IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION



**FIRST APPEAL NO. 1333 OF 2024.**

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| 1. | Union of India, Through the Secretary, Ministry of Finance, New Delhi through The Commissioner of Custom (Import) having office at New Custom House, Ballard Estate, Mumbai – 400 001. | **… Appellant. [Org. Defendant]** |

***Versus***

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| 1. | Smt. Laxmiben W/o Morarji Dedhia | |
| 2. | Shri. Praful Morarji Dedhia **(Deleted)** | |
| 2a. | Mrs. Bharti Praful Dedhia | |
| 2b. | Mr. Vishal Praful Dedhia | |
| 2c. | Mrs. Mayuri Sunil Vishariy | |
| 3. | Shri. Jitendra Morarji Dedhia | |
| 4. | Smt. Indira Kantilal Gosar | |
| 5. | Smt. Chandrika Mahendra Furia | |
| 6. | Smt. Daksha Prakash Vohra | |
| | All above India Inhabitant of Mumbai, All above Residing at Chitrakoot, R.B. Mehta Marg Ghatkopar (East), Mumbai-400077 | **…Respondents. [Org. Plaintiffs]** |

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*Mr. Jitendra B. Mishra , Ms. Megha Bajoria, Mr. Rupesh Dubey for the Appellant.*
*Mr. Ketan Parekh i/by Mr. K. R. Parekh & Co., for Respondent Nos. 3 to 6.*

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**Coram :** **Sharmila U. Deshmukh, J.**

**Reserved on:** **April 29, 2025.**

**Pronounced on :** **May 7, 2025.**

**JUDGMENT :**

**1.** The First Appeal is at the instance of Original Defendant impugning the Judgment dated 25th July, 2013 passed by the City Civil Court in Suit No. 8817 of 1992 partly decreeing the suit and directing the Appellant to pay Rs. 4,75,226/- to Respondent with further interest @ 10% p.a. from the date of suit i.e. from 10th July, 1992 till realisation.

**2.** The suit was initially filed in the High Court being Suit No. 2076 of 1992 and was subsequently transferred to the City Civil Court and renumbered as Suit No. 8817 of 1992. For sake of convenience the parties are referred to by the status before the Trial Court.

**3.** The Plaintiff came with the case that he was carrying out warehousing business in the name of style of M/s. Morarji Warehousing. On 7th July, 1984 one M/s. Ashok Traders stored 2297 bags in the Plaintiff's godown on payment of warehousing charges. The Assistant Collector of Customs addressed communication dated 13th July, 1989 to the Plaintiff informing him that the goods of M/s. Ashok Traders lying in the Plaintiff's godown was purchased by Ms. Solvent Chemicals in an Auction held on 29th June, 1989 and the goods are to be delivered to the representative of custom authorities. By the said communication, the Plaintiff was called upon to forward the warehousing charges bill to the Assistant Collector of Customs directly. The communication was received on 15th July, 1989 and as per the instructions goods were delivered to the Custom Officer. The Plaintiff prepared his bill for warehousing charges for the period from 7th July, 1984 to 14th July, 1989 amounting to Rs. 4,20,351/- @ Rs. 3/- per month per bag and forwarded the same to the Assistant Collector of Customs along with his letter dated 20th March, 1991. As there was default in payment of warehousing charges the suit came to be filed. As per the particulars of claim, Rs. 4,20,351/- was charged for the period from 7th July, 1984 to 13th July, 1989 with further interest @ 24% p.a. aggregating to Rs. 3,02,622/- and the claim was for Rs. 7,22,973/-.

**4.** The suit was resisted by the Defendant raising objection on ground of limitation. It was further contended that for purpose of clearance of the goods from Custom, M/s. Ashok Traders did not have valid license and the goods which were imported without valid license were kept in the godown of the Plaintiff and the Plaintiff was an abettor in receiving the goods fraudulently. It was contended that the Plaintiff had not entered the particulars of goods in the records of the warehouse. It was further contended that by communication dated 30th July, 1989, the Plaintiff was called upon to forward the bill for warehousing charges within 15 days however, the same was forwarded after lapse of about one year. It was denied that there was any contract between the Plaintiff and Defendant that the warehousing charges will be paid by Defendant and the claim came to be denied.

