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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment Reserved on : July 03, 2012*  
*Judgment Pronounced on: July 18, 2012*

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**RFA(OS) 20/2000**

LUFTHANSA GERMAN AIRLINES ..... Appellant  
Represented by: Mr.H.L.Tiku, Senior Advocate  
instructed by Ms.Yashmeet Kaur,  
Advocate

versus

VIJ SALES CORPORATION ....Respondent  
Represented by: Mr.Pawan Kumar Bahl, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE MANMOHAN SINGH**

**PRADEEP NANDRAJOG, J.**

1. Suit filed by M/s.Vij Sales Corporation against Lufthansa claiming decree in sum of ₹1,48,200/-; being the value of the goods entrusted to Lufthansa for carriage by air from New Delhi to London has been decreed along with the pre-suit interest @9% per annum i.e. ₹19,784.70 together with pendente-lite and future interest at the same rate on the sum of ₹1,48,200/-.

2. It is not in dispute that M/s.Vij Sales Corporation, acting through its agent M/s.Continental Carriers delivered a consignment of ready-made garments valued at ₹1,48,200/- to Lufthansa for carriage to London from Delhi on July 31, 1976 and for which Lufthansa issued the Airway Bill No.220-5673 9174, Ex.D-1. The goods were consigned to State Bank of India, London. Ex.D-1 had an endorsement that

M/s.R.K.Fashion Ltd. was the notified party. M/s.Vij Sales Corporation handed over the Airway Bill and other allied documents pertaining to the export to State Bank of India, New Delhi which sent the documents to its branch at London so that as consignee, the State Bank of India could take delivery of the goods or hand over the documents to the notified party for doing the needful. Suffice would it be to record that the export was for the benefit of M/s.R.K.Fashion Ltd. and between M/s.Vij Sales Corporation and M/s.R.K.Fashion Ltd. it was a term of the contract that the notified party i.e. M/s.R.K.Fashion Ltd. would make payment for the goods to State Bank of India at its London branch and collect the Airway Bill and other export documents and based thereon would get the goods released from the customs at London. Admittedly the goods reached London on August 04, 1976 and the goods could not be removed through the customs, and for which Lufthansa had no role for the reason it was for the consignee or the notified party to have completed the necessary formalities. Vide Ex.DW-1/1, Lufthansa informed Vij Sales Corporation as also the notified party R.K.Fashion Ltd. that the goods were incurring demurrage and should be removed. It was highlighted that the release order required to be issued by Lufthansa was already issued to Express Enterprises, the party nominated as its agent by R.K.Fashions Ltd. Vide Ex.D-3, on October 05, 1976 Lufthansa once again informed Vij Sales Corporation and its agent at Delhi, M/s.Continental Carriers, that the goods had not been got released from the customs at London. Another reminder Ex.DW-1/2 was sent by Lufthansa on November 16, 1976 which was addressed to M/s.Continental Carriers and M/s.Vij Sales Corporation. Nothing happened.

The goods remained at the bonded warehouse and since there was a threat of the same being auctioned by the custom authorities at London, vide Ex.D-5 on January 29, 1977, Lufthansa intimated said fact to M/s.Vij Sales Corporation. The stalemate continued requiring Lufthansa to send another reminder to M/s.Vij Sales Corporation, Ex.D-6 on March 18, 1977. The stalemate continued save and except that on April 22, 1977 vide Ex.P-1, M/s.Continental Carriers informed Lufthansa that the goods be delivered to M/s.Kay Imports-Exports and for which it was intimated that the shipper had applied for RBI permission and that the same would be sent shortly. Thus, as per Ex.P-1 Lufthansa was required to issue a release order in favour of M/s.Kay Imports-Exports and not that the goods could be delivered by Lufthansa to said party inasmuch as the goods were already in the warehouse of the customs in London.

