charges in respect of the third consignment. Learned counsel had drawn strength from the judgment of the Supreme Court in Shipping Corporation of India Ltd. v. C.L.Jain Woollen Mills and Others; (2001) 5 SCC 345.

7. In the factual matrix of the aforesaid case, an order of confiscation and penalty was passed in respect of the imported goods, which was quashed by the Supreme Court. The Warehousing Corporation warehousing the goods was not impleaded in the proceedings and the High Court directed that it had already absolved the owner to pay any demurrage charges with the result that if such charges arose, the same would be the liability of the custom authorities. It was this part of the order which was sought to be challenged before the Hon'ble Supreme Court. In that context, it was observed by the Hon'ble Supreme Court that the custom authorities had power and control over the imported goods without whose permission, it could not be cleared, but they had no power to restrain charging of demurrage charges. The custom authorities were, however, held bound to pay the demurrage charges in the absence of any provisions in the Customs Act absolving them of that liability.
8. The counsel for respondent nos.1 and 2 thus pleaded that the detention of the goods by the appellant was illegal in

the absence of any provisions either in the Warehousing Corporation Act, 1962; the Contract Act, 1972 or in the Customs Act, 1962 permitting the Warehousing Corporation to have such a lien over the goods, which had not been warehoused or stored with them, merely because there was a dispute in respect of the amount payable under another consignment.

9. Learned Single Judge proceeded to discuss the provisions of the Customs Act. A reading of Sections 48 and 63 of the Customs Act shows that while giving authority to the custom authorities to sell the goods in their custody, an obligation has been cast upon the importer to pay the charges for warehousing of the goods. The authorities further gave power even to the warehouse keeper to sell the part of the goods for realization of its dues sufficient to meet its liability. A reading of the provisions thus gave rise to a conclusion that the lien, if any, of the warehouse keeper, would only be in respect of the goods which had been stored with the consent of the owner and not on any other goods.
10. Learned counsel for the appellant before the learned Single Judge sought to advance the plea that since the goods in question of the first consignment were under adjudication of the custom authorities, they could not have been auctioned by the appellant. The goods unloaded in a custom area remain in the custody of such persons as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or

transshipped in accordance with the provisions of Chapter VIII of the Customs Act in terms of the authority conferred under Section 45 of the Customs Act. It is in this context that the plea was raised that the appellant was the custodian of the Customs Department under Section 45 of the Customs Act. The aforesaid plea was rejected by the learned Single Judge in the absence of any statutory provision. It has been specifically noted that the admitted case of the parties was that the goods imported as per the second and third bills of lading/entry were not warehoused or stored with the appellant and only warehoused goods could be disposed of by auction.

11. In the grounds of the appeal, the appellant has pleaded that the consideration of Section 48 r/w Section 63 of the Customs Act by the learned Single Judge is erroneous. The storage is obligated by law. The first consignment was detained by the custom authorities on account of the alleged mis-declaration of value though the goods were subsequently released. The appellant was entitled to detain the second and third consignments. A further plea raised is that the learned Single Judge failed to take notice of Section 171 of the Indian Contract Act ('the Contract Act' for short) which gives such a right to the wharfinger to exercise powers of lien as the unpaid service. It may be noticed that learned counsel for the appellant conceded that this plea was never urged or argued before the learned Single Judge but contended that the same being a question of law ought to be examined by this Court.

12. Learned counsel for the appellant before us pleaded that the appellant had issued a number of notices to the respondent nos.1 and 2 to take delivery of the first consignment which was subject matter of custom adjudication, but the respondent nos.1 and 2 failed to do so. However, it cannot be disputed before us that since the duty payable under the consignment was under adjudication, the goods could not have been taken delivery of by respondent nos.1 and 2 until and unless the respondent nos.1 and 2 were willing to pay the full duty as sought to be imposed by the custom authorities. Learned counsel for respondent nos.1 and 2 has pointed out that the adjudication by the custom authorities regarding the first consignment was in their favour and thereafter the delivery was taken by respondent no.1 after payment of the crystallized demand of Rs.5,30,455/-. It is only when such adjudication took place that there was crystallization of the demand and the respondent no.1 had never abandoned the goods, which could create any apprehensions in the mind of the appellant.
13. The only point really urged before us by learned counsel for the appellant is the right claimed in view of the provisions of Section 171 of the Contract Act, a point never argued or urged before the learned Single Judge. The only plea was that same being a legal question, could be raised at any time.
14. In our considered view, the appellant ought to have laid the foundation of this case in terms of the factual matrix in

