

\$~R-28A

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

+ RFA 41/2007

SUNSTAR OVERSEAS LTD. Appellant

Through Mr.B.R. Sharma, Adv.

versus

THAI AIRWAYS INTERNATIONAL LTD. Respondent

Through Mr.Sanjay Gupta, Ms.Bhavna Dhami
and Mr.Ajay Pratap Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER (ORAL)

% **18.09.2017**

1. Being aggrieved by the judgment and decree dated 31.10.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/respondent for the recovery against the appellant/defendant was decreed, the present appeal has been preferred.

2. The facts enumerating from the plaint filed before the Court below are that the plaintiff/respondent is a company which operates in Delhi and is carrying on the business of air transport i.e carriage of passengers and cargo in various parts of the world. Appellant/ defendant is a limited company. The defendant no. 2 has a unit called A.T Travels which is carrying on the business as cargo agents. The defendant no.2 booked a shipment consisting of 20 pieces

which is said to contain “jute made-ups” on 20.10.1995 for carriage from New Delhi to Los Angeles. Defendant no.2 requested the plaintiff to carry the shipment on “freight collect” basis i.e freight was to be paid by the consignee. The defendant no.2 gave a written undertaking to the plaintiff/respondent airline to pay freight and incidental charges if the said shipment remained undelivered at the destination. The consignment reached Los Angeles on 8th November, 1995 and consignee was duly informed about the same and was asked to collect the shipment of freight and other charges which was amounting to Rs. 2,55,109/- but consignee refused to take the delivery of the shipment on the ground that defendant no. 1 had contracted with the consignee to deliver the goods by the end of October 1995. The appellant/ defendant no.1 instead of giving alternative disposal instructions in regard to the cargo sent a letter to the plaintiff/respondent alleging delay in transporting the shipment and asked the plaintiff/respondent to deliver the shipment to the consignee free of freight and compensate defendant no.1 for the cost of goods. It was alleged that the plaintiff/respondent duly carried the shipment booked by the appellant/defendant according to terms and conditions of Airway Bill dated 20.10.1995. There was no stipulation that the shipment had to be delivered by 01.11.1995. There was a binding contract between the plaintiff and defendants and appellant/defendant was liable to pay the freight charges. The plaintiff/respondent had prayed for recovery of Rs.3,41,788/- with interest @ 18% per annum.

3. In the written statement filed on behalf of the appellant/defendants, it was stated that the suit has not been signed and filed by duly authorized person and the plaintiff is not entitled to the amount claimed in the suit for the defendants/appellant as the plaintiff/respondent despite specific instructions and the assurance given by the officials of the plaintiff to the defendant for the quick delivery of shipment, but it was delayed and due to the negligent act of the plaintiff the suit was liable to be dismissed.

4. On the basis of pleadings of the parties, following issues were framed by the Court below :

(1)Whether the plaintiff is entitled to recover Rs. 3,41,788/- as claimed in the suit? (OPD)

(2)Whether the suit has been signed and verified by duly authorised person? (OPP)

(3)Whether the plaintiff did not comply with the specific instructions regarding delivery of the consignment and consequently defendants were not liable to take the delivery? (OPD)

(4)Whether the claim of the plaintiff is barred by limitation? (OPD)

(5)Relief

5. To prove his case, the plaintiff examined Sh. Anjan Mukherjee as PW1. Sh. Rakesh Aggarwal got his statement recorded as D1W1 for defendant no.1, whereas Sh. Munish Kumar as D2W1.

6. The Court below decided all the issues against the

defendant/appellant. Feeling aggrieved by the judgment and decree in the suit, the present appeal has been filed.

7. The argument advanced by the counsel for the defendant/appellant is that the consignment was booked by air because of its requirement and need to the consignee urgently which was made known to the respondent orally that the consignment has to be delivered on or before 01-11-1995 to the consignee. It was further argued that the respondent Airline could not deliver the consignment up to 1-11-1995 which was booked with them on 20-10-1995 although they were having clear 10 days and how the consignment was unduly delayed has not been explained by them. The plaintiff/respondent was at fault in not delivering the consignment within the time and thus liable to deliver it free to the consignee and also liable to compensate the appellant.

8. On the other hand, argument advanced by the counsel for the respondent is that the respondent airline had duly carried the cargo from New Delhi to Los Angeles in accordance with the terms and conditions of the airway bill no. 217-1390-0810 dated 20.10.1995. It was further argued that the cargo was large and hence it had to be carried in two lots and there was no stipulation that the cargo would be delivered to the consignee by 01.11.1995; the cargo was to be carried in normal course and business of the plaintiff. It was also argued that the consignee was prepared to accept the cargo if the airway bill was amended from charges collect basis to charges prepaid basis and freight was paid by defendant no.1. It was further argued that as per the carriage by Air Act, 1972 the present suit is not time

barred and within two years reckoned from the date of arrival of the said consignment at the destination.