3. As per the evidence led, there is a disconnect with respect to the correspondence which was exchanged between the parties thereafter, but it appears that some correspondence was exchanged which led Lufthansa to write a letter to M/s.Continental Carriers on May 20, 1977, Ex.P-2, in which Lufthansa wrote as under:-

“Dear Sirs,

Re: Air way bill No.220-5673 9174  
New Delhi/London  
Dated : 31.07.1976

This has reference to your letter V-9 dated 16.05.1977 in connection with the subject shipment.

As already informed over the telephone on 18.5.1977 that as per telex information received from our office in London the shipment was

delivered to clearing agent M/s.Express Enterprises with information to M/s.Kay Import-Export.

Thanking you and assuring you of your best cooperation at all times we remain.

Yours sincerely

Lufthansa German Airlines

Otto Preuss  
Cargo Sales Manager - India"

4. Since the release order had already been issued by Lufthansa in the name of M/s.R.K.Fashion Ltd. and M/s.Express Enterprises London was acting as the agent of M/s.R.K.Fashion Ltd. and since thereafter M/s.Kay Imports-Exports was made the notified party, M/s.Express Enterprises wrote a letter on May 28, 1977, Ex.PW-1/2 as under:-

"Dear Sirs,

Re: AWB 220-5673 9174 – ex LH 034/4.8.76

We have been instructed by Lufthansa Airlines, to advise yourselves regarding a shipment of 78 cartons under the above airway bill.

This shipment is present held in a Bonded Warehouse. On the instructions of the previous consignee M/s.R.K.Fashions Ltd. should you wish to release this consignment, we would want a release note from R.K.Fashion Ltd.

For your information, please note that HM Customs would want the duty before the shipment could be released.

If you do not have a clearing agent, we would be prepared to act for you provided the conditions are complied with.

Thanking you,

Yours faithfully,

EXPRESS ENTERPRISES  
M.ASLAM"

5. There is another break in the evidence led, but correspondence continued between the parties; what it was? We do not know, but on 08.08.1977 Lufthansa wrote a letter, Ex.P-6, to M/s.Continental Carriers with copy to M/s.Vij Sales Corporation in which it wrote as under:-

"Dear Sirs,

Re: Air way bill 220-5673 9174  
New Delhi/London  
Dated 31.07.1976

We acknowledge receipt of your letter V-9 dated 02.08.77 in connection with the subject shipment.

As you are well aware that the new consignee M/s.Kay Import-Export agreed to take this consignment without the storage charges and on your confirmation for payment of storage charges locally, the consignment was released to consignee agent M/s.Express Enterprises for delivery to a bonded warehouse where it still remains. We have further been advised by our London office that as per M/s.Kay Import-Export they have spoken to Mr.Vij disputing the purchase price of the goods.

We trust you will appreciate that the shipment has been delivered to consignee agent care of the bonded warehouse and as such the matter is closed so far as Lufthansa is concerned. The matter is now only between shipper and consignee.

Thanking you and assuring you of our best cooperation at all times we remain.

Yours sincerely

Lufthansa German Airlines

Otto Preuss  
Cargo Sales Manager - India"

6. Ex.P-6 was responded to by M/s.Continental Carriers on August 22, 1977, Ex.P-7, in which Continental Carriers categorically wrote to the Cargo Sales Agent of Lufthansa that it appears he not having correct facts with him inasmuch as the goods were still lying awaiting custom clearance. Continental Carriers wrote: *'It appears that you are not getting the correct facts from your London Office regarding the above shipment ..... the goods are still lying in the bonded warehouse in the name of the first consignee.'* Correcting itself, on October 18, 1977 Lufthansa informed Continental Carriers vide Ex.D-7 as under:-

"Sub:AWB 220-5673 9174 dated 31.07.76 – Delhi/London

Dear Sirs,

Further to our letter of September 30, 1977 we are writing to you today to inform you that our London office has now clarified the position with regard to the delivery of this consignment as follows:

This consignment arrived in London on August 4, 1976 by a flight LH034. On arrival the documents for the consignment were correctly passed to Express Enterprises who are R.K.Fashion's nominated agent for want of the necessary bank release.

