

Supreme Court of India

Board Of Trustees For The Port Of ... vs Bombay Flour Mills Pvt. Ltd. & Anr on 7 October, 1994

Equivalent citations: 1995 AIR 577, 1995 SCC (2) 559

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

BOARD OF TRUSTEES FOR THE PORT OF CALCUTTA & ANR.

Vs.

RESPONDENT:

BOMBAY FLOUR MILLS PVT. LTD. & ANR.

DATE OF JUDGMENT 07/10/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1995 AIR 577

1995 SCC (2) 559

JT 1995 (1) 30

1994 SCALE (4) 896

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Pursuant to the Order passed by this Court on September 5, 1994 the appellant had taken substituted service, and served respondents by publishing 'Court Notice' in Hindustan Times Newspaper, New Delhi, Monday dated 19th September, 1994 (Annexure B) at page 115. Although nobody appears for the respondents, notice must be deemed to have been served on the respondents.

2. Leave granted.

3. This appeal by special leave arises from the order of Division Bench of the Rajasthan High Court dated 7.2.1994 made in Civil Appeal (Writ) No. 409 of 1992.

4. The respondent had consignment of Rolling Mills in 63 cases, imported at the Port of Calcutta in October 1988 and got unloaded at No. 3 shed, Netaji Subhas Docks of the appellants between October 11 to 17, 1988. The respondent No. 1 was required to obtain delivery of the goods as per the prescribed Scale of Rates but he failed to have them cleared after making payment of demurrage. He made a representation on March 27, 1989 requesting the appellants to waive the port charges and release the goods. Since the appellant refused to do so, on April 18, 1989, the respondent approached the District Court at Bharatpur, Rajasthan and obtained an ex parte ad-interim mandatory injunction on 22nd April, 1989 directing the appellant to release the goods within two days on payment of the sum of Rs. 2,26,674.00 (Two lacs twenty six thousand, six hundred and seventy four only) being made while the respondent was due in a sum of Rs. 7,37,400/- to the appellant. When the appellant approached the High Court of Rajasthan by way of Civil Appeal (Writ), the High Court dismissed the same.

5. It is seen that the cause of action had arisen at Calcutta when the goods were imported and they were unloaded at Shed No. 3, Netaji Subhas Docks of the appellant and the liability of payment had also arisen and on its failure to clear the goods the respondent instituted the suit in District Court at Bharatpur, Rajasthan. No part of the cause of action arose at Bharatpur. The appellant's office is at Calcutta. Under s.20 CPC the only court competent to take cognizance of the action is the appropriate court at Calcutta. The order passed by the District Court, Bharatpur in the suit filed by the respondent, is without jurisdiction and is void. When the appellant approached the High Court it has dismissed the case. Therefore High Court has committed manifest error of law in refusing to interfere with such an obviously illegal and void order. Therefore, the impugned order passed by the High Court of Rajasthan and District Court, Bharatpur are set aside. The appeal is accordingly allowed. No costs as none appears in the court.