order to really plead the benefit of the provisions of Section 171 of the Contract Act. No such plea was laid before the learned Single Judge. Despite this fact, we have considered it appropriate to analyze this plea within the limited context of the undisputed facts and the provisions of the said Section. The Section reads as under:

“171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.

Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.”

15. Learned counsel for the appellant has strongly relied upon the judgment of the Hon'ble Supreme Court in Board of Trustees of the Port of Bombay v. Sriyanesh Knitters; (1999) 7 SCC 359. It is thus pleaded that the Board of Trustees of the Port Trusts constituted under the Major Port Trusts Act, 1963 ('the MPT Act' for short) are the owners of the wharf and are wharfingers who not only provide space at the port for loading and unloading of the goods, but also provide for storage of goods till the same are removed. Thus a general lien of wharfingers in respect of the past dues is available as contemplated under Section 171 of the Contract Act for retention of the bailed goods as security. Demurrage would form a part of the "General Balance of Account". The appellant claims to be maintaining a Container Freight Station which is nothing but a dry port and thus it is

pleaded that all the principles in respect of the Board of Trustees of the Port of Bombay would equally apply to the appellant-Corporation. To support this plea, learned counsel relied upon the judgment of the Supreme Court in International Airports Authority of India & Ors. v. Grand Slam International & Ors.; (1995) 3 SCC 151 where it was held that the provisions of the MPT Act and International Airport Authority Act, 1971 are similar to that of Central Warehousing Corporation Act, 1962 and the principle applicable would thus be the same.

16. Learned counsel for the appellant, in order to get over the plea of the question not being raised before the learned Single Judge, has relied upon the observations of the Hon'ble Supreme Court in State of Tamil Nadu v. Rangaswamy & Ors.; JT 2002 (8) SC 192 to the effect that a pure question of law can be raised at any stage.
17. In order to appreciate the plea of the learned counsel for the appellant, the judgment in Board of Trustees of the Port of Bombay v. Sriyanesh Knitters' case (supra) has to be examined in depth. The dispute in that case arose when the Port Trust refused to release certain goods being acrylic fibre imported by the consignee on the ground that the claim in respect of the wharfage and demurrage was still due to them for consignments of woolen rags imported earlier by the same consignee. The consignment of the woolen rags had remained at the docks for a certain period which ended when the dispute between the consignee and the custom authorities was resolved. The consignment of

woolen rags had been released and the Port Trust had demanded demurrage charges for which the consignee disputed the liability. The Port Trust had filed several suits for recovery of the amount. It is thereafter that the consignment of acrylic fibre arrived which was refused to be released.

18. The Hon'ble Supreme Court observed that though there was no provision of general lien in the MPT Act, that Act does not exclude operation of other laws which may be applicable. In the absence of provisions for general lien under the MPT Act, the Port Trust had relied upon the provisions of Section 171 of the Contract Act which was held to be permissible. It was further explained that the general lien contemplated under Section 171 of the Contract Act only enabled retention of the bailed goods as security and not the power to sell the goods. The wharfingers would have to take recourse to other proceedings in accordance with law for securing the order which would then enable the goods to be sold for realization of the amount due to it including filing of a suit.
19. The Supreme Court also explained that Section 171 of the Contract Act was in two parts. The statutory right of lien was available only to five categories – bankers, factors, wharfingers, attorneys and policy brokers – subject to their contracting out of Section 171. The second part made it clear that this benefit was not available to any other person i.e. unless there was an express contract to that effect.

