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C.A.No. 11820 OF 1996
ITEM No.104

Court No.8

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.11820 of 1996

TRANSWORLD SHIPPING SERVICES

Appellant (s)

VERSUS

VISAKHAPATNAM PORT TRUST

Respondent (s)

(WITH OFFICE REPORT)

Date : 17/07/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s)Mr. S. Ganesh, Sr. Adv.
Ms. Puja Sharma, Adv.
Mr. Rajan Narain, Adv.

For Respondent (s)Mr. Kailash Vasdev, Sr.Adv.
Mr. S.K. Shandilya, Adv.
Mrs. V.D.Khanna, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties at length.
The appeal stands dismissed in terms of the signed order. There will be no order as to costs.

(K.K. Chawla)
Court Master

(Jasbir Singh)
Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11820 OF 1996

TRANSWORLD SHIPPING SERVICES

Appellant (s)

VERSUS

VISAKHAPATNAM PORT TRUST

Respondent (s)

O R D E R

This appeal is against an order of the Andhra Pradesh High Court dated 20th September, 1995. Briefly stated the facts are as follows:-

The appellants are Shipping Agents who act on behalf of owners of various shipping vessels at various ports. As Shipping Agents, they were also operating at the Port of Visakhapatnam.

Under the Regulations framed by the Visakhapatnam Port Trust Authorities, in pursuance of Section 123 of the Major Port Trusts Act, 1963, any agent proposing to carry on his business, at Visakhapatnam Port, had to open a deposit account. For the purposes of opening the deposit account, a letter of consent had to be given stating therein that all dues payable by him to the Port would be adjusted against the deposit account. It is not disputed that such a letter had been given and a deposit account was opened by the appellants.

By a letter dated 30th August, 1985, the appellants informed Traffic Manager of the Visakhapatnam Port Trust that a vessel "M.V. PANTANASSA" was arriving on 30th August, 1985, for the purposes of discharging 9,000 metric tonnes of cement, and that their agent M/s. Chowgule Brothers would attend the shipment and clear the vessel. By this letter, they permitted the Port authorities to debit the deposit account, amongst others with the Port Dues. The Vessel entered the Port and after discharging left the Port on 13th September, 1985.

On 14th September, 1985, the Port Trust authorities addressed a letter to the Master of the Vessel, with a copy to the appellant, stating that as the vessel was sailing away one Tug "Dhanamjaya" which had been engaged by the vessel was damaged due to parting of one of the two ship's lines given for towing. The letter, inter alia, stated that as the Tug was damaged, they were liable to make good the damages and that, if necessary, a surveyor could be appointed to inspect the damage. Neither the appellants nor the Master of the Vessel nor anybody else appointed any surveyor nor inspected the damaged Tug. At this stage nobody disputed that the Tug had got damaged due to the parting one of two ship's lines.

The respondent then got the Tug repaired. The total cost of repair came to Rs.2,34,885.75p. Accordingly, a bill was raised and sent to the appellants on 19th February, 1986. As the amount was not paid, the appellants were called upon by letter dated 25th April, 1986 to pay up the said amount failing which all services to their organisation would be stopped immediately. As the appellants did not pay the amount, by a memo dated 6th May, 1986 all port services were denied to the appellants. The appellants, therefore, filed a writ petition. The writ petition came to be dismissed by a learned Single Judge of the High Court. The appeal filed by the appellants has been dismissed by the impugned judgment.

We have been taken through the Regulations and Rules which have been framed pursuant to Section 123 of The Major Port Trusts Act, 1963. It has been urged that the Regulations deal only with rates for services rendered by the Port Trust. It is submitted that the Regulations do not cover a case where a claim for damage is made by the Port Trust. It is urged that the Regulations and the Rules thereunder do not empower or authorize the Port Trust to recover damages from the Agent. It is urged that the right of the Port Authorities to recover damages is covered by Sections 116 and 131 of the Major Port Trusts Act, 1963. It is submitted that the Port Trust Authorities must recover the damages only from the owner of the vessel and cannot seek to do so from the Agent. In support of this submission, reliance is placed upon the case in *Ednasa Shipping Co. v. Trustees, Visakhapatnam Port* reported in AIR 1978, A.P. Page 306.