In accordance with your letter of October 18, 1976 the bank's name was deleted and R.K.Fashion became consignee, but he did not take delivery of this consignment. In your letter

of April 22, 1977 you requested us to change the name of consignee again and to read then Kay Import-Export and the consignment was held for Kay Import-Exports' disposal since that time.

During this transaction the documents were all the time in the possession of Express Enterprises as agents and they were informed by our London office about the changes of the name of the consignees and they were all the time ready to make delivery of the goods to the nominated consignees. Kay Import-Export could have accepted this consignment from Express Enterprises which they failed to do. Kay Imports-Exports also have not instructed Express Enterprises to transfer the documents to any other agent of their choice.

Please allow us to explain that the transportation contract under which this consignment was carried from Delhi to London was concluded between the Shipper and the Carrier in favour of the consignee. Whether the consignee remains the same as originally shown on the airway bill or whether the name of the consignee had to be changed as per the shippers' request, in no way carriers are in a position to take any action against the consignee if he does not take delivery of the consignment. Carriers can only offer the consignment to the consignee for acceptance and it is the discretion of the consignee whether to accept the consignment or not.

Now it pains us to note that despite our best efforts to assist the shipper to solve the problem he has had with this consignment and really our London office has gone out of the way, even now no further action is taken by the shipper or his new consignee to take delivery of the goods. It comes to our mind now that it might have been a wrong thing to do when we requested our London office to waive 50% of the storage charges to enable the shipper to find an alternative buyer for his goods. As it appears he is not interested to do something for his goods, but still tries to leave everything to this carrier.

Therefore, we wish to make it clear that this consignment is now lying a customs bonded warehouse for the disposal of Kay Import-Export and the storage charges are attaching to the consignment. This consignment may be kept in Customs Bonded Warehouse until such time Customs authorities do some action to dispose of the goods in any way they like, if the goods are not cleared within a reasonable time.

Any responsibility for this consignment must surely be that of the shipper including payment of the storage charges further incurring on it. We will definitely not accept any claims whatsoever in this matter.

Thanking you, we remain,

Yours sincerely

Lufthansa German Airlines

Otto Preuss  
Cargo Sales Manager - India"

7. On September 07, 1977, M/s.Kay Imports-Exports wrote a letter, Ex.PW-1/4, to M/s.Vij Sales Corporation as under:-

"Ref: Payment of consignment covered under AWB No.220-5673 9174 dt. 31.7.76 for ₹1,48,200/-

Further to my telephonic talk regarding the delivery of above mentioned consignment and the payment of above said bill for ₹1,48,200.00, I want to inform you that neither I have taken the delivery of the above mentioned consignment nor M/s.Express Enterprises are my agent. The matter is between you and Lufthansa because of non-delivery of consignment to me by Lufthansa. I am not responsible to pay the amount of ₹1,48,200.00 for the consignment covered under AWB No.220-5673 9174 dt. 31.7.76.

Further you please write directly to Lufthansa who is responsible to deliver the consignment to the other party.

Yours sincerely,

For KAY IMPORT-EXPORT  
(ASHOK KAPOOR) PROP."

8. Since the goods still remained with the customs, on November 16, 1977 Lufthansa wrote to M/s.Vij Sales Corporation the letter Ex.D-9 as under:-

"Sub: Air way bill 220-5673 9174  
New Delhi/London  
Dated : 31.07.1976

This is further to the correspondence resting with our letter dated 18.10.1977 to your forwarding agents M/s.Continental Carrier, New Delhi in connection with the subject shipment. A copy of the said letter dated 18.10.1977 is enclosed herewith, which is self explanatory.