9. Arguments advanced by the counsel for the parties were heard and I have gone through the evidence, documents and material placed on record.

10. With respect to the fact that whether the plaintiff/respondent is entitled to recover Rs. 3,41,788/- as claimed in the suit. The counsel for the appellant argued that the respondent delayed the delivery of consignment which resulted into losses to the consignee and therefore the appellant is not liable to make any payment to the respondent. To discharge the onus PW-1 Sh. Anjan Mukherjee reiterated the contents of the plaint and proved the Airway Bill no. 21713900180 dated 20.10.1995 for carriage of consignment in suit which is evident from Ex.PW1/1. Furthermore, the freight guarantee received with airway bill, is evident from Ex. PW1/2. It was argued by the respondent that the cargo was large and hence it had to be carried in two lots and there was no stipulation as to the time of the delivery of the consignment. He further proved the letter requesting to the defendant/appellant to pay the freight and to give alternate disposal instruction which is Ex.PW1/4.

11. Now, coming to the issue whether the suit has been signed and verified by duly authorised person. The counsel for the appellant has argued that the suit has not been filed and signed by the duly authorized person but it was denied by the respondent and the contention taken by them was that Mr. Van Chirakul and Mr Philip Vera Bunnag both the General Managers of the respondent airlines

had the authority to sign and verify the pleadings. It is also submitted by the counsel of the respondent that Mr. Philip Vera Bunnag is the principal officer at Delhi and holds a General Power of Attorney dated 15.10.1998 to act for and behalf of the plaintiff/respondent.

12. With respect to the next issue, whether the plaintiff did not comply with the specific instructions regarding delivery of the consignment and consequently defendants were not liable to take delivery, it is evident from the plaint of the plaintiff/appellant that they booked a shipment consisting of 20 pieces for carriage from New Delhi to Los Angeles. In the course of the business of the plaintiff airline issued the airway bill bearing no. 217-1390-0810 which itself gave details of the shipment and the conditions of contract therein, and one of the condition was that the shipper is liable to pay all the outstanding freight and store charges, if the consignee fails to take the delivery of the consignment. Opposing the same, the respondent argued that there were no specific instructions given regarding the delivery of the consignment within the stipulated time and as the consignment was large it was dispatched in two parts and therefore there was a delay of 8 days. Thus, the appellant cannot be given the benefit of not paying the delivery charges to the respondent.

13. With respect to the claim of appellant that the suit is barred by limitation. The counsel for the appellant argued that the suit is barred by limitation both in terms of Rule 29 in the first schedule of Carriage by Air Act, 1972 and in terms of Clause 12 of the condition of contract as given on the back side of AWB, but the counsel for the respondent denied the above contention and argued that the present

suit is filed within 2 years reckoned from the date of arrival of the said consignment at the destination and it cannot be said to have been filed beyond the period of limitation. The consignment reached its destination on 08.11.1995 and legal action was brought against the appellant within 2 years as the suit was filed on 01.09.1997.

14. With respect to the appellant's claim of relief seeking recovery Rs 3,41,788/-, it is evident from the material placed on record that the appellant booked a shipment consisting of 20 pieces, weighing 2760 kgs and because the shipment was large it was dispatched in two lots. The consignment reached Los Angeles on 8th of November, 1995 and the consignee was duly informed about the same and was asked to collect the shipment on payment of freight and other charges which was amounting to Rs. 2,55,109/- but the consignee refused to take the delivery of the same as it was not duly delivered within the specific time. The respondent did not get any alternate disposal instruction for delivery of the consignment at the destination which caused a huge loss to the respondent. Also, there was no stipulation that the cargo will be delivered to the consignee within the specified time. However, the cargo was to be carried in normal course and business of the respondent. It is duly established from the facts that the plaintiff/respondent is only a carrier and it has duly played his part of contract by carrying the cargo to its destination with due speed and diligence.

15. It is an admitted fact that the consignment was booked by the appellant/defendant through Airway Bill Ex.PW1/1. It is also matter of record that the shipment was dispatched on 31.10.1995 and

04.11.1995. The terms and conditions mentioned in the airway bill Ex.PW1/1 are the admitted fact. It has also come on record that the consignee was duly informed to take delivery of the consignment after payment of freight and other charges but he did not turn up and the freight was not paid. Therefore, the plaintiff/respondent is entitled to recover the freight charges from the appellant.

16. In view of the discussion made above, no error has been found in the judgment and decree passed by the Court below and the same is accordingly upheld.

17. The present appeal is accordingly dismissed.

P.S.TEJI, J

SEPTEMBER 18, 2017
dd