20. As to what is a wharf and who is a wharfinger has been discussed by the Supreme Court in para 19 and 20 of the aforesaid judgment which are re-produced below for convenience:

“19. Wharf is defined in Jowitt’s Dictionary of English Law, 2nd Edition as being “a broad plain place, near some creek or haven, to lay goods and wares on that are brought to or from the water”. In Webster’s Dictionary wharf is defined as “a structure of masonry or timber erected on the shore of a harbor, river, or the like, alongside which vessels may lie to load or unload cargo, passengers etc.: also, any landing place for vessels, as a pier or quay”. Ramanatha Aiyar’s *The Law Lexicon*, 2nd Edn. defines wharf as “a landing stage built especially along the shore for loading or unloading vessels”. The MPT Act contains an inclusive definition of wharf in Section 2(za) and provides that wharf includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods, or for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

20. Wharfinger is not defined in the Act but in *Jowitt’s Dictionary of English Law* wharfinger is defined as the occupier of wharf and it is further stated that “as a rule, wharfingers have a general lien for the balance of their account”. In Ramanatha Aiyar’s *The Law Lexicon* wharfinger is defined as meaning “the occupier of a wharf” or “a person who owns a wharf”.”

21. The Supreme Court observed that the Port Trust was the owner of the wharf at Bombay and the services rendered by the Port are not only of loading or unloading of the cargo, but would also include storing and delivering of goods.
22. Learned counsel for respondent nos.1 and 2 has sought to distinguish the aforesaid judgment apart from raising the ground of waiver of the plea under Section 171 of the Contract Act as the same was not advanced before the

learned Single Judge. Learned counsel pleaded that the appellant had failed to establish that it was a wharfinger within the definition of the same as elucidated by the Supreme Court and referred to aforesaid and in the alternative it was pleaded that even if it be assumed that the appellant was a wharfinger, the appellant was not entitled to invoke the provisions of Section 171 of the Contract Act as there did not exist any General Balance of Account at the time of receipt of second and third consignments for which the appellant could have retained the consignments as security for the alleged charges of the first consignment. On the date of receipt of the second and third consignments, the adjudication was still pending with the custom authorities and thus neither was the appellant capable of delivering the goods nor the respondent no.1 was entitled to the delivery of goods of the first consignment. It is only when the delivery was capable of being made after adjudication, would the charges become due and the same is as per normal international trade practice. On the completion of the adjudication process and payment of the custom duty, respondent no.1 was issued a certificate for "goods passed out of custom authority". It is thereafter that the delivery of the goods was taken by respondent no.1. Respondent no.1 had never refused to pay the crystallized demand of the payment with respect to the first consignment nor it was the case of the appellant that the respondent no.1 had ever abandoned the goods. It was thus pleaded that the

appellant could not even have delivered the goods and thus there was no question of detaining the second and third consignments.

23. Learned counsel for the appellant referred to the provisions of Section 48 of the Customs Act, which reads as under:

“Procedure in case of goods not cleared, warehoused, or transhipped within thirty days after unloading. - If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within thirty days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof:

Provided that -

1. animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;
2. arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Explanation. - In this section, "arms" and "ammunition" have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959).”

24. Learned counsel submitted that the aforesaid provision contemplates the process of sale where the goods are capable of being delivered and the importer despite being entitled to take delivery does not lift his consignment and is thus deemed to have abandoned the same.

25. A plea further raised by learned counsel for respondent nos.1 and 2 was that the lien as a wharfinger under Section 171 of the Contract Act is only available as security with respect of the General Balance of Account. The alleged claim which had been raised was of Rs.1,60,000/- while the value of the goods was Rs.10,00,000/-. The value of the first consignment was thus good enough to satisfy any claim but the appellant illegally detained the second consignment worth the value of over Rs.9 lakhs as also the third consignment of approximately the same value as admitted in their own documents. Thus the total goods of value of Rs.28 lakhs were detained for securing a meagre amount of Rs.1,60,000/- which is not permissible in law. In this context, a reference was also made to Section 63 of the Customs Act, which reads as under:

“Payment of rent and warehouse charges. -

1. The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.
2. If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse-keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.”