Since M/s.Kay Import-Export, the new consignee nominated by you also have failed to take release of the above shipment the same is lying undelivered on your risk and costs. You are therefore once again requested to pursue matter with your consignee for immediate release of the shipment against payment of the charges which accrued while the shipment was stored in a bonded warehouse due to your consignee's failure to release.

We would like to make it clear that the above mentioned shipment is still available for your disposal or for release by your new consignee M/s.Kay Import-Export. Since it is not possible to store undelivered shipments for an indefinite period, we request you to let us to have your alternate disposal instructions within 15 days from the date of this letter failing which the shipment will be finally surrendered to HM

Customs for their disposal which shall be entirely on your risk and responsibility.

Thanking you and assuring you of our best attention at all times we remain,

Yours sincerely

Lufthansa German Airlines

Otto Preuss  
Cargo Sales Manager - India"

9. The stalemate continued. M/s.Vij Sales Corporation instituted a suit against Lufthansa. Grievance in the plaint was that Lufthansa informed M/s.Continental Carriers vide its letter dated May 20, 1977 that it had delivered the consignment to M/s.Express Enterprises, stated to be the agent of M/s.R.K.Fashion Ltd. and in this manner the goods got delivered at London to a party not authorized to do so and in the process M/s.Vij Sales Corporation could not recover the price of the goods, which fact was reiterated by Lufthansa as per its letter Ex.P-6 dated August 08, 1977 in which Lufthansa once again took the stand that the goods had been delivered to the original notified party i.e. M/s.R.K.Fashion Ltd.

10. In paragraphs 5, 6 and 11 to 14 of the plaint M/s.Vij Sales Corporation pleaded as under:-

"5. That the plaintiffs changed the consignee and nominated Messrs Kay Imports & Exports, 46-Hill Crest Road, Acton, London, as consignee in place of M/s.R.K.Fashion Ltd. This change was communicated to the defendant by letter dated 22<sup>nd</sup> of April, 1977 by M/s.Continental Carriers and the defendants were directed to deliver the goods to M/s.Kay Imports and Exports. The letter dated 22<sup>nd</sup> of April, 1977 is reproduced below for convenience of reference:-

22<sup>nd</sup> April, 1977

To  
The Cargo Sales Manager,  
Lufthansa German Airlines,  
Palam Airport,  
New Delhi.

Dear Sir,

Ref :-AWB No.220-5673 9174 dated  
31.7.76 Delhi/London

Please send a telex message that the goods covered under the above AWB may be delivered to M/s Kay Imports & Exports, 46-Hill Crest Road, Acton, London W3 UK 992-2790, Surcharge charges less deduction may be debited to us and separate bill sent for this purpose. The shipper has applied for the RBI permission and the same will be sent to you shortly.

Thanking you,

Yours faithfully,

For M/s.Continental Carriers

Sd/- T.N.Vohra."

6. That by letter dated 20<sup>th</sup> of May, 1977 the defendant informed M/s.Continental Carriers that they had received a telex information through London Office that the shipment was delivered to clearing agents M/s.Express Enterprises with information to M/s.Kay Imports & Exports. The letter of the defendant to the plaintiff is reproduced below:-

20<sup>th</sup> May, 1977

M/s.Continental Carriers,  
H-37, Connaught Circus,  
New Delhi.

Dear Sir,

Ref :-AWB No.220-5673 9174  
New Delhi/London dated 31.7.76

This has reference to your letter No.V-9 dated 16.5.77 in connection with the subject shipment. As already informed over the telephone on 18.5.77 that as per telex information received from our office in London, the shipment was delivered to clearing agents M/s.Express Enterprises with information to M/s.Kay Imports & Exports.

Thanking you and assuring you of our best co-operation at all times.

I remain  
Yours faithfully,  
Lufthansa German Airlines

Sd/- Otto Preuss  
Cargo Sales Manager, New Delhi

Cc: Vij Sales Corporation, 1129, Railway Road, Shahdara, Delhi for information please"

xxx xxx xxx

11. That the defendants by their letter dated the 8<sup>th</sup> August, 1977 informed M/s.Continental Carriers that the consignment was released to consignee's agents M/s.Express Enterprises for delivery to a bonded warehouse.

