

Witness duly sworn on 01.04.2026

Cross Examination by Sri.DS Advocate for defendant:

I have document to show that I am the Managing Partner of Plaintiff firm. I can submit it to court if need be. Myself and my wife both are authorized signatories of the Plaintiff firm. There is a resolution to that effect and it can be submitted to court. I have document to show that Mr.Habeeb Ur Rehman is the Manager of the firm and he is also the authorized signatory of the firm. To my knowledge, the said Habeeb was not partner in any firm and was Manager in our firm. It is false to suggest that, Habeeb was not Manager in the firm and there is no nexus whatsoever between the plaintiff firm and Habeeb/PW-1.

2. Myself and Habeeb/PW-1 both have given information to our Advocate to prepare the suit. As on date the firm has about 23 years experience in the field of C & F and Stevedoring. I am aware about the plaint pleadings. It is true that, in our plaint it is mentioned in Para 6 that about 77.6% of the entire dues is already paid by the defendant. We have documents to show the value of the said 77.6% and it can be submitted to court.

3. It is true that, as per Ex.P.18/Agreement, under the head C & F, Stevedoring, transportation and handling of fly ash in jumbo bags is 300 + 130 per M.T is agreed. It is true that, for the same cost we were also required to give facility of warehousing at our own premises. The maximum handling loss is at 1%. It is true that, fly ash is procured from UPCL by 1st defendant. Transportation of fly ash from UPCL to our godown and from there to NMPT as and when required was to be borne by us.

4. It is true that, we are the custodian of the goods until it is delivered to NMPT. It is true that, we have to apply to NMPT to secure the warehouse or open yard for storing the fly ash. The witness volunteers that, the extent of open yard is applied by us to NMPT based on the written instructions of defendant. I can submit the written instructions of defendant to court. It is false to suggest that, defendant never gave instructions to us to store the fly ash in open yard at NMPT.

5. I am not aware if fly ash cannot be exposed to moisture or water. It is true that, it is our duty to inform the defendant in case there was any defect in packing of fly ash in jumbo bags. It is true that, when we received the goods, there was no issue with regard to packing. It is false to suggest that, as per Ex.P.18/Agreement, we had to store the bags in covered warehouse only. It is false to suggest that, even inside NMPT we were supposed to store the fly ash only in covered area.

6. Paved area in NMPT means uncovered area. It is false to suggest that, after goods are stored inside NMPT, we are not supposed to shift the goods inside NMPT without the permission of defendant. In this case, we shifted the goods since the 21 days free period had lapsed and NMPT directed us to shift it to yard 13 and 14. NMPT will decide the criteria of above said 21 days. It is true that, NMPT will inform us about the 21 days time. Witness volunteers that, even if NMPT does not inform us, we are supposed to shift the goods after 21 days to avoid penalty. NMPT does not inform C & F agents about the 21 days timeline. In this case we have given letter to NMPT informing about the requirement of 21 days period. I can submit the said letter to court. As a C & F agent

we do all the documentation regarding stevedoring, custom clearance etc.

7. We have not done any work for D-1 prior to the impugned transaction. We have done C & F work for D-1 in the past i.e., prior to the incident of 29.05.2018. We are making claim in the plaint regarding transaction with D-1 pertaining to prior to 29.05.2018 also. I had mentioned about the previous outstanding amounts i.e, prior to 29.05.2018 transactions to my Advocate while preparing the suit papers.

8. It is true that, apart from stevedoring and C & F, the activity of steamer agent also is involved. The steamer agent can be appointed either by the Importer or Exporter. I am not aware as to who has appointed the steamer agent/Admiral Shipping Ltd., in this case. As per Ex.P.18, work of stevedoring was also entrusted to us. In this case it was our scope of work to transport the goods from the stock yard upto the hook point along side the vessel.

9. In this case vessel nomination had not taken place when the goods were stocked in berth No.2 and 3 warehouse. D-1(a)/Mangaldas Gupta authorized me to transport the fly ash from our godown to NMPT berth No.2 and 3. Witness volunteers that, it was oral instruction. It is false to suggest that, D-1(a) had never made any such oral authorization to me. It is false to suggest that, without any instructions and to earn additional warehouse rent, we voluntarily shifted the goods from covered area to uncovered area inside NMPT campus.

10. It is false to suggest that, without nomination of the vessel there was no need for us to transport the goods from our

warehouse to NMPT. It may be true that, the details viz., vessel name, IMO number, cargo type, quantity, last port and next port will be required for nomination of vessel and is to be intimated to the Traffic Manager of NMPT. Witness volunteers that, it was not in his scope of work to provide the said information.

11. It is false to suggest that, it was not required for us to transport the goods to NMPT port prior to vessel nomination or berth allocation. I have submitted to court the instructions said to be given by D-1 to us for transportation to NMPT and the acknowledgment of D-1. We had not received any notice from NMPT traffic department that the vessel was open for export when the goods was shifted by us to NMPT. It is false to suggest that, we have violated the above said rule and unilaterally shifted the goods to NMPT without instructions of D-1.

12. It is false to suggest that, if goods are taken by C & F agent inside NMPT before nomination of vessel, the agent would be doing so solely at his cost and risk. Witness volunteers that, nomination of vessel is not a criteria to take the goods inside NMPT.

13. In this case, customs clearance was done for the export cargo. In this case it was done by custom house agent appointed by us. We have documents to show that customs clearance was done for the export cargo. It is true that, customs clearance is done only after vessel nomination is done. It is false to suggest that, entire goods that was received at NMPT was only for the purpose of export. Witness volunteers that, some quantity was sold by D-1 in local market also and there is E-mail communication by D-1 to us

to release the cargo for domestic sale. I have already submitted the said documents to court.

14. It is true that, when goods are taken inside the NMPT by us, we have to declare the type and quantity of goods. It is true that, we have to obtain permission from the port for stocking the goods inside port premises. It is subject to certain conditions.

15. On 29.05.2018 goods was stocked in open area of about 2000 sq.mtrs. I do not know about the height of the goods that was stocked. It is false to suggest that, if height is not noted, it would be a lapse on our part as per NMPT norms. Witness volunteers that, they had stocked the goods at a height as permitted under NMPT rules. It is true that, after damage of goods, the competent authority has conducted spot inspection and submitted report to both the parties viz., plaintiff and D-1. Witness volunteers that, he was not party to the said spot inspection since their license was cancelled as on that date. Our C & F agent license issued by NMPT lapsed on 02.12.2019.

Further cross examination is deferred.

(Typed to my dictation in the open court.)

R.O.I. & A.C.,

**I Addl. District & Sessions Judge,
Mangaluru, D.K.**