26. The aforesaid provisions also envisage such charges which have become due and not paid and goods of sufficient

portion are required to be dealt with. Thus only part of the consignment so as to satisfy the claim of the warehousing has to be detained or sold.

27. The important distinguishing factor on facts between the present case and of Board of Trustees of the Port of Bombay v. Sriyanesh Knitters' case (supra) is stated to be that in the facts of that case the dispute was whether the imported goods were woolen rags or woolen garments and the importer had secured the release of goods on payment of fine which resulted in adjudication process being over. The consignment detained was received after that. In the present case, the adjudication process was still pending when the second and third consignments arrived and were detained. Not only that in the other case, even for the period for which the relevant goods had been detained, the importer had refused to pay charges resulting in legal proceedings for recovery by the Port Trust. It is only after that the second consignment had been detained. Such an eventuality never arose in the present case as the adjudication process was on and it is not in dispute that there were no dues outstanding against the first consignment. There was no question of any demand pending adjudication in that case. Learned counsel emphasized that such different facts are material while construing whether a particular judgment applies or not and in that behalf has referred to the observations of the Hon'ble Supreme Court in State of Rajasthan v. Ganeshi Lal; (2008) 2 SCC 533 in para 11 and 12 as under:

“11. “12. ... Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge’s decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *State of Orissa v. Sudhansu Sekhar Misra*; AIR 1968 SC 647 and *Union of India v. Dhanwanti Devi*; (1996) 6 SCC 44) A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leathem*; 1901 AC 495 Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.”¹

12. “15. ... Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* 1951 AC 737 (at p. 761) Lord MacDermott observed: (All ER p. 14 C-D)

‘The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge....’

16. In *Home Office v. Dorset Yacht Co. Ltd*; 1970 AC 1004 Lord Reid said (at All ER p. 297g-h), ‘Lord Atkin’s speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances’. Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No. 2)*(1971) 1 WLR 1062 observed: (All ER p. 1274d-e) ‘One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;’ And, in *Herrington v. British Railways Board*; 1972 AC 877 Lord Morris said: (All ER p.761c)

‘There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.’

17. Circumstantial flexibility, one additional or different fact may make a

world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

18. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

'Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * *

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.' "

28. We have given our thought to the relevant contentions advanced by learned counsel for the parties. There is no doubt that the appellant did not raise the plea of Section 171 of the Contract Act before the learned Single Judge, but then the same being only a legal plea has been taken note of by us since that was the only plea which was really sought to be advanced by learned counsel for the appellant. This would, however, require the plea to be dealt with in the context of undisputed facts since proper ground has not been laid on the factual matrix vis-à-vis the provisions of Section 171 of the Contract Act. It cannot be seriously doubted that in view of the judgment of the Supreme Court in the Board of Trustees of the Port of Bombay v. Sriyanesh Knitters' case (supra) wharfinger has a right to retain consignments received subsequently

towards due pending earlier unless parties have contracted out of the same. The provision is restrictive in its application as there are only five categories which are covered under the said provisions. For the appellant to succeed, he must establish A) that he is a wharfinger; B) there is no contract to the contrary and C) the security is for a General Balance of Account. As to who is a wharfinger in turn is dependent on the definition of a wharf which has been discussed in para 19 and 20 of the Board of Trustees of the Port of Bombay v. Sriyanesh Knitters' case (supra) as the wharf is a broad plain place, near some creek or haven, to lay goods and wares on that are brought to or from the water. It has to be a structure of masonry or timber erected on the shore of a harbor. The containers in question covered by the first consignment were shifted by the appellant to the Patparganj which is certainly not a place next to the sea. This is explained by stating that the same is a transit place. In our considered view even if it is accepted that the same was a transit place, the contention that the appellant is a wharfinger has no force. The appellant provides services which are those of a warehouseman and not those which are of a wharfinger. Section 171 of the said Act only contemplates giving a general right of lien in respect of five categories of persons and the appellant is not covered under any one of those.

29. There is undisputedly no contract to the contrary, but then the relationship between the parties has to be one of wharfingers.

