# Strides Pharma Science Limited vs Round The Clock Logistics Private ... on 28 July, 2023

## Author: Sachin Datta

## Bench: Sachin Datta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment reserv
Judgment pronounc

+ CS(COMM) 438/2023

STRIDES PHARMA SCIENCE LIMITED ..... Pe
Through: Mr. T.K. Ganju, Sr. Advocate wit
Mr. Sukrit R. Kapoor, Mr. Aviral
Tripathi & Mr. Samarth Kapoor, A

Versus
ROUND THE CLOCK LOGISTICS PRIVATE LIMITED & ORS.
..... Responden

Through: Mr. Utkarsh Joshi,
with Mr. Shekher K
Mr. Kartickay Math
Gupta, Mr. Shanker
for D-2 and Mr. Su
AR of D-2.
Mr. Sandeep Sethi,
Mr. Vivek Jain, Mr
Pangarkar, Ms.
Mr. Abhishek Gupta
Sarguroh, Mr. Mani
Swapnil Srivastava
Mr. Nitin Sharma,
Srivastava, Mr. Ja
Vikram Singh Dala
Sethi, Advs. for D
Mr. Uday Kumar, Ad

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA



I.A. No. 11644/2023 in CS (COMM) 438/2023

Signing Date:28.07.2023
16:48:59

JUDGMENT

1. The present suit has been filed by the plaintiff (consignor), in connection with a consignment of a pharmaceutical goods which was to be consigned to one of its clients namely L.N.K. International Inc. New York (consignee).

2. For the purpose of the aforesaid consignment, the plaintiff engaged the services of defendant no. 1 i.e., Round the Clock Logistics Pvt. Ltd., a company registered under the Companies Act, 2013. The defendant no. 1, in turn, is stated to have forwarded the consignment to another forwarding agent i.e., the defendant no. 2 who further forwarded the said consignment to the defendant no. 3. Ultimately, the defendant no. 3 is stated to have booked the consignment for transportation to its destination through the defendant no. 4 and the defendant no. 5.

3. Pursuant to the arrangement/understanding between the plaintiff and the defendant no. 1, "House Bills of Lading" ("HBOLs") dated 31.03.2023 are stated to have been issued by the defendant no. 1. The same are stated to have been handed over to the plaintiff by the defendant No. 1. The said HBOLs contain a specific reference to each container number in which the goods were to be transported, the description of the goods, and the name of the consignee, the port of loading, the port of discharge, and the place of delivery. These have been filed alongwith the documents filed with the plaint at page nos. 18 to 28. The consignor in the said bills of lading is "Strides Pharma Science Limited on behalf of Strides Pharma Global Pte Ltd" and the consignee is "L.N.K International Inc." One such HBOL is as under:

4. It is the admitted case of the plaintiff and the defendant no. 1 that the aforesaid bills of lading could not have been used for carriage of the cargo to the destination since the relevant customs authority at the port of discharge (New York, USA) recognise only carriers who are registered with the Federal Maritime Commission ("FMC").

5. Consequently, the defendant no. 1 engaged services of the defendant no. 2, who in turn engaged the services of the defendant no. 3. Admittedly, even the defendant no. 3 is not a carrier registered with the FMC. Ultimately, services of the defendant no. 4 (EMU Lines Pvt. Ltd.) and the defendant no. 5 (Bluetide Eservices Pvt. Ltd.) were availed for the purpose of transportation of the consignment to its destination. For this purpose, bills of lading containing the endorsement "seaway" came to be issued by the defendant no. 5 [Seaway Bills of Lading ("SBOLs")] in which the consigner was again referred to as "Strides Pharma Science Limited on behalf of Strides Pharma Global Pte. Ltd". The consignee was reflected to be "L.N.K. International Inc.". As in the case of the HBOLs, the SBOLs also make a specific reference to each container, the description of the consignment, the name of the vessel etc. These SBOLs also contain the endorsement "Shipped on Board". Eight (out of ten) SBOLs contain an endorsement to the effect the goods have been shipped on 31.03.2023 whereas two of these SBOLs contain an endorsement to the effect that the goods have been shipped on 10.04.2023. The copies of these SBOLs have been filed alongwith the plaint at page No. 29 to 39 of the documents accompanying the plaint. A copy of one such SBOL is as under:

6. From the reply filed by the defendant no. 4 to the present I.A. and the contentions made by the said defendant in its written synopsis, it transpires that apart from the SBOLs, certain bills of lading were also issued by the defendant no. 4. In this regard, it has been specifically averred by the defendant no. 4 in its reply as under:

"..... 

It is most respectfully submitted that the Defendant No.3 had approached the Answering Defendant and placed the booking of 10 containers for USA. Accordingly, Answering Defendant had secured the booking from Carrier- Cosco Line (not a party in the present suit) and handed over 10 empty containers to the Defendant No. 3, who has handed over back duly stuffed 10 containers to the Carrier. Accordingly, Answering Defendant has issued the original Bill of Lading to the Defendant No. 3 (Bill of Lading is also known as Multimodal Transport Documents) and these 10 containers are required to be delivered against the presentation of the original Bill of Lading at Destination. However, Defendant No. 3 is in the physical possession of all the Original Bill of Lading and undertaken to pay the charges in respect of containers detention charges, destination and delivery charges for the delay period etc. Apparently, Defendant No. 3 has some dispute with the Defendant No. 2 and Plaintiff, that is the reason Defendant No. 3 has taken lien on the goods of the Plaintiff in order to recover the old dues from Defendant No. 2 and Plaintiff ....."

The bills of lading issued by the defendant no. 4 [copies of which have been handed over during the course of hearing] are as under:

By:RADHA BISHT Signing Date:28.07.2023 16:48:59 By:RADHA BISHT Signing Date:28.07.2023 16:48:59 By:RADHA BISHT Signing Date:28.07.2023 16:48:59 It can be seen that unlike the HBOLs and the SBOLs, in the above bills of lading, the defendant no.3 (Cogoport Private Ltd.) is referred to as the consigner and one "City Freight Logistics Inc." has been referred to as the consignee. The container numbers referred to in the above bills of lading issued by the defendant no. 4 are the same as the container numbers mentioned in the HBOLs and SBOLs. The originals of these bills of lading are stated to be in possession of the defendant no. 3. As noticed above, the defendant no. 4 has clarified in its reply that it is on account of withholding of the above bills of lading that the goods could not be released at the port of discharge. As such, some of the requisite documents/bills of lading that are required to get the consignment released at the port of discharge are still in possession of the defendant no.3.