12. In reply to the letter dated 8<sup>th</sup> of August, 1977 of the defendant M/s.Continental Carriers by their letter dated 22<sup>nd</sup> of August, 1977 wrote to the defendants that the stand taken by the defendants was not correct. It was contended that M/s.Kay Imports and Exports never gave

instructions to anybody for clearance and storing the consignment in question in a bonded warehouse. M/s.Express Enterprises were not the agents of M/s.Kay Imports & Exports. It was also mentioned in the letter that M/s.Kay Imports & Exports approached the London Office of the defendants for taking delivery of the consignment but they were informed that the goods had already been handed over on 5.5.1977 to M/s.Express Enterprises, who were agents of the previous consignee i.e. R.K.Fashion Ltd.

13. That M/s.Kay Imports & Exports by their letter dated the 7<sup>th</sup> September, 1977 informed the plaintiff that they had not taken delivery of the consignment nor M/s.Express Enterprises were their agents. They repudiated their liability to pay the amount of Rs.1,48,200/- i.e. the price of the goods.

14. That M/s.Kay Imports & Exports had been ready and willing at the relevant time to accept the delivery of the goods. But the defendant was not in a position to give delivery of the goods to M/s.Kay Imports & Exports for the reason that the goods had been unauthorisedly delivered on 5.5.1977 to M/s.R.K.Fashion Ltd., through their agents M/s.Express Enterprises."

11. In response to afore-noted paragraphs of the plaint, the stand taken by Lufthansa in the written statement reads as under:-

"5. With respect to para 5 of the plaint, the answering defendant submits that by a letter No.V-9 dated October 18, 1976 received from Continental Carriers, purporting to be on the instructions from the plaintiff, instructed the answering defendant to delete the consignee Bank's name and to deliver the consignment directly to the party namely R.K.Fashions Limited 202-A, Kensington High Street, London. The answering defendant sent the appropriate telex message to its London office. The answering

defendant further submits that as the consignment was prepaid, R.K.Fashions failed to pay the demurrage charges and physically take delivery. The answering defendant advised the plaintiff from time to time of the said fact. On April 22, 1977 the Continental Carriers addressed a letter to the answering defendant and received by it on April 26, 1977, advised defendant and received by it on April 26, 1977, advised the answering defendant to deliver the consignment to new consignee Messrs Kay Imports & Exports, 46, Hill Crest Road, Action London, in place of R.K.Fashions Limited. Subject to what has been stated above para 5 of the plaint is denied.

6. Para 6 of the plaint is not denied in so far as it relates to issuance of letter dated May 20, 1977.

XXXX XXXX XXXX

11. Para 11 of the plaint is not denied.

12. With respect to para 12 of the plaint the answering defendant submits that the enquiry the Continental Carriers, were making, were wholly irrelevant. Receipt of letter dated August 22, 1977 is however not denied. Save and except what has not been specifically admitted herein is denied.

13. Para 13 of the plaint is denied.

14. Para 14 of the plaint as stated is denied. It is specifically denied that Messrs Kay Imports & Exports were ready and willing at the relevant time to accept the delivery. It is also denied that defendant was not in a position to deliver the goods as upon plaintiff's own showing the clearing Agents Messrs Express Enterprises offered to release goods to the new consignee."

12. Ignoring technical issues framed and highlighting that in appeal before us the battle was fought between the parties with respect to issue No.6 and 7, it needs to be

highlighted by us that the main issue in question was issue No.6 i.e. whether Lufthansa handed over the consignment to M/s.Express Enterprises against the instructions of M/s.Vij Sales Corporation; and if yes the next issue i.e. Issue No.7 : what was the amount which the plaintiff M/s.Vij Sales Corporation would be entitled to.