30. The most important aspect in the present case is the conclusion to be arrived at whether there was a General Balance of Account.
31. The adjudicatory process of the custom authorities was pending consideration and that is the reason why the goods were not released to the respondent no.1. In fact, the occasion for invocation of proceedings under Sections 45 and 63 of the Customs Act never arose because there was a contested dispute pending before the custom authorities, which is stated to have ultimately been adjudicated in favour of respondent no.1. In the process of such adjudication, no delivery could have been made. It is also not in dispute that the goods were worth about Rs.10 lakh of sufficient security and respondent no.1 had never abandoned the goods. The appellant could not realize its goods by sale under Section 63 of the Customs Act in view of the pendency of the adjudicatory process which was also the reason why neither the appellant could give delivery of the goods nor could respondent no.1 take delivery of the goods. On completion of the adjudicatory process, the dues had been cleared and goods taken delivery of. Thus the occasion to determine as to what is the amount payable would have arisen only after the adjudicatory process was completed including in respect of the demurrage.
32. The important distinguishing factor between the present case and Board of Trustees of the Port of Bombay v. Sriyanesh Knitters' case (supra), as rightly emphasized by learned counsel for respondent nos.1 and 2, is that the

importer in Board of Trustees of the Port of Bombay v. Sriyanesh Knitters' case (supra) after having paid the custom duty and penalty, took delivery of the goods but failed to clear the account. The Port Trust was, in fact, compelled to file civil proceedings for recovery of the amount and it is in that context that the second consignment was detained by the Port Trust as a wharfinger under Section 171 of the Contract Act.

33. In the present case, the adjudicatory process was still on when the second and third consignments were received and thus it cannot really be said that there was a General Balance of Account for which second and third consignments could have been detained as security within the provisions of Section 171 of the Contract Act. We do not even consider it necessary to aver the fact that in the present case the adjudication process has been in favour of respondent no.1 while in Board of Trustees of the Port of Bombay v. Sriyanesh Knitters' case (supra), the importer paid the duty and the penalty and got the goods released as the same may not impact the quantification of liability towards the storage charges. The importer failed to pay the crystallized demand which would be the General Balance of Account even after adjudicatory process and that is why the detention of the second consignment can be said to be within the parameters of Section 171 of the Contract Act.
34. Respondent no.1 in the present case never objected to the payment of the amount due on account of storage, but the

amount had not been crystallized as on the date of detention of the second and third consignments as the adjudicatory process was still on. On completion of adjudicatory process, the amount was paid both towards custom duty and for storage charges.

35. A reading of the provisions of Section 63 of the Customs Act shows that the interest of the warehouse is sought to be protected by giving liberty to detain or deal with such part of the goods as is necessary to clear the liability towards such storage charges. It is not given a blanket power to deal with the goods. The end claim of the appellant was of Rs.1,60,000/- while the goods imported were worth Rs.10,00,000/-. The custom authorities were not saying that the goods were of a lesser value, but of a much higher value. The goods were of sufficient security for any storage charges. The goods were not perishable in nature being acrylic scrap. There was sufficient security available with the appellant in respect of the first consignment and on that account also there was no need for detention of the second or third consignment. A judgment of the Court is not like a statute and must thus be read in the context of the facts in which it was given keeping in mind the principles of law. It is this aspect which has been emphasized in State of Rajasthan v. Ganeshi Lal's case (supra). The aforesaid distinguishing facts make it clear that the ratio of Board of Trustees of the Port of Bombay v. Sriyanesh Knitters' case (supra) would not apply to the

facts of the case in question in view of there being a large number of essential and divergent facts.

36. We cannot lose sight of the fact that the demurrage which has accumulated is not on account of disputed consignment but is sought to be claimed for storage of the goods on subsequent consignments which were improperly detained and it cannot be said that the appellant is entitled to recover this amount from respondent nos.1 and 2.
37. We find no merit in the appeal and the same is dismissed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

SEPTEMBER 22, 2008
dm

MOOL CHAND GARG, J.