7. It has been specifically averred by the defendant no. 3 in its reply to the present application that since there are certain outstanding dues payable by the defendant

no. 2 to the defendant no. 3, the said defendant no. 3 has exercised its right of "lien and detention" in relation to the cargo/consignment in question. In this regard, it has been specifically averred by the defendant no. 3 in its reply as under :-

"……..

The answering Defendant has the contractual and legal right of lien and detention in relation to the cargo / documents claimed bv the Plaintiff, due to the Defendant No. 2 's failure to pay the former s dues:

41. It is submitted that Defendant No. 3 was engaged by Defendant No.2 in the capacity of a freight forwarder, as explained above. It is submitted that the invoices raised by Defendant No. 3 on Defendant No. 2 make it clear that the Trading Conditions shall apply to the transaction. Further, the invoices also make it clear that in case of any dispute, the Courts of Mumbai shall have exclusive jurisdiction.

42. As per Clause 4 of the Trading Conditions, the Defendant No.3, as the Forwarder, has the right of lien and detention in the event of non- payment of its dues. In the instant case, Defendant No.2 has failed to clear invoices, leading to the above-mentioned outstanding dues.

43. That in this regard, Defendant No.3 had pursued Defendant No.2 demanding the payment of the aforesaid dues. However, Defendant No.2 failed to comply with such demands. Thus, left with no alternate recourse, the Defendant No.3 exercised its right of lien over the House Bill of Lading for the above-mentioned cargos in compliance with the Trading Conditions which forms the agreement between the Defendant No.3 and Defendant No.2 and applicable law.

……."

8. As regards the amounts allegedly payable by the defendant no. 2 to the defendant no.3 are concerned, the bulk of the aforesaid amounts pertain to services in respect of cargo/consignment in which some third party was the consignor and with which the plaintiff is not concerned in any manner whatsoever. The details thereof are as under:-

"……..

13. The tabulated calculation of dues owed by the Defendant No.2 to the Defendant No.3 as on date follows:

First Transaction S. Head of Charge Amount Due No. (in INR/USD) 1 Charges for the subject services 11,80,000 invoiced vide Invoice Nos.

COGOM2324015067 dated 31st May 2023.

2 Charges for the subject services 2,67,572 invoiced vide Invoice Nos.

COGO/2223/79485 dated 31st March 2023.

3. Charges for the subject services 84,775 invoiced vide Invoice Nos.

COGO/2223/79479 dated 31st March 2023.

4. Charges for the subject services 44,103 invoiced vide Invoice Nos.

COGO/2223/79599 dated 31st March 2023.

5. Charges for the subject services 5,24,377 invoiced vide Invoice Nos.

COGOM2324005816 dated 28th April 2023. (Invoice amount INR 14,65,192/- and Outstanding amount INR 5,24,377)

6. Charges for the subject services 2,67,624 invoiced vide Invoice Nos.

COGOM2324002868 dated 18th April 2023.

7. Charges for the subject services 29,075 invoiced vide Invoice Nos.

COGOM2324002871 dated 18th April 2023.

8. Charges for the subject services 4,720 invoiced vide Invoice Nos.

COGOM2324002876 dated 18th April 2023.

9. Charges for the subject services 2,506 invoiced vide Invoice Nos.

COGOM2324002872 dated 18th Apil 2023.

10. Charges for the subject services 1,168 invoiced vide Invoice Nos.

COGOM2324002875 dated 18th April 2023.

invoiced vide Invoice Nos.

COGOM2324002867 dated 18th April 2023.

invoiced vide Invoice Nos.

COGOM2324002874 dated 18th April 2023.

13. Estimated future cost towards $ 1,21,951.219 security amount, detention and storage starting from 7th April 2023 and containing.

(1 USD = 82 INR)
TOTAL (INR) 1

9. As regards the plaintiff s consignment, it has been averred by the defendant no. 3 in its reply that following charges have not been paid towards it:

> Second Transaction S. No. Head of Charge Amount Due (in INR) 1 Charges for the subject services invoiced 44,560.27 vide Invoice Nos. CCOGOM2324016383 dated 13th June 2023.
>
> 2 Charges accrued towards detention, $97,138 storage and destination charges starting from 16th June 2023 and containing. (1USD =82 INR)
>
> 3. Estimated future cost per day towards $3200 detention, storage and destination charges starting from 10th July 2023 and continuing.

(1USD=82 INR) TOTAL (INR) 83,10,404.71

10. It can be observed hereinabove, that as far as the plaintiff s consignment is concerned, as per the defendant no. 3 s own showing, only an amount of Rs. 44,560.27/- (Forty Four Thousand Five Hundred Sixty and Twenty Seven Paisa Only) remains allegedly unpaid by the defendant no. 2 to the defendant no.3. The remaining charges claimed are towards detention and storage incurred at the destination port. These detention charges are being incurred since the goods have not been released to the consignee for want of documents which are being retained by the defendant no.3.

11. Admittedly, the invoices which were raised by the defendant no. 3 upon the defendant no. 2 in respect of the plaintiff s consignment have been paid to the defendant no. 3 except for one invoice for Rs. 44,560.27 which is dated 13.06.2023. The said invoices [which have been paid by the defendant no. 2 to the defendant no. 3] have been enclosed by the defendant no. 2 alongwith its reply to the present application.

12. It is also the case of the defendant no. 1 and the defendant no. 2 that their requisite charges for the services performed by the said defendants have been duly received by them and nothing further

is payable by the plaintiff to them.