**5.** The Plaintiff examined himself and deposed as to the contents of the plaint. He produced the communication dated 13th July, 1989 addressed by the Assistant Collector of Customs, evidencing delivery of the goods to M/s. Solvent Chemicals, delivery order dated 13th July, 1989 issued by the Assistant Collector of Customs and copies of correspondence. The Plaintiff was cross examined and the case put up was that there was no privity of contract between the Plaintiff and the Defendant and therefore no warehousing charges are required to be paid.

**6.** The Defendant examined the Deputy Commissioner of Customs who deposed as to the contents of the written statement. He produced the order passed by the Collector of Customs by which personal penalties were inflicted on M/s. Ashok Traders, the Plaintiff and others. He deposed that by letter dated 13th July, 1989 the Plaintiff was asked to submit the bill to the Defendant within 15 days which has been submitted after lapse of 1 ½ year and therefore barred by law of limitation. In cross-examination DW-1 has admitted that the consideration for the goods was received from M/s. Solvent Chemicals and the goods were delivered by Plaintiff to M/s. Solvent Chemicals.

**7.** The Trial Court by the impugned Judgment held that the communication dated 13th July, 1989 is part of promise by the Assistant Collector of Customs for payment of the warehousing charges for the goods and the communication amounts to contract between the Plaintiff and Defendant. On the aspect of limitation the Trial Court held that on 20th March, 1991 the Plaintiff has submitted the bill for warehousing charges and the period of limitation will run from 15th July, 1989 when the goods were handed over to the Assistant Collector of Customs therefore the suit filed on 10th July, 1992 is within period of limitation. The Trial Court noted that there was no contractual rate of interest agreed upon between the parties and restricted the claim to 10% interest on the warehousing charges of Rs. 4,75,226/-

**8.** Mr. Mishra, learned Counsel appearing for the Appellant would submit that the goods stored in the Plaintiff's godown were imported without license and removed from the Bombay Port Trust. He submits that pursuant to show cause notice issued to M/s. Ashok Traders and Plaintiff, penalties came to be inflicted on them. He submits that the goods were auctioned by the Custom Department and the Plaintiff was directed to deliver to the auction purchaser the goods and to submit the bill within 15 days however the same came to be submitted after 1 ½ year. He points out to the confiscation order to contend that upon confiscation, the goods vested absolutely with the Defendant and relies upon Section 126 of the Customs Act, 1962. He would further submit that the suit claim was for the period from 7th July, 1984 when the goods were stored by M/s. Ashok Traders and therefore the same was barred by limitation in the year 1992.

**9.** *Per contra,* Mr. Parekh, learned Counsel appearing for the Respondent would submit that by communication of 13th July, 1989 the Assistant Collector of Customs called upon the Plaintiff to deliver the goods to the auction purchaser and to raise the bill for the warehouse charges. He submits that the Trial Court has rightly held that the communication constitutes contract between the parties and therefore the liability is upon the Assistant Collector of Customs to satisfy the invoice raised. He would submit that though interest of 24% was sought the same has been restricted to 10%.

**10.** The following points would arise for consideration.

**(a)** Whether the communication of 13th July, 1989 constitutes contract between the Plaintiff and the Defendant imposing liability on Defendant for payment of warehousing charges ?

**(b)** Whether the Plaintiff is entitled to warehousing charges from the date when the goods were lodged in the Plaintiff's godown by M/s. Ashok Traders or from the date that the ownership of the goods vested in the Defendant ?