13. Decreeing the suit, the reasoning of the learned Single Judge reads as under:-

“Adverting to the pleadings and evidence, it is admitted case of the parties that the plaintiff firm through its agent M/s.Continental Carriers delivered a consignment of ready-made garments on 31<sup>st</sup> July 1976 to the defendant at New Delhi for carriage to London and Airway bill No.220-5673 9174 Ex.D-1 State Bank of India, South Hall, Middlesex, UK is shown as the consignee while M/s.R.K.Fashion Ltd. as notify party. It is also not in dispute that after M/s.R.K.Fashion Ltd. failed to take delivery of the consignment on getting the documents released by making payment to the consignee, by the letter Ex.D-4 dated 18<sup>th</sup> October 1976 sent by M/s.Continental Carriers on instructions from the plaintiff, the defendant was instructed to delete the consignee bank’s name and deliver the consignment directly to M/s.R.K.Fashion Ltd. It is further not in dispute that by the letter Ex.P-1 dated 22<sup>nd</sup> April 1977 which was received by the defendant on 26<sup>th</sup> April 1977, the defendant was instructed by plaintiff’s agent M/s.Continental Imports & Exports and to debit the storage charges to its account and separate bill sent for this purpose. Case of the plaintiff is that despite receipt of the said letter Ex.P-1 the defendant handed over the consignment in question to M/s.Express Enterprises, agent of said M/s.R.K.Fashions Ltd. on 5<sup>th</sup> May 1977 and it is, therefore, liable to compensate the plaintiff for the value of consignment together with interest. On the point of delivery of consignment to M/s.Express Enterprises on the aforesaid date the averments particularly made in paras 12 and 14 of the plaint,

corresponding paras of the amended written statement and also the letters Ex.P-2, Ex.PW-1/4 and Ex.PW-1/2 are relevant. Para No.11 of the plaint notices that the defendant by letter dated 8<sup>th</sup> August 1977 informed M/s.Continental Carriers that the consignment had been released to M/s.Express Enterprises being the consignee's agent. In para No.12 it is pleaded that in reply to said letter dated 8<sup>th</sup> August 1977 M/s.Continental Carriers by the letter dated 22<sup>nd</sup> August 1977 wrote to the defendant that M/s.Express Enterprises was neither the agent of M/s.Kay Imports & Exports nor the latter gave any instructions to anybody for clearance of the consignment on its behalf. It is further pleaded that in the said letter it was also mentioned that M/s.Kay Imports & Exports approached the London office of the defendant for taking delivery of consignment but they were informed that the consignment had already been handed over on 6<sup>th</sup> May 1977 to M/s.Express Enterprises. In para No.14 it is alleged that M/s.Kay Imports & Exports had been ready and willing at the relevant time to accept the delivery of consignment but the defendant was not in position to give delivery thereof to them for the reason that the consignment had already been unauthorizedly delivered on 5<sup>th</sup> May 1977 to M/s.R.K.Fashion Ltd. through their agent M/s.Express Enterprises. In corresponding paras of the amended written statement it has not been specifically denied by the defendant that the consignment in question was not handed over on 5<sup>th</sup> May 1977 to M/s.Express Enterprises as alleged. Ex.P-2 dated 20<sup>th</sup> May 1977 is the letter sent by the defendant to said M/s.Continental Carriers and in para No.2 of this letter it is stated that as per the telex information from their office in London the consignment in question was delivered to M/s.Express Enterprises with information to M/s.Kay Imports & Exports. The defendant cannot wriggle out of what is stated in said para 2 in Ex.P-2. Ex.PW-1/4 dated 7<sup>th</sup> September 1977 is the letter sent by M/s.Kay Imports & Exports to the plaintiff repudiating the liability to pay the amount of ₹1,48,200/- being the value of

consignment in question on the grounds that neither the delivery of consignment was made to them nor M/s.Express Enterprises was their agent. Ex.PW-1/2 dated 28<sup>th</sup> May 1977 is the letter sent by M/s.Express Enterprises to said M/s.Kay Imports & Exports and it, inter alia, notices that if the latter do not have a clearing agent they are prepared to act for them. Aforesaid letters and the pleadings prove beyond doubt that M/s.Express Enterprises was not the agent of M/s.Kay Imports & Exports and the delivery of the consignment in question was made by the defendant to M/s.Express Enterprises on 5<sup>th</sup> May 1977 against the instructions contained in said letter Ex.P-1.”