13. In order to break the impasse as a result of the action on the part of the defendant no. 3 in withholding the requisite documents that were required for getting the goods released at the port of discharge, the plaintiff, vide its email dated 20.06.2023, proposed as under :

14. The above, without prejudice offer of the plaintiff was not accepted by the defendant no. 3 as a result of which the goods could not be released at the port of discharge and continued to attract demurrage. It is notable that the above proposal was made by the plaintiff, to somehow get its consignment released, in the light of the aforesaid actions on the part of the defendant no. 3, even though admittedly, the plaintiff has nothing to do with the dues allegedly payable by the defendant no. 2 to the defendant no. 3 in respect of an altogether third party s consignment. However, despite the above attempt, no understanding could be arrived at between the parties. The defendant no. 3 has continued to insist that it has a lien on the plaintiff s consignment.

15. It is in this background that the instant suit has been filed, alongwith the present application. The prayers sought in the present application are as under:

> "..... 
>
> I. In view of the facts and circumstance as afore-stated it is respectfully prayed that this Hon ble court is be pleased to:-
>
> I. Grant an Ex-Parte Ad-Interim Injunction and Mandatory Injunction in favour of the Plaintiff and against the Defendants, their nominees, agents, successors or any third person acting through them, thereby directing them to hand-over peacefully all the goods as forming part of the Subject Consignment to the consignee i.e. LNK International Inc., New York;
>
> II. Grant an Ex-parte Ad-interim Injunction in favour of the Plaintiff and against the Defendants directing them to deposit INR 3,00,00,000/- as security towards failure to perform contractual obligation, illegal withholding of the goods, reputational and goodwill damage of the Plaintiff.
>
> III. Pass such other and further orders as this Hon ble may deem fit and proper in the facts and circumstances of the case. ....."

Submissions on behalf of Plaintiff

16. In the aforesaid background, it is contended by the learned senior counsel for the plaintiff that the defendant no. 3 has wrongly retained the original bills of lading on account of which the consignment in question could not be released at the port of discharge. It is strenuously contended that the action of the defendant no. 3 in retaining the relevant documents/original bills of lading is unlawful and illegal. Reliance has been placed on the email dated 14.06.2023 sent by the plaintiff s

agent in New York (port of discharge) confirming that the consignment is held up on account of the hold instructions of the defendant no. 3. It is contended that the plaintiff has nothing to do with the transaction between the defendant no. 2 and the defendant no. 3 in respect of some third party s consignment/s, and the inter-se disputes between the defendant no. 2 and the defendant no. 3 with regard to the charges payable thereunder. It is contended that the same cannot afford any justification whatsoever for withholding the consignment of the plaintiff.

17. It is submitted that demurrage is being incurred on the plaintiff s consignment on a day to day basis due to unlawful and illegal actions of the defendant no. 3 and therefore, the defendant no.3 must be directed not only to forthwith hand over the original bills of lading and all relevant documents pertaining to the plaintiff s consignment in its possession so that the goods can be released at the destination port, but must also additionally be directed to bear the demurrage charges which are being incurred on a day to day basis since their arrival at the port of discharge.

18. It is submitted that it is patently absurd and illegal on the part of the defendant no. 3 to ascertain any right of lien or detention in respect of the consignment in question on account of alleged non-payment of its dues by the defendant no. 2 in respect of consignments of a third party with which the plaintiff is not at all concerned.

19. It is contended that it is only with a view to arm twist the defendant no. 2 through the plaintiff, that the defendant no. 3 has illegally retained the requisite original documents/ bills of lading and instructed its New York delivery partners to withhold the subject delivery consignment. It is stated that the said conduct of the defendant no. 3 is malicious and actionable and calls for urgent interim orders. It is submitted that the plaintiff has made out a very strong prima facie case. It is also emphasized that the plaintiff shall suffer irreparable harm and loss if the goods in question are not released at the port of discharge inasmuch as the goods are perishable in nature and are stored in conditions which are non-conducive, as a result of which there is a genuine apprehension that the goods would be rendered unusable and thereby lose their entire value. It is submitted that the present case is a fit case where the Court should pass a mandatory injunction directing the defendant no. 3 to release the original bills of lading and other documents in its possession in respect of the consignment in question, to the plaintiff without delay and to direct the defendant no. 3 to bear the demurrage charges incurred at the port of discharge till the date of handing over the said documents to the plaintiff. Submissions on behalf of the defendant no. 3

20. Learned senior counsel for the defendant no. 3 has contended as under:

> (i) That the plaint is liable to be returned due to lack of territorial jurisdiction. It is submitted that the invoices raised by the defendant no. 1 on the plaintiff expressly exclude the jurisdiction of this Court and nominate Courts in Mumbai for adjudication of all matters relating thereto. It is stated that the position with regard to the invoices raised by the defendant no. 3 upon the defendant no. 2 is also similar. Reliance has been placed in this regard on the judgment of the Supreme Court in M/s Swastik Gases Pvt. Ltd. Vs. Indian Oil Corporation Ltd1.

(ii) It is submitted that the plaintiff lacks the locus standi to seek the reliefs sought, inasmuch as it is only the consignee (LNK International Inc.) who can bring an action as per Section (1) of Bills of Lading Act, 1856. In this regard, reliance has been placed on the judgment of the Supreme Court in the case of British India Steam Navigation Co. Ltd. Vs. Shanmughavilas Cashew Industries and Ors.2

(iii) It is also stated that the suit is not maintainable against the defendant no. 3 as there is no privity of contract between the plaintiff and the said defendant.

(iv) It is contended that the plaintiff has sought contradictory reliefs inasmuch as on one hand, it seeks a mandatory injunction, while on the other hand it claims damages for the value of such cargo.

It is also contended that granting of the reliefs sought in present application would tantamount in granting the final relief which cannot be permitted at this stage.

(v) It is contended that the conditions for grant of mandatory injunction as laid down by the Supreme Court in Doarab Cawasji Warden Vs. Coomi Sorab Warden & Ors.3, are not satisfied in the present case. It is contended that the plaintiff is (2013) 9 SCC 32 (1990) 3 SCC 481 (1990) 2 SCC 117 not the contractual seller of the goods and that it will not suffer any injury even if the cargo remains undelivered.

