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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: April 12, 2023

M/s IAL Container Line (India) Limited and another

....Petitioners

versus

M/s Citizen International and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Animesh Sharma, Advocate for petitioners.

Mr. Rajesh Punj, Advocate
for proposed LRs of respondent No.1.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 21.02.2023 (Annexure P-9) passed by learned Additional Civil Judge (Senior Division), Ludhiana, whereby preliminary issue with regard to limitation in the suit of respondent No.1/plaintiff, was decided against petitioners/defendants No.1 and 2.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondent No.1/plaintiff filed a suit for recovery of Rs.27,96,658/- along with interest of 18% per annum against petitioners and proforma respondent on the allegations that respondent No.1 had booked a container with petitioner No.2 for shipping domestic and industrial sewing machines and other parts to Dubai, UAE vide Bill of Lading dated 15.09.2005 (Annexure P-3). Value of consignment shipped by respondent No.1 was US Dollars 32037.00. The original Bill of Lading on its overleaf had inscribed general terms and conditions applicable to carrier and merchant *qua* their responsibilities, rights

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and liabilities. Container was shipped on board vessel 'Orient Stride' under a Bill of Lading issued on 19.09.2005 and reached destination port Dubai on 11.10.2005. Container was cleared from the port on 27.10.2005 and was taken by respondent to its warehouse.

2.2. Respondent No.1 further alleged that while de-stuffing the container, it was noticed that part of the consignment had been badly damaged due to default and negligence of petitioners and proforma respondent.

2.3. Suit was filed on 21.11.2007 i.e., more than two years after alleged damaged to the consignment took place. Petitioner No.1 filed an application under Order VII Rule 11 of CPC stating suit to be not maintainable on the grounds of limitation.

2.4. Aforesaid application was dismissed vide order dated 12.10.2011 (Annexure P-7) on the ground that question of limitation was a mixed question of law and fact and would be treated as a preliminary issue.

2.5. Aggrieved, petitioners filed revision petition before this Court, which was disposed of vide order dated 27.04.2012 (Annexure P-8) with liberty to petitioners to establish preliminary issue by producing relevant material and relevant law on record of trial Court.

2.6. Vide impugned order dated 21.02.2013 (Annexure P-9), certified copy of which is stated to be prepared on 05.03.2013, the preliminary issue was decided against petitioners. Hence the instant petition.

3. Learned counsel for petitioners contends that period of limitation would be governed by provisions of Multimodal Transportation of Goods Act, 1993 (for short 'Transportation Act'), which prescribed period of limitation as 9 months from the date of delivery of goods or the date when goods should have been delivered. He would further contend that even under the Indian Carriage of

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Goods by Sea Act, 1925 (for short 'Sea Act'), carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of goods or the date when the goods should have been delivered.

3.1. To buttress his arguments, learned counsel for petitioners relies on several decisions including a decision rendered by the Supreme Court in **East & West Steamship Co. V. S.K. Ramalingam**, reported in **AIR 1960 Supreme Court 1058**. Reference of the same will suffice for the purpose of present petition. Relevant extract thereof is reproduced herein below:

"25. On the next question whether this clause prescribes only a rule of limitation or provides for the extinction of a right to compensation, it will be observed that the Bombay High Court has not discussed it at all, apparently because on the facts of the case before it, it would have mattered little whether the provision was one of limitation or of extinction of right. The question is however of some importance in the facts of the Madras Case. For if the provision is one of limitation there would be some scope for argument in the facts of that case that the period was extended by acknowledgments of liability within the meaning of Art. 19 of the Limitation Act. The question we have to decide is whether in saying that the ship or the carrier will be "discharged from liability", only the remedy of the shipper or the consignee was being barred or the right was also being terminated. It is useful to remember in this connection the international character of these rules, as has been already emphasized above. Rules of limitation are likely to vary from country to country. Provisions for extension of periods prescribed for limitation would similarly vary. We should be slow therefore to put on the word "discharged from liability" an interpretation which would produce results varying in different countries and thus keeping the position uncertain for both the shipper and the ship-owner. Quite apart from this consideration, however, we think that the ordinary grammatical sense of "discharged from liability" does not connote "freed from the remedy as regards liability" but are more apt to mean a total extinction of the liability following upon an extinction of the right. We find it difficult to draw any reasonable distinction between the words "absolved from liability" and "discharged from liability" and think that these words "discharged from liability" were intended to mean and do mean that the liability has totally disappeared and not only that the remedy as regards the liability has disappeared. We are unable to agree with the learned Judge of the Madras High Court that these words merely mean that "that even though the right may

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inhere in the person who is entitled to the benefits, still the liability in the opposite party is discharged by the impossibility of enforcement." The distinction between the extinction of a right and the extinction of a remedy for the enforcement of that right, though fine, is of great importance. The Legislature could not but have been conscious of this distinction when using the words "discharged from all liability" in an Article purporting to prescribe rights and immunities of the ship-owners. The words are apt to express an intention of total extinction of the liability and should, especially in view of the international character of the legislation, be construed in that sense. It is hardly necessary to add that once the liability is extinguished under this clause, there is no scope of any acknowledgment of liability thereafter."