14. It is apparent that the learned Single Judge has been influenced by two factors. Firstly Ex.P-2 and Ex.P-6 i.e. letters written by the Cargo Sales Manager of Lufthansa on May 20, 1977 and August 08, 1977 in which it was stated by Lufthansa that the goods in question have been released to the consignee agent i.e. M/s.Express Enterprises; and secondly, the pleadings of Lufthansa, and as noted in para 10 above, the pleadings in para 6 of the plaint that in the letter dated May 20, 1977 Lufthansa had admitted having delivered the goods to the consignee agent and reiterating said admission, and as pleaded in para 11 of the plaint as per Lufthansa’s letter dated August 08, 1977, to which pleadings, as noted in para 11 above, Lufthansa admitted the pleadings in the corresponding paragraphs of the plaint.

15. We must accord our displeasure at the casual manner in which the written statement was filed by Lufthansa. When clients approach lawyers, it is the duty of the lawyer to read the documents upon which the opposite party relies as also such documents on which the client relies. If parties have committed a mistake, it is the duty of the counsel to highlight

said fact in the pleadings. If this does not happen, the situation akin to the one we are witnessing comes into being. A wrong admission by a party in a letter, upon which the opposite party places reliance, going unrebutted; would lead to a logical decision of there being an admission. With docket explosion in Courts, it is not expected that a Judge would read a file front to back, page by page and line by line. After all, Judges are guided during arguments by counsel whose duty it is to highlight relevant evidence. Alas! This has not happened in the instant case.

16. It is true that the Cargo Sales Manager of Lufthansa, vide Ex.P-2 has written that the shipment was delivered to M/s.Express Enterprises; the clearing agent, but the same is an obvious mistake and for which we may only draw the attention to the reader of our opinion of the facts noted by us in para 4 above, in which we have reproduced the letter written by M/s.Express Enterprises on May 28, 1977 i.e. Ex.PW-1/2, in which letter M/s.Express Enterprises clearly wrote that the shipment was being held in a bonded warehouse. The letter Ex.P-6 dated August 08, 1977, written by Lufthansa, contents whereof have been noted by us in para 5 above, would evidence that the language used therein is : *The consignment was released to consignee agent M/s.Express Enterprises for delivery to a bonded warehouse where it still remains.* It is apparent that the writer of the letter confused the issue of a physical release of goods and the legal requirement of a delivery note being released. The letter does not bring out any admission that Lufthansa gave delivery of the goods to Express Enterprises. The letter Ex.P-6 was correctly understood by the agent of Vij Sales Corporation in India i.e. M/s.Continental Carriers, who under its letter dated

August 22, 1977, Ex.P-7, clearly wrote that it appears that the Cargo Sales Agent of Lufthansa appears to not having correct facts in his knowledge inasmuch as the goods were still lying awaiting custom clearance. Immediately thereafter, as noted by us in para 6 above, Lufthansa corrected itself by writing the letter Ex.D-7 on August 18, 1977, contents whereof have been reproduced by us in para 6 above. Further correspondence Ex.PW-1/4 and Ex.D-9 extracted by us in paragraphs 7 and 8 above clearly bring out that M/s.Continental Carriers, the agent of Vij Sales Corporation, M/s.Express Enterprises, the agent of the original notified party i.e. M/s.R.K.Fashion Ltd. who also was acting as the agent of M/s.Kay Import-Export i.e. the changed notified party, were aware of the goods being in the custom bonded warehouse and no delivery thereof being given to the original notified party. The letter Ex.PW-1/4 by M/s.Kay Import-Export clearly brings out that M/s.Express Enterprises was never delivered the possession of the consignment and the letter Ex.D-7 dated October 18, 1977 clearly brings out that the consignment was still with the customs bonded warehouse when the said letter was written. Thus, there is enough documentary material to show that neither, when Ex.P-2 was written on May 20, 1977 nor when Ex.P-6 was written on August 08, 1977, was possession of the goods given by Lufthansa to either M/s.Express Enterprises or the original notified party i.e. M/s.R.K.Fashion Ltd.