(vi) It is further contended that the defendant no. 3 has a right of lien in respect of the goods as a "bailee". It is contended that in terms of Section 170 of the Indian Contract Act, 1872, the right of the bailee to a lien subsists as long as the requisite charges are not paid to the bailee (defendant no.3). Certain judgements have been relied upon by the learned Senior Counsel for the defendant No. 3 in support of this submission, which have been dealt with hereunder.

(vii) It is also submitted that the contract between the defendant no.2 and the defendant no.3 vests a right of lien on the defendant no.3 by virtue of "Standard Terms of Freight Forwarders Association of India" which have been referred to in the invoices raised by defendant no.3 upon the defendant no.2.

(viii) It is further contended that since the plaintiff has already raised a monetary claim for compensation, even assuming there is any breach on the part of the defendant no.3, the same can be compensated in terms of money and as such grant of mandatory injunction is unwarranted.

Submissions on behalf of the defendant no.1:

21. It is submitted on behalf of the defendant no. 1 that the said defendant had carried out its obligations without delay and had arranged for the prompt shipment for the cargo. It is submitted that the relevant bills of lading under which the cargo moved were not issued by it. It is further submitted that the said consignment cannot be released as the original bills of lading are in the possession of the defendant no. 3, who is holding onto the same.

22. It is further submitted that the defendant no. 1 has not delayed the delivery of the goods and cannot be held liable for the delay and that it is the defendant nos. 3 to 5 who are responsible for the non-delivery of the said consignment.

Submissions on behalf of defendant no.2:

23. It is submitted on behalf of the defendant no. 2 that it has no privity of contract with the plaintiff. It is submitted that the defendant no. 2 engaged the services of the defendant no. 3 for the booking of 10 containers of shipment to be transported from India to New York, U.S.A. The goods are stated to have been shipped under a bill of lading issued by defendant no. 5.

24. It is submitted that the invoices raised by defendant no. 3 on defendant no. 2 were cleared in their entirety. To substantiate the same, the defendant no. 2 has also relied on the bank statement and payment receipts attached alongwith their reply to the present application. It is submitted that upon arrival at its designated destination, the consignment of goods was withheld by the defendant no. 3 on the basis that the defendant no. 3 had a right of „lien and detention over the goods.

25. It is the contention of the defendant no. 2 that, the invoice for Rs.44,560.27/- was raised on the defendant no. 2 by the defendant no. 3 on 13.06.2023 on account of GRI "General Rate of Interest". It is pointed out that the consignment of goods had reached New York on 12.06.2023 and the delivery of the consignment was denied by the defendant no.3 on the very same date. Hence, there was no question of the defendant no. 3 holding any lien on account of the said invoice. Further, it is contended that there could be no question of increase in rates after the consignment had already reached its destination.

26. It is also contended that, the defendant no. 2 is not a member of the Federation of Freight Forwarders Association of India and therefore it is misconceived to allege that the "Standard Trading Conditions of Freight Forwarders" would be applicable to the defendant no. 2. Moreover the said conditions were never agreed upon between the defendant no. 3 and the defendant no. 2. Finally, it is submitted that even under the said rules, the defendant no. 3 shall have no right of lien and detention of the said consignment of goods which were unrelated to the transactions with the plaintiff.

Submissions on behalf of Defendant no.4

27. It is submitted on behalf of the defendant no. 4 that it is a Multimodal Transport Operator having regular contract with the Steamer Ship / Vessel s agent / Container Line Carrier, and due to which the defendant no. 3 had approached the defendant no. 4, and placed the booking of the concerned 10 containers, with the defendant no. 4. The defendant no. 4 had secured the booking from "Cosco Line" and handed over 10 empty containers to the defendant no. 3, who had handed over back duly stuffed ten (10) containers to "Cosco Line". Accordingly, the defendant no. 4 had issued certain bills of lading [also referred to as Multimodal Transport Documents] in favour of defendant no. 3, and the ten (10) containers are required to be delivered against the presentation of the same.

28. The defendant no. 4 has placed reliance on certain email communications between the plaintiff and defendant no. 3 wherein it is stated that defendant no. 3 has demanded Rs. 2,00,00,000/- (Rupees Two Crores Only) in order to release the said original bills of lading needed to secure the release of the goods lying at port. It is claimed that in this regard the plaintiff had offered to pay a sum of Rs. 1,15,00,000/- (Rupees One Crore Fifteen Lakhs Only) which was ultimately rejected by the defendant no. 3.

29. It is also contended that there exists no privity of contract between the defendant no. 4 and the plaintiff herein and as a result the said defendant no. 4 should not be dragged into the present dispute.

30. It is submitted that due to the ongoing dispute, the demurrage charges being charged on the goods lying at port are increasing on a day to day basis and currently the demurrage charges stand at USD 112,318 (One Hundred Twelve Thousand Three Hundred and Eighteen US Dollars) and if not settled the charges shall keep increasing at USD 4000 Dollars a day, and due to this it is submitted that the said demurrage charges are to be paid by the defendant no. 3 as the delay and charges in lieu of the delay have all been caused due to the conduct of the defendant no.3.

Analysis and Findings:

Locus Standi of the Plaintiff:

31. Learned senior counsel for the defendant no. 3 has relied on Section 1 of the Bill of Lading Act, 1856, to contend that in terms thereof, it is only the consignee who has the right to sue in respect of the consignment and the plaintiff (consignor) has no right to bring an action with regard thereto.

32. The said contention of the defendant no. 3 is ex-facie untenable. The original bills of lading were required to be handed over in the first instance to the consignor. The consignor (plaintiff) is aggrieved as a result of withholding of the said bills of lading by the concerned freight forwarding agent (defendant no. 3). It is incorrect to contend that in such a situation the consignor (plaintiff) has no right to sue. It is notable that the controversy in the present case is not with regard to any of the terms and conditions in the concerned bills of lading but the act of the defendant no. 3 in refusing to part with the original bills of lading and / or other requisite documents to the consignor.

