

British India Steam Navigation Co. Ltd.

Vs

Hindustan Cashew Products Ltd

Civil Appeal No. 56 (N) of 1977

(P. B. Sawant, K. N. Saikia JJ)

13.03.1990

JUDGMENT

K. N. SAIKIA, J. –

1. This defendant's appeal by special leave is from the judgment and decree dated February 16, 1976 of the High Court of Kerala at Ernakulam, affirming the judgment and decree of the Subordinate Judge, Cochin in O. S. No. 18 of 1969 filed by the plaintiff-respondent.

2. The appellant is a Company incorporated in England carrying on the business of carriage of goods by sea and M/s Madura Company Private Ltd. is its agent at the port of Cochin. The respondent is an incorporated company having its registered office at Bombay carrying on the business of import, export and manufacturing cashewnuts in Quilon and other places.

3. On December 10, 1967, the respondent purchased 100 tons of raw cashewnuts from M/s Amiraly Miraly Nurmamade, Nampula, under a contract dated December 10, 1967 at the rate of shillings 81 per ton c. i. f. Cochin Port. For shipment of the cargo the appellant entered into a contract of affreightment with the seller evidenced by a clean bill of lading dated February 6, 1968 for 100 tons i. e., 1270 bags or raw cashewnuts to be shipped from the port of Nacala in S. S. Ardrossmore to be delivered to the consignees at the port of Cochin. After shipment the seller drew demand draft accompanied by the bill of lading and related documents and received the invoice price from the respondent. However, on arrival of the steamer at Cochin the appellant gave delivery of 1029 bags of cashewnuts only and there was short landing of 241 bags of cashewnuts and the appellant issued a short landing certificate to that extent on October 10, 1968. The appellant settled the claim of Rs. 16,975.75 in respect of the remaining 148 bags for which the respondent filed Original Suit No. 18 of 1969 in the Court of Subordinate Judge, Cochin for the said amount with interests and costs of the suit. The appellant resisted the suit contending in its written statement that under clause 3 of the bill of lading the disputes between the parties were to be determined exclusively in England according to the English law and hence the suit was not maintainable in the Cochin court; and that it was a mere character and the owner of the vessel was M/s Mullion and Co. of Gibraltar and under the charterparty and clause 4 of the bill of lading the appellant was only an agent of the owner and the latter was a necessary party as he alone was responsible for the loss.

4. At the trial the respondent examined S. Ramachandran Naik as a witness and produced documents Exs. A-1 to A-9 while the appellant examined one K. K. Narayanan and produced the bills of lading as documents B-1 to B-3. The Subordinate Judge decreed the claim and the appellant's appeal therefrom was dismissed by the High Court.

5. The facts of, and the questions of law involved in this appeal are similar to those in Civil Appeal No. 764 (N) of 1975. Therefore this appeal also succeeds for the same reasons given in that judgment; and the case is similarly remanded to the trial court for disposal according to law after giving opportunity to the parties to amend their pleadings and adduce further evidence, if they are so advised, in light of the observations made therein. In the facts and circumstances of the case, we make no order as to costs.

</html