4. On the other hand, learned counsel for proposed LR's of respondent No.1 argues that provision of Transportation Act is not applicable as petitioners were not registered carriers under the Act. Further argues that Sea Act is also not applicable as it was not stated in the Bill of Lading that the Act was applicable.

5. I have heard learned counsel for parties and gone through the record.

6. The controversy which can be narrowed down in a very short compass is as to whether limitation is to be governed *qua* determination of the suit being barred as per Sea Act, 1925 or in the alternative under the provisions of Limitation Act, 1963 (for short 'Limitation Act')?

7. The answer to the same lies between *inter se* terms agreed between the parties as per Bill of Lading relied upon by respondent No.1 herein/plaintiff itself seeking damages from petitioners for alleged loss of goods, which were to be delivered in Dubai by way of multi-mode transportation from Ludhiana to Mumbai and then through sea transportation to Dubai. Bill of Lading has been relied upon by both the parties and was exhibited as a part of documents relied upon by plaintiff-respondent No.1 as Exhibit P-7. Relevant terms in the Bill of Lading contained for the purposes of determination of limitation are as below:

"Carrier's Responsibility

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1. Clause Paramount

A. Subject to Clause 13 below, this Bill of Lading, insofar as it relates to sea carriage by any vessel whether named herein or not, shall have effect subject to the Hague Rules or any legislation making such Rules or the Hague-Visby Rules compulsorily applicable (such as COGSA or COGWA) to this Bill of Lading and the provisions of the Hague Rules or Applicable Legislation shall be deemed incorporated therein. The Hague Rules (or COGSA or COGWA if this Bill of Lading is subject to US or Canadian Law respectively) shall apply to the carriage of Goods by inland water ways and reference to carriage by sea in such Rules or Legislation shall be deemed to include reference to inland water ways. If and to the extent that the provisions of the Harter Act of the United States of America 1893 would otherwise be compulsorily applicable to regulate the Carrier's responsibility for the goods during any period prior to loading on or after discharge from the vessel the Carrier's responsibility shall instead be clause 6(3) below, but if such provisions are found to be invalid, such responsibility shall be subject to COGSA.”

The other relevant clause of the Bill of Lading to be reproduced is Clause 6 (4)(G), which reads as follows:

“The Carrier shall be discharged of all liability unless suit is brought in the proper forum and written notice thereof received by the carrier within nine months after the delivery of the goods or the date when the goods should have been delivered. In the event that such time period shall be found contrary to any convention or law.”

8. In light of the above terms, I have perused the impugned order, which no doubt in terms of reasoning of law, is premised on the correct conclusion that in case, Bill of Lading contains clause, then Sea Act will be applicable. However, while concluding the same, it appears that learned Court below did not notice that in this case, the aforesaid clause which clearly was printed on the back of Bill of Lading and therefore, committed manifest error in concluding that since there was no such clause in the Bill of Lading and suit having been filed within 3 years of limitation prescribed under the Limitation Act, was maintainable. I have seen photocopy of Bill of Lading (Exhibit P-7 before learned Court below), which has been placed on record before this Court

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and overleaf page of the bill clearly has the relevant clause contained in 6(1)(A) and 6(4)(G) as already reproduced above. Learned Court below seems to have either completely overlooked the same or by inadvertence not seen it before passing the impugned order. Though while interpreting applicability of law, learned Court below has in a general sense opined in favour of petitioners, but the conclusion has been wrongly arrived at in the absence of its having either not noticed relevant clause printed on the Bill of Lading.

8.1. Be that as it may, clause 6(1)(A) *ibid* makes it amply clear that Bill of Lading is subject to the COGSA Rules. Requirement of Section 4 of the Indian Carriage of Goods By Sea Act, 1925 since stands satisfied, therefore, limitation has to be governed as per Article III Clause 6 of the Rules Relating to Bills of Lading, which for ready reference, is reproduced herein below:

“6. Unless notice of loss or, damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

*In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should be delivered. **This period may, however, be extended if the parties so agree after the cause of action has arisen;***

Provided that a suit may be brought after the expiry of the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court.

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In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.”

9. Perusal of aforesaid limitation clause makes it evident that liability of claim *qua* transportation of goods through sea stands extinguished upon expiry of one year from the date of delivery of goods in the ordinary course unless same is extended by three months, as noted above. In any case, same stood extinguished at the most after 15 months whereas suit has been concededly filed after a lapse of 2 years.
10. In the premise, instant revision petition is allowed and impugned order is set aside. Suit is dismissed being barred by limitation.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 12, 2023
mahavir

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No