33. Reliance sought to be placed by learned senior counsel for the defendant no. 3 upon the judgement of the Supreme Court in the case of British India Steam Navigation Co. Ltd (supra) is misconceived. Specific reliance has been sought to be placed on paragraph 13 of the said judgement wherein it has been observed as under:

"……

13…….

the ownership of the goods along with the right to sue is transferred and vested in the consignee named in the bill of lading as if the contract contained in the bill of lading has been made with himself. ....."

34. In British India Steam Navigation Co. Ltd (supra), the Supreme Court was concerned with a situation where an action had been brought by the purchaser (consignee) against the charterer of the vessel. It was in this context that the Supreme Court construed the terms of the bill lading and the liabilities and rights flowing thereunder upon the shipper and the consignee. The same is wholly inapplicable to the facts of the present case. Even so, even in British India Steam Navigation Co. Ltd (supra), it was observed by the Supreme Court as under:

".....

12. Until the Bills of Lading Act, 1855 was passed in England the endorsement of a bill of lading would not affect the contract evidenced in it, and the endorsee could not sue or be sued on such contract, though he was the person really interested in goods, the subject of the contract. By Section 1 of the Bills of Lading Act, 1855, in England "every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property of goods shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bills of lading had been made with himself." In Sewell v. Burdick[(1884) 10 AC 74, 85, 104 : 1 TLR 128] it is held that Section 1 is to be given effect in any proceeding in the English court regardless of the proper law governing the transfer of the bill of lading. The property passes by reason of consignment or endorsement and the right to sue passes with it. The consignee or endorsee may lose his right or liability under the Act by such further endorsement of the bill of lading as divests him of the property. Such a vesting of rights and liabilities on endorsement of a bill of lading does not in any way affect the shipowners' rights against the original shippers or owners of the goods for the freight or the shipper's rights under the bill of lading or the liability of the consignee or indorsee by reason of his being such consignee or indorsee, or of his receiving the goods in consequence of such consignment or indorsement, or any right of stoppage in transitu.

....."

35. In Gudur Krishna Reddy Vs. Union of India and Another4, the High Court of Andhra Pradesh has held as under:

".....

10. I do not think that the said Judgment is an authority for the proposition that the consignor in no case can institute the suit or in all cases where the goods are consigned, it is the consignee who alone can sue for the loss.

11. The learned Judge for the proposition he laid down in that case relied upon Daws v. Peck(1799) 8 T.R. 330: Esp. 12: 4 R.R. 675 (T.K.: Term Reports). A reading of that judgment would disclose that case does not decide anything like the one held by the Courts below. The facts of that case were that the goods were directed to be delivered to one Mr. Odey. It appears that on the direction of Mr. Odey the consignment was sent to him by the consignor through a particular carrier: The goods were either lost or damaged in the transit. It was contended in that case that the consignor can sue even in a case where the title in the goods had passed to the consignee and that the consignee, who had instituted the suit, had 1964 SCC OnLine A.P. 31 no locus standi to institute the suit. It was found that when the title in the goods had passed to him and when the consignor acted as his agent in handing over the goods to the particular carrier in pursuance of the direction given to him by the consignee, the consignee can institute the suit. It is obvious that in the circumstances in which the delivery was made to the common carrier it was the vendee who stood to the risk and the damnum et injuria were to him and not to the vendor, the plaintiff in that case. The opinion of the Lord Kenyon, Ch. J., is illuminating in this behalf. The two other learned Judges also reached the same conclusion. That case therefore is not an authority to hold that once the consignment is made it is the consignee alone who can institute the suit. When the consignee has locus standi to institute the suit depends primarily upon the facts and circumstances of each case. In cases where the consignor has not parted with the title in goods, he, being the bailor, can certainly sue for damages the Railway Company which is the bailee. In cases however where the title in the goods has passed to the consignee, the consignee can also bring a suit for damages against the Railway. In cases however where either the consignor or the consignee can claim and the person claiming receives the damages from the Railway Company either outside the court or through the court, any; payment thus made in the discharge of the claim: by the Railway Company would certainly be a valid discharge as against the person who had not put his claim, and the rights of the consignor and the consignee will be settled between them. The Railway Company, in any case is liable to pay the compensation because of its negligence. In this case it is not in dispute that although the R.R. stands in the name of the consignee, but it has not been endorsed in his favour conveying the title in the goods.

12. When it is not in doubt that the title in the baskets of betel leaves consigned from Nellore was with the consignor, this case ought not to have presented any difficulty for reaching the conclusion that it is the consignor who alone can institute the present suit. The consignee who has not had any title in the goods could not have sued in the present case. Merely because the R.R. stands in the name of the consignee without the title any goods passing to him he would not be entitled to- institute the suit.

13. I am fortified in my conclusion by the-following decisions:.

**** **** ****

15. In Chhangamal v. Dominion of India, AIR 1957 Bom 276, a Bench of the Bombay High Court said:

"The right of action to recover compensation for loss or damage to the goods ordinarily vests in the consignor. Where the goods lost or damaged. In transit are the subject-matter of a contract of sale, the owner of the goods may in the absence of a contract to the contrary sue the railway administration. Therefore, a consignee who is in possession of a railway receipt duly endorsed by the consignor may maintain an action for compensation for loss of the goods covered: thereby, but he can do so not because he is the consignee but because he is the owner of the goods. A consignor may sue for compensation for loss relying upon the breach of contract of consignment. An owner of goods covered by a railway receipt may sue for compensation relying upon his title and the loss of goods by misconduct of the railway administration. But a bare consignee, who is not ex party to the contract of consignment and who is not the owner of the goods, cannot maintain a suit for compensation for loss or damage to the goods. He has no cause of action ex contractu nor ex delicto."

16. I am thus satisfied that as the title in the goods had not passed to the consignee and because the plaintiff is the bailor, the Railway, he being responsible to him for the losses and as the plaintiff continued to be the owner of the baskets, it is he who could institute the suit. The lower courts therefore have erred in holding that the plaintiff has no locus standi to institute the suit. In this case the plaintiff has produced a letter of authority from the consignee which shows that the consignee has no objection for the plaintiff instituting the suit. Although that letter is there, but in the view which I have taken I find no difficulty in rejecting the contention that the plaintiff was not competent to Institute the suit. ....."

