

\$~R-202

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

Date of Decision: October 25, 2016

+ RFA 751/2005

INTERNATIONAL AIRPORT AUTHORITY OF INDIA

..... Appellant

Through: Mr. Aruneshwar Gupta &
Mr. Ayush Khanna, Advocates

Versus

ASIAN COMPUTER CONSULTANCY SERVICE PVT. LTD.

.....Respondent

Through: Mr. Yogesh Malhotra, Advocate
and Mr. Udit Grover, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

Appellant is the *bailee*, who vide order of 20th April, 2005 has been saddled with the liability to pay the entire cost of first consignment containing 20 cartons and custom duty paid on it. The decree against appellant is of ₹3,67,003.20 payable with demurrage charges and interest @10% p.a..

The factual background of this case already stands noticed in the impugned order and needs no reproduction. Suffice to note that on 22nd April, 1987, a consignment of 20 cartons of electric components i.e. parts of switch mode power supply for computers were imported from *Taiwan*

and the said consignment was received at the Indira Gandhi International Airport, Delhi and while in custody of appellant, was subjected to inspection by custom authorities for assessment of custom duty and upon respondent-plaintiff depositing the demurrage charges and the custom duty, the said consignment was released to respondent-plaintiff on 22nd August, 1987. It is not in dispute that the custom authorities found that there was pilferage and due to it, 19 cartons of the consignment were taken by respondent-plaintiff after appellant expressed its inability to trace out the 20th carton and thereafter, respondent-plaintiff had served a legal notice upon appellant-defendant demanding a sum of ₹6,40,130/- with interest. Since there was no response to the aforesaid legal notice, therefore, respondent-plaintiff had filed a suit for recovery of damages. On the basis of the pleadings of the parties, issues were framed, the evidence was led and thereafter, vide impugned judgment, suit of respondents stands decreed for a sum of ₹3,67,003.20 with demurrage charges of ₹90, 130/- with *pendente lite* and future interest @10% p.a.

While entertaining this appeal, operation of the impugned order was stayed subject to appellant depositing the decretal amount which was directed to be kept in fixed deposit. It was accordingly so done.

At the final hearing of this appeal, learned counsel for appellant has assailed the impugned order on the ground that there was no privity of contract, express or implied and in the absence of any privity of contract, appellant was not liable for payment of any amount as damages to the respondent. Learned counsel for appellant states that appellant had retained the goods on behalf of custom authority and since the custom authority has not been made a party despite objection by appellant,

therefore, appellant cannot be made to suffer the decree in question. It is pointed out by learned counsel for appellant that appellant had exercised due and proper care that of a prudent person and had provided security and protection to the goods in storage area by deploying security staff of 250 persons to keep a watch on movement of the goods. It is also pointed out that the cargo movement is checked at three points i.e. *at the gate of bounded area, at the import delivery gate and at the main gate*. It is highlighted that sixty armed security guards, fifteen supervisors, four gunmen and three security officers were always posted at the exit and entry points of the storage area and since goods were properly stored, therefore, the impugned order deserves to be set aside, as there can be no presumption of negligence and that the *maxim of res ipsa loquitur* has been erroneously invoked by trial court against appellant, as the negligence on the part of appellant does not stand established.

To the contrary is the submission of learned counsel for respondent who support the impugned order and submits that there is no infirmity in it. It is submitted that on the Bill of Entry (*Ex. PW1/10*), there is a noting by the custom authorities that the goods in question, which were made available for inspection, were pilfered and this document is not disputed by counsel for appellant herein. To submit so, attention of this Court is drawn to Bill of Entry (*Ex. PW1/10*) and its back side, which shows that the inspection is done by the custom authorities and the remarks appearing on its back side are made by custom authorities. Attention of this Court is also drawn to the cross-examination of appellant's witness *Mr. K.L.Meena (DW-1)* to highlight that this witness has also admitted in his evidence that out of 20 cartons, 19 were delivered and out of it, 04

cartons were loose and the inspection was carried out by the custom authorities in the presence of respondent-consignee. Thus, it is submitted that in the face of aforesaid evidence, there was no requirement of getting any witness from the custom authorities examined.