17. Even otherwise, as per the airway bill Ex.P-2, the goods were consigned in the name of State Bank of India and M/s.R.K.Fashion Ltd. was the notified party. The goods being imported in the United Kingdom had to pass through the customs and delivery had to be obtained from the bonded warehouse of the customs since the goods were not lifted

immediately on arrival. As per the airway bill, Lufthansa had to issue a delivery note in favour of M/s.R.K.Fashion Ltd., which Lufthansa appears to have done and unfortunately its Cargo Sales Manager, rather than write that it had handed over the delivery note, wrote that goods were delivered. The facts of the case bring out that the relevant documents enabling customs clearance in United Kingdoms were sent by Vij Sales Corporation to State Bank of India, London through the branch at Delhi and the notified party M/s.R.K.Fashion Ltd. was duly notified of the same, requiring it to pay the money and obtain the documents from the State Bank of India branch London, and get the goods cleared from the customs. This did not happen. M/s.Vij Sales Corporation changed the name of the notified party and informed that now M/s.Kay Imports-Exports would be the notified party. Vide Ex.P-1, on April 22, 1977, much after the goods had reached London on August 04, 1976, M/s.Continental Carriers, the Indian agent of M/s.Vij Sales Corporation informed Lufthansa that the shipper i.e. M/s.Vij Sales Corporation had applied for RBI permission for change in the name of the notified party and the permission to be granted would be sent shortly. There is no evidence of any permission being obtained from RBI, much less sent to Lufthansa. As noted by us in para 2, as per Ex.P-1, Lufthansa was required to issue a release order in favour of M/s.Kay Imports-Exports and not the goods to be delivered.

18. It is rather unfortunate that attention of the learned Single Judge was not drawn to the evidence aforesaid and lastly, the testimony of the witness of Lufthansa who clarified: *It is correct that the letter dated 20<sup>th</sup> May, 1977 was written by us to the Continental Carriers wherein it is mentioned that the shipment was delivered to the clearing agent Express*

*Enterprises with information to Kay Import-Export. Volunteered: In fact, it is only the document, copy of which was with our office, which was handed over to the nominated agent for getting the goods cleared from the Customs. After the goods are cleared they are stored in bonded warehouse.*

19. The appeal is accordingly allowed. Impugned judgment and decree passed by the learned Single Judge decreeing suit filed by the respondent is set aside. The suit is dismissed, but without there being any orders as to costs all throughout keeping in view the fact that the appellant is responsible for a protracted and an unnecessary trial.

20. Before bringing the curtains down we note that the appellant was directed to deposit the decretal amount in this Court which was initially kept in a fixed deposit but was later on, together with interest accrued thereon, directed to be released to the respondent upon respondent furnishing security to the satisfaction of the Registrar General of this Court. The respondent furnished the requisite security and withdrew the amount and thus we direct that if the respondent does not return the amount which it had received under orders of this Court by paying the same to the appellant within six weeks, the learned Registrar General would enforce the security bond and after realizing the amount received by the respondent would pay over the same to the appellant.

(PRADEEP NANDRAJOG)  
JUDGE

(MANMOHAN SINGH)  
JUDGE

JULY 18, 2012  
dk