36. Reference is also apposite to the inter-se agreement dated 23.07.2020, between the plaintiff and the consignee which has been placed on record by the plaintiff. Clause 2.12 thereof clearly states that the plaintiff shall retain title and risk of loss until delivery of the consignment. Only after delivery, will the title and risk pass onto the consignee.

37. Admittedly, the goods in question have not yet been delivered to the consignee i.e., L.N.K. International Inc. New York. As such, the plaintiff continues to retain legal title thereof and consequently, has the right to sue or seek relief qua the said goods/consignment.

Territorial Jurisdiction

38. As far as the territorial jurisdiction of this Court is concerned, it is averred in the plaint as under :-

"....

21. It is stated that this Hon'ble Court also has the territorial jurisdiction to entertain and try the present suit by virtue of Section 20 of the Code of Civil Procedure 1908 as Defendant No. 2's registered address is within the jurisdiction of this Hon'ble Court. Further, the cause of action has arisen within the jurisdiction of this Hon'ble Court. The services offered by Defendants are provided through online platforms, and accessible from within the jurisdiction of this Hon'ble Court. The Defendant No. 2 and Defendant No. 4 reside and/or personally work for gain and have their main and registered office in Delhi, ill jurisdiction of this Hon'ble Court. Further, the Defendant No.3 vide its email dated 21.06.2023 has admitted to having an office in Delhi (i.e. at 1002-1003 (V) , 10th Floor Kanchanjunga Building, 18 Barakhamba Road, New Delhi-110001) and personally working for gain in Delhi. Further, the Defendant No. 1 resides and/or personal(v works for gain and has their main office in Delhi at Central Square Plaza-31370, 3rd Floor, Plot No. 20, Manoharlal Khurana Marg, Bara Hindu Rao, Near Filmistan Cinema, New Delhi - II 0006. In view thereof, as the Defendant No. 2 and Defendant No. 4 are having offices and/or work for gain within jurisdiction of this Hon ble Court and further even Defendant No. 1 and Defendant No. 3 have their office within jurisdiction of this Hon 'hie Court. Additionally, the Defendant No. 5 also works for gain in New Delhi apart from having its registered office in Old Delhi Road, Gurgaon. In any event and b way of immense precaution the Plaintiff has filed an application under Section 20(2) of the Code of Civil Procedure, 1908 seeking leave of this Hon'ble Court to sue Defendant No.1, Defendant No. 3 and Defendant No. 5 in the jurisdiction of this Hon 'hie Court. In the view thereof, this Hon'ble Court has complete jurisdiction to adjudicate upon the present suit.

....."

39. Thus, as per the plaint and the memo of parties, each of the defendants has offices/work for gain within the jurisdiction of this Court. It is also notable that the defendant no. 1, the defendant no. 2 and the defendant no. 4 have not denied or contested the territorial jurisdiction of this Court to entertain the present suit.

40. It is also a fact that the concerned bills of lading, which have been retained by the defendant no. 3 [as reproduced hereinabove], on the face of it, have been drawn up by the defendant no. 4 in Delhi. The said bills of lading bear the stamp and Delhi address of the defendant no. 4 and also, the said bills of lading also contain the following stipulation:

"....

22. Jurisdiction:

The contract evidenced by or contained in this MTD shall be governed by the law of India and any claim or dispute arising hereunder or in connection herewith shall be subject to the jurisdiction of the Indian court in Delhi, New Delhi only.

....."

41. Stipulations in the context of tax invoice raised by the defendant no.1 upon the plaintiff which mentions "subject to Mumbai Jurisdiction" cannot be construed in a manner so as to divest this Court of its inherent jurisdiction. The said stipulation is being construed by the defendant no. 3 (which is not a party to the said tax invoice) in a manner contrary to the understanding of the plaintiff and the defendant no.1. As mentioned, it is neither the case of the plaintiff nor the defendant no.1 that this Court does not have territorial jurisdiction to entertain the present suit. Likewise, the stipulations that may be contained in the inter-se invoices raised by the defendant no. 2 upon the defendant no. 3 cannot be construed in a manner so as to divest the jurisdiction of the Court in an action initiated by the plaintiff against the defendant no. 3 on account of alleged illegal withholding of the documents/ bills of lading drawn up for the purpose of the plaintiff s consignment.

42. The reliance placed by the learned senior counsel for the defendant no. 3 on the judgment of Supreme Court in the case of M/s Swastik Gases (supra) is also misconceived. All that the said judgement holds is that the use of words like "only", "exclusively", "alone" and so on, are not necessary to convey the intention of the parties while construing a jurisdiction clause in an agreement. In M/s Swastik Gases (supra), the Supreme Court approved the judgment in the case of A.B.C. Laminart Pvt. Ltd. Vs. A. P. Agencies5, in which it was held that even without such exclusionary words, the maxim „expressio unius est exclusio alterius which translates to, "the expression of one thing is the exclusion of another" may be applied.

43. Specific reference was made in Swastik Gases (supra) to para 21 of the judgement in A.B.C. Laminart (supra), in which it has been observed as under:

> "....
>
> 21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like "alone", "only", "exclusive" and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim "expressio unius est exclusio alterius" -- expression of one is the exclusion of another -- may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.
>
> ....."

