

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(s). 8211 OF 2003

M/S. RAJASTHAN ART EMPORIUM Appellant (s)

VERSUS

KUWAIT AIRWAYS & ANR. Respondent(s)

(With office report)

Date: 15/03/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Mr. Jaideep Gupta, Sr. Adv.
Ms. Madhurima Tatia, Adv.
Mr. Indra Makwana, Adv.

For Respondent(s)

Mr. Subrat Birla, Adv.
Mr. S.C. Birla, Adv.

Mr. P. C. Agarwal, Sr. Adv.
Mr. Dinesh Sabharwal, Adv.
Mr. Braj Kishore Mishra ,Adv.
Ms. Aparna Jha, Adv.
Mr. Vikram, Adv.
Mr. Abhishek Yadav, Adv.

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

The civil appeal is allowed in terms of the signed order.

(NIDHI CHUGH)
Sr. P.A.

(RENUKA SADANA)
Court Master

(Signed order is placed on the file.)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8211 OF 2003

M/S. RAJASTHAN ART EMPORIUM ...Appellant (s)

VERSUS

KUWAIT AIRWAYS & ANR. ...Respondent(s)

O R D E R

The appellant M/s. Rajasthan Art Emporium filed

original petition bearing O.P. No. 229 of 1997 before the National Consumer Disputes Redressal Commission, New Delhi (for short, the National Commission) praying, inter alia, for refund of freight charges paid by it, compensation for loss of business and reputation and value of goods short delivered.

Respondents herein resisted the petition. The National Commission, after considering the pleadings and materials made available on record framed two questions for its consideration, namely, as to whether there was any delay in delivering the consignment and secondly, whether there was any short delivery, as such. While advertng to the question regarding the timely delivery, the National Commission merely referred to the written version and the affidavit available on record and rejected the claim of the appellant herein in a summary manner by observing: -

"There is no other document to show any agreement between the complainant and the 1st OP nor is there any such special condition/instruction mentioned in the Airway Bill referring to the time frame. In the absence of any evidence in support of the plea raised by the complainant, we are unable to sustain this point raised by the complainant."

....2.

CIVIL APPEAL NO. 8211 OF 2003

.2.

Learned Senior Counsel made an attempt to invite our attention to the material available on record in support of the plea that there was enormous delay on the part of the respondents in delivering the consignment. We are not inclined to go into that question and appreciate the evidence available on record. The fact remains that the National Commission in a summary manner without appreciating the material and evidence available on record rejected the contention urged on behalf of the appellant herein regarding the delay in delivering the consignment. The finding recorded by the National commission is in the nature of Ipse Dixit. In the circumstances, we find it difficult to sustain the conclusion arrived at by the National Commission on the first point, namely, as to whether there was any delay in delivering the consignment. The matter requires reconsideration by the National Commission.

However, the learned senior counsel appearing on behalf of the first respondent prayed for setting aside the entire order and for its remission to the National Commission. We are not persuaded to agree with the submission. Further, the National Commission did not commit any error in granting the amount of US\$ 36440 towards the short delivery. The relief so granted by the National Commission is based on appreciation of the material available on record. Be that as it may, the respondent did not prefer any separate appeal challenging the correctness of the order of the National Commission in awarding the said amount towards the short delivery but preferred cross objections which in our considered opinion, are not maintainable.

....3.

CIVIL APPEAL NO. 8211 OF 2003

.3.

For the aforesaid reasons, this appeal is allowed setting aside the finding recorded by the National Commission so far as it concerns the issue relating as to whether there was any delay in delivering the consignment. The matter is, accordingly, remitted for fresh consideration by the National Commission.

We make it clear that we have not expressed any opinion, whatsoever, on the question as to whether there was any delay at all in delivering the consignment as the same is required to be gone into by the National Commission.

....., J.
[B. SUDERSHAN REDDY]

....., J.
[SURINDER SINGH NIJJAR]

NEW DELHI;
MARCH 15, 2011.