It is submitted by respondent's counsel that appellant has not exercised due care and caution, as is expected from a *Bailee* and so, the blame cannot be put on custom authorities, as the said authorities have been vigilant enough to give note of Bill of Entry (*Ex. PW1/10*) that there was already a pilferage before commencing the inspection. It is submitted that even if adequate number of security guards etc. were posted at the storage area but that by itself would not sufficiently show that due care and caution was exercised. It is further submitted that it was for appellant to explain as to how one carton went missing and despite several opportunities given to appellant to trace out the missing carton, respondent was constrained to file the suit to seek recovery of the goods. Lastly, it is submitted that in the absence of evidence to rule out the negligence the principal of *maxim of res ipsa loquitur* would apply and respondent's suit has been rightly decreed against appellant.

Upon hearing both the sides, on perusal of impugned order and the evidence on record, this Court is constrained to note that not only the pleadings but even the evidence is half baked in this case. Such a view is taken because respondent-plaintiff has said in his evidence that rest of the consignment, due to the missing carton, had become useless and the consignment orders received by respondent-plaintiff were cancelled/withdrawn. No evidence in this regard has come on record to support the abovesaid assertion. Since it has come in the evidence that there was

pilferage at the time of inspection by the custom authorities, therefore, it cannot be said that appellant had exercised due care and caution as *bailee*. The evidence of pilferage remains unrebutted and so, appellant is liable to compensate respondent for the missing carton and custom duty paid thereon.

After having gone through the evidence on record, this Court is of the considered opinion that trial court has erred in granting entire cost of 20 cartons and custom duty paid thereon to respondent-plaintiff, who is entitled to the cost of the missing carton and custom duty paid thereon only. It has come in the evidence of respondent-plaintiff that fresh orders for re-import of misplaced/ stolen parts were placed vide Invoice (EX. PW1/24). The Packing List on record is (Ex. PW1/25), which discloses that packaging of components, as detailed in EX. PW1/24 was done in two wooden boxes. The Air Way Bill (EX. PW1/26) reveals that there were two cartons and the gross weight of these cartons was 530 kg. and the freight charges were ₹59, 890/- and the components imported i.e. electric components, parts of switch mode power supply for computers (Ex. PW1/27) were weighing 490 kg. and the cost of these two cartons is ₹1,25,938.05/- and the custom duty paid thereon is ₹80,885/-. However, the trial court has computed the total loss of appellant-defendant at ₹3,67,003.20.

So far as demurrage charges of ₹90,130/- are concerned, this Court finds that there was no justification for the trial court to have granted it for the reason that respondent-plaintiff as a prudent person ought to have taken rest of the 19 cartons and then for the missing carton, could have waited for a reasonable time i.e. to give three months time to appellant to

trace out the missing carton. Having not done so, respondent-plaintiff is not liable to any demurrage charges.

So far as respondent's communication of 21st August, 1987 (*Ex. PW1/15*) is concerned, this Court finds that instead of waiting for appellant to trace out the missing consignment, the respondent ought to have taken the remaining 19 cartons. Otherwise also, it was always open to respondent-plaintiff to make out a case against custom authorities and seek damages from the custom authorities in view of decision of Supreme Court in *International Airports Authority of India & ors. Vs. Grand Slam International & ors.* (1995) 3 SCC 151, wherein it has been reiterated as under:-

“44. It cannot be gainsaid that, by reason of unjustified detention of his goods by the Customs Authorities, the importer is put to loss by having to pay demurrage charges for the periods of such detention. The Central Government is empowered by Section 35 of the International Airports Authority Act, 1971 and Section 111 of the Major Port Trusts Act, 1963 to issue to the Authority and the Board of Trustees, respectively, directions on questions of policy after giving them an opportunity, as far as practicable, of expressing their views. The Central Government can, if so advised, after giving to the Authority and the Board of Trustees the opportunity of expressing their views, direct them, under the aforementioned provisions, not to levy demurrage charges for periods covered by detention certificates.”

As far as claim of damages of ₹1,00,000/- is concerned, it is rightly not sought by learned counsel for respondent as there is no justification to grant it in light of the view taken in the preceding paragraphs.

In view of the above, the impugned order of 20th April, 2005 is modified to the extent that suit of respondent-plaintiff stands decreed for a sum of ₹2,77,885/- only with *pendente lite* and future interest @10% p.a. from the date of filing of the suit till deposit of the decretal amount. It is pointed out that the decretal amount is deposited by appellant in this Court. Out of the deposited amount, the decretal amount with interest accrued thereupon be released to respondent as per rules and the balance of the deposited amount be remitted to appellant.

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 25, 2016

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