(1989) 2 SCC 163

44. In the concurring opinion of Madan B. Lokur, J., in Swastik Gases (supra), specific reference was made to A.B.C. Laminart (supra) as under:

> "……
>
> 43. In A.B.C. Laminart v. A.P. Agencies [A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163] the relevant clause reads as follows: (SCC p. 167, para 3) "3. … „Any dispute arising out of this sale shall be subject to Kaira jurisdiction.
>
> 44. Despite the aforesaid clause, proceedings were initiated by the respondent in A.B.C. Laminart [A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163] in Salem (Tamil Nadu). The appellant challenged the jurisdiction of the Court at Salem to entertain the proceedings since the parties had agreed that all disputes shall be subject to the jurisdiction of the courts in Kaira (Gujarat). The trial court upheld the objection but that was set aside in appeal by the Madras High Court which held that the courts in Salem had the jurisdiction to entertain the proceedings.
>
> 45. The civil appeal filed by the appellant in A.B.C. Laminart case [A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163] challenging the decision of the Madras High Court was dismissed by this Court thereby affirming the jurisdiction of the Court in Salem notwithstanding the exclusion clause. While doing so, this Court held that when a certain jurisdiction is specified in a contract, an intention to exclude all others from its operation may be inferred; the exclusion clause has to be properly construed and the maxim expressio unius est exclusio alterius (expression of one is the exclusion of another) may be applied. Looking then to the facts and circumstances of the case, this Court held that the jurisdiction of courts other than in Kaira were not clearly, unambiguously and explicitly excluded and therefore, the Court at Salem had jurisdiction to entertain the proceedings. ……"

45. Thus, in A.B.C. Laminart (supra) even in the context of stipulation to the effect that „Any dispute arising out of this sale shall be subject to Kaira jurisdiction. [which is similar to the stipulation in the present case], it was held by the Supreme Court that even the application of the Maxim „expressio unius est exclusio alterius could not lead to the inference that jurisdiction of Courts other than Kaira were clearly, unambiguously, explicitly excluded and therefore, it was found by the Supreme Court that the Court at Salem had jurisdiction to entertain the proceedings in that case. Likewise, in the present case, prima facie, it would be unwarranted to construe a bar of jurisdiction of Courts in Delhi.

46. M/s Swastik Gases (supra), does not derogate or dilute the principle enunciated in A.B.C. Laminart (supra), and only reiterates the same. It is a different matter that in the facts of Swastik Gases (supra), the application of maxim „expressio unius est exclusio alterius , led to the conclusion that the jurisdiction of Courts other than Calcutta was found to be impliedly excluded. The said conclusion is based on the factual matrix in that case and therefore, cannot be mechanically applied to the present case to reach the conclusion that the Courts in Delhi would not have any jurisdiction.

47. Reference is also apposite to the observations made by the Supreme Court in R.S.D.V. Finance Co. Ltd. Vs. Shree Vallabh Glass Works Ltd.6, wherein in the context of a stipulation which is identical to the stipulation relied upon by the defendant no. 3 in the present case, it has been held as under:-

> "……..
>
> 9. We may also consider the effect of the endorsement „Subject to Anand jurisdiction made on the deposit receipt issued by the defendant. In the facts and circumstances of this case it cannot be disputed that the cause of action had arisen at Bombay as the amount of Rs 10,00,000 itself was paid through a cheque of the bank at Bombay and the same was deposited in the bank account of the defendant in the Bank of Baroda at Nariman Point, Bombay. The five post-dated cheques were also issued by the defendant being payable to the plaintiff at Bombay. The endorsement „Subject to Anand jurisdiction has been made unilaterally by the defendant while issuing the deposit receipt.
>
> (1993) 2 SCC 130 The endorsement „Subject to Anand jurisdiction does not contain the ouster clause using the words like „alone , „only , „exclusive and the like. Thus the maxim „expressio unius est exclusio alterius cannot be applied under the facts and circumstances of the case and it cannot be held that merely because the deposit receipt contained the endorsement „Subject to Anand jurisdiction it excluded the jurisdiction of all other courts who were otherwise competent to entertain the suit. The view taken by us finds support from a decision of this Court in A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem [(1989) 2 SCC 163 : (1989) 2 SCR 1]"

48. The aforesaid observations clearly apply to the facts of the present case; the use of this expression "subject to Mumbai Jurisdiction" cannot be construed to exclude the jurisdiction of any or all other Courts who are otherwise competent to entertain the present suit.

49. Learned counsel for the plaintiff has also rightly relied upon the judgment in the case of Baldev Steel Ltd. Vs. The Empire Dyeing and Manufacturing Company Ltd.7, where, in the context of an identical stipulation, it has been held as under:-

> "……..
>
> 11. On a perusal of the correspondence, as proved on record, it is seen that defendant No.3 i.e. M/s. Garlick Engineering, division of defendant No.1, submitted its quotation on 25.4.1975, from the Delhi office. Defendant No.1 had a branch office in Delhi. Negotiations and discussions took place in Delhi. The order dated 12.6.1973 was placed by the plaintiff on the defendants in Delhi. The said order had also been accepted by defendant No.3 having its office at Delhi from Delhi. The payments to the defendants were made at Delhi. From the foregoing, it would be seen that the cause of action for suit had arisen in Delhi. Merely, because one of the standard printed

terms of the quotation, mentioned, subject to "Bombay Jurisdiction", it cannot exclude the Delhi Jurisdiction. It was not an exclusionary clause. As noticed earlier, the entire negotiations, placement of order and further correspondence was through the defendants' office at Delhi. Keeping in mind the explanation to Section 20(c) CPC, as also interpreted by the Apex Court in M/s.Patel Roadways Limited Vs. M/s.Prasad Trading Company - , it is clear that the Courts at Delhi would have jurisdiction being a place where the defendant Corporation was having its divisional or subordinate 2001 SCC OnLine Del 477 office and the place where the cause of action arose. Issue No.13 is decided in favor of the plaintiff and against the defendants. It is held that the Courts at Delhi have the jurisdiction to try and entertain the suit. ....."

50. In Bela Goyal Proprietor of Ispat Sangrah (India) Vs. VIIPL-MIPL JV (Jaipur) and Ors.8. The contention that was raised in that case was similar in terms of the contention raised on behalf of the defendant no.3 in the present proceedings and recorded by the Court as under :-

"....

11. Qua jurisdiction it is argued even though the principal office of the defendant Nos.1 to 3 is in Delhi, yet no cause of action had arisen at Delhi as it arose only at Jaipur and in view of the stipulated condition on the invoices viz. subject to Jaipur jurisdiction, coupled with the fact defendant have their offices at Jaipur, this Court does not have territorial jurisdiction to try this matter.