In this case, the question was whether the Regulations framed by the respondents, particularly Regulation 42, permitted the respondents to demand a bank guarantee from the owner of the Vessel. It was held that they could demand a bank guarantee. Relying upon this case, it was submitted that this authority lays down that it is only the owner who is liable for damages. We are unable to accept this submission. The authority nowhere considered the question whether, apart from the owner any other person can also be made liable. In fact a proper reading of the authority would show that it is against the appellants inasmuch as it clearly lays down that Regulations framed under Section 123 can also deal with a claim for damages. It has also been held, in this case, that the Port Trust need not merely follow the procedure laid down in Sections 116 and 131 of the Major Port Trusts Act but can demand an unconditional bank guarantee. It has been held that once the ship leaves the country the remedy for recovery would be affected.

It is next urged that the appellants cannot be made liable in view of Section 230 of the Indian Contract Act, 1872. Section 230 reads as follows:-

"230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal. - In the absence of any contract to that effect an agent cannot personally enforce contracts entered

d into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary - Such a contract shall be presumed to exist in the following cases:-

- (1)Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2)Where agent does not disclose the name of his principal;
- (3)Where the principal, though disclosed, cannot be sued."

It must be noted that such a contention was not taken in the writ petition. It, however, was urged before the High Court and the High Court has dealt with it. It must also be noted that the writ petition was challenging the action of the respondents - Port Trust in withdrawing services to the appellants. The appellants have no right to insist that such services be rendered. Such services are rendered on the basis of the letter of consent given by the appellants under Rule 5 of the Regulations. This letter of consent states that the Port Trust would be free to adjust "all dues payable" in the deposit account. We are unable to accept the submission that the term "all dues payable" must be restricted to dues payable in respect of services rendered by the Port Trust. The term "all dues payable" is wide enough and cannot be given a restrictive meaning. Section 230 of the Contract Act would not apply because by giving the letter of consent the appellants have entered into a contract to the contrary. On the basis of the letter of consent, the Port Trust allowed the appellants to operate. The appellants cannot then turn around and claim that he will not clear "all dues".

Even otherwise in respect of this particular ship, the appellants had given a letter dated 30th August, 1985. Even this letter permits the Port Trust to debit "Port dues". We are unable to accept the submission that the term "Port dues" must be restricted to only dues which are in respect of services rendered for the unloading of the goods. The whole purpose of having the deposit account and of having a letter of consent, from Agents, is to see that the Port Trust which has to carry on the business of maintaining and running the Port is not required to go running after foreign ships. It is the agents, who act on behalf of foreign ships who must take on the liability with their own consent. The agent can always recover from the owner of the ship.

We are in agreement with the observations in the impugned judgment that merely because a right is given under Sections 116 and 131 of the Major Port Trusts Act does not mean that recourse to other remedies can not be had. In other words, the right given in Sections 116 and 131 can be exercised over and above any other right or remedy which the Port Trust may have.

It must be mentioned that on behalf of the respondents it was submitted that the appellants had acted as an agent for an undisclosed principal and thus Section 230 of the Contract Act would not apply. Prima facie it appears difficult to accept this submission. However, in the view that we have already taken, we do not wish to go into this question and leave the question open.

Finally, it must be mentioned that if any person has any grievance against the claim raised by the Port Trust it is always open to that person to challenge that claim and file a suit. Neither the appellants nor the owners have till this date challenged the claim raised by the Port Trust. Therefore, it cannot even be said that the amount was not due.

For all these reasons, we see no reason to interfere. The appeal stands dismissed. There will be no order as to costs.

.....J.
(S.N. Variava)

.....J.
(H.K. Sema)
New Delhi,
July 17, 2003.