**(c)** Whether the suit is barred by limitation ?

**11.** It would be necessary to note the relevant dates for the purpose of determining the issue of limitation as also the period for which the liability of the warehousing charges can be imposed upon the Defendant. On 7th July, 1984 M/s. Ashok Traders had stored goods in the Plaintiff's godown. On 10th August, 1987, the Collector of Customs passed an order of confiscation of goods lying with the Plaintiff and imposed penalties upon M/s. Ashok Traders as well as the Plaintiffs and others under the provisions of Section 126 of Customs Act, 1962. It will apposite to reproduce Section 126 of the Customs Act, 1962 which reads thus:

> ***"126. On confiscation, property to vest in Central Government***
> *(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.*
> *(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods."*

**12.** The provision makes it clear that upon the order of confiscation being passed, the ownership of goods vest absolutely in the Collector of Customs and therefore from 10th August, 1987, the Defendant was the owner of the goods lying in the Plaintiff's godown. The Collector of Customs did not lift the goods upon passing of the order of confiscation on 10th August, 1987 and continued to store the same in the Plaintiff's godown. On 13th July, 1989, communication was addressed by the Collector of Customs to the Plaintiff informing the Plaintiff that M/s. Solvent Chemicals is the successful auction purchaser and directed the Plaintiff to deliver the goods to the said party. The communication called upon the Plaintiff to submit the bill for warehousing charges to the Assistant Collector of Customs for settlement within a period of 15 days. On 15th July, 1989, the Plaintiff acted upon the requisitions of the communication dated 13th July, 1989 and delivered the goods to M/s Solvent Chemicals and thereafter raised bill for Rs. 4,20,351/- on 20th March, 1991.

**13.** In evidence, there is no explanation by Defendant as to why the Plaintiff was asked to raise the invoice upon the Defendant if there was no liability to pay. There is also no explanation as to why the ware-housing facilities of Plaintiff were continued to be used after the ownership of goods vested in the Defendant. The evidence indicates that liability to pay the warehousing charges is not denied by the Defendant and their case is that invoice was required to be raised within a period of 15 days which was raised after period of 1 ½ years. Upon transfer of ownership of the goods in the year 1987, the Defendant having availed the warehousing facility of the Plaintiff, the liability of payment of warehousing charges is on the Defendant. The communication dated 13th July, 1989 calls upon the Plaintiff to raise the bill for warehousing charges which constitutes a contract between the Plaintiff and Defendant. Even if there was no communication, as the Defendant claims ownership of goods, the Defendant would be liable to pay the charges.

**14.** By issuance of communication dated 13th July, 1989 as the ownership of the goods stood vested in the Defendant on 10th August, 1987 the communication of 13th July, 1989 impliedly accepts the liability of payment of warehousing charges from date of confiscation. There is no term or condition in the said communication as to when the amount under the invoice raised would become due and payable. The period of limitation would commence from the date of communication dated 13th July, 1989 as it was on that date that the Plaintiff was called to raise the invoice and the suit which was filed on 10th July, 1992 was therefore within limitation.

**15.** In the year 1984, the goods belonged to M/s Ashok Traders and the ownership came to be vested in the Defendant only upon the confiscation order passed on 10th August, 1987 from which date the Defendant would be liable to pay the warehousing charges. Therefore, the claim for the period from 7th July, 1984 to 10th August, 1987 is required to be excluded.

**16.** The Trial Court has rightly considered that the communication of 13th July, 1989 constitutes a contract. Having accepted the ownership of the goods lying in the Plaintiff's warehouse and calling upon him to release the goods, the Defendant are liable for payment of the warehousing charges.

**17.** Though the claim in the suit is for period from 7th July, 1984, the Plaintiff will be entitled to the warehousing charges only from the date of confiscation order when the ownership of the goods vested in the Defendant i.e. from 10th August, 1987 to 13th July, 1989 @ Rs. 3/- per month per bag for 2297 bags stored in the Plaintiff's godown, which amounts to Rs. 1,65,384/-.

**18.** In light of the above, the Appeal is partly allowed and the following order is passed:

**::ORDER::**

**a)** First Appeal is partly allowed.

**b)** The suit is partly decreed.

**c)** The Defendant shall pay Rs. 1,65,384/- to the Plaintiff with interest @ 10% p.a. from the date of the suit i.e. from 10th July, 1992 till payment or realisation.

**19.** In view of the disposal of First Appeal, nothing survives for consideration in the pending Civil/Interim Applications and the same stand disposed of.

**[Sharmila U. Deshmukh, J.]**