....."

51. In the above context this Court held as under:

".....

21. Admittedly defendant nos.2 to 4 have their registered office at Delhi. The defendant no.1 is a joint venture of defendant nos.2 and 3. The explanation to Section 20 CPC makes it clear where principal office is located, the company is presumed to carry its business from there. Moreso, if one peruse the three impugned cheques, those were of the account in Punjab National Bank, of defendant no.1, being maintained at Shalimar Bagh, Delhi. Thus the part of cause of action arose at Delhi coupled with the fact the company has its principle office at Delhi; this Court shall have the jurisdiction. Merely by mentioning on the invoices viz. the disputes shall be subject to the jurisdiction at Jaipur would not snatch away the jurisdiction of this Court as there was no exclusion clause in the invoices.

....."

52. As such, the plaintiff cannot be non-suited at the present stage based on the plea of the defendant no. 3 regarding lack of territorial jurisdiction. Privity of Contract 2022:DHC:58

53. It has been contended on behalf of defendant no. 3 that the present suit is not maintainable for want of privity of contract between the plaintiff and defendant no. 3. This contention is untenable on the face of it. The very grievance of the plaintiff is that the defendant no. 3 has sought to wrongfully exercise „lien in respect of the consignment of the plaintiff without any contractual or statutory basis. The plaintiff cannot be prevented from agitating this issue on the ground of absence of "privity of contract" between the plaintiff and the defendant no.3. In fact, the absence of privity of contract is relied upon by the plaintiff in support of its contention that the defendant no. 3 cannot be permitted to exercise any "lien" in respect of the plaintiff s consignment.

Scope of power to grant Mandatory Injunction

54. In Hammad Ahmed Vs. Abdul Majeed & Ors,9 it has been held by Supreme Court as under :-

> "..... 
>
> 58. The ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction. In Deoraj v. State of Maharashtra [Deoraj v. State of Maharashtra, (2004) 4 SCC 697], this Court held that Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Therefore, in appropriate case, ad interim injunction in mandatory form can be granted. The Court held as under: (SCC p. 703, para 12) "12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself;
>
> (2019) 14 SCC 1 for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case -- of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury

> complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.

....."

55. Thus, this Court would grant ad interim mandatory injunction if withholding the same would "prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end, the Court would not be able to vindicate the cause of justices".

56. Likewise, in Dorab Cawasji Warden Vs. Coomi Sorab Warden & Ors.,10 it has been held by the Supreme Court as under :

> "....
>
> 16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of (1990) 2 SCC 117 such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines.

Generally stated these guidelines are:

> (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
>
> (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money. (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

....."

57. There is no quarrel with the above parameters for the grant of mandatory injunction. What has to be seen is whether the facts of the present case warrants grant of any mandatory injunction. There is clearly no legal bar in granting an appropriate mandatory injunction in a deserving case.

58. In Paras Imports Pvt. Ltd. and Others Vs. Runway Logistics Pvt. Ltd.,11 a Division bench of this Court, while deciding an appeal against grant of a mandatory injunction which mandated production of a bill of lading, inter alia observed as under:

> "……
>
> 2019 SCC OnLine Del 10342
>
> 13. The object of interlocutory injunction is to protect the Plaintiff against injury by violation of his right. The Court has to see where the balance of convenience lies, by weighing Plaintiff's need for protection against the corresponding need of the Defendant to be protected against injury resulting from his having been prevented from exercising his legal rights.
>
> ……
>
> The relief of mandatory injunction as prayed for is in the nature of a direction to the Appellants to produce the original bill of lading or, in the alternate, return all the goods. If the injunction is vacated, the suit of the Respondent would become infructuous, as even if Plaintiff were to succeed in the suit after trial, the goods would no longer be available. Thus, refusal of injunction would certainly and adversely affect the interest of the Plaintiff and considering the facts of the case in proper prospective, we find that the approach of the learned Single Judge was appropriate and, accordingly, the appeal assailing the order of confirmation of injunction and the dismissal of the application seeking vacation thereof is rejected. ……"

59. In the present case, if it is found that the exercise of "lien" by the defendant no.3 is unlawful, the same would obviously lead to grave and irreparable injustice to the plaintiff. In such a situation, the wrongful exercise of lien cannot be allowed to continue till final disposal of the present suit. An obvious wrong cannot be allowed to be perpetuated and this Court would grant appropriate relief, even in the form of a mandatory injunction, to redress the same. Far from precluding grant of such a relief in such a situation, the judgments cited on behalf of the defendant no. 3 mandate that in an appropriate case, mandatory injunction ought to be granted.

Right of "lien" claimed by the Defendant no.3

60. Two contentions are raised by the learned senior counsel for the defendant no.3 found in support of the alleged right of the defendant no. 3 to exercise lien in respect of the consignment in question. Firstly, it is contended that the "Standard Trading Conditions for the Freight Forwarders" as framed by the Federation of Freight Forwarders Association in India, which find a reference in

the invoice raised by the defendant no.3 upon the defendant no. 2, enables the defendant no.3 to exercise/claim a lien with respect to the goods in question.

61. Secondly, it is contended that the right to exercise this lien also flows from Section 170 and 171 of the Indian Contract Act, 1872.

62. Both the above contentions are misconceived.

63. The so-called conditions for the Freight Forwarders (supra) do not have any statutory or regulatory basis whatsoever. The defendant no.2 has categorically denied the applicability of the same.

64. Ex facie, the aforesaid "Standard Trading Conditions for Freight Forwarders" cannot apply in a situation where the goods of a third party come into the hands of a Freight Forwarder in his capacity as such agent of another Freight Forwarder (defendant no.2). The untenability of the contentions of the defendant no.3 is evident from the absurd consequences that would entail if the so-called Standard Trading of Federation Forwarders were made applicable to the parties such as the plaintiff who are not Freight Forwarders, who have no privity of contract with sub-agents of the Freight Forwarders engaged by it and in whose hands the goods have come only for the purpose of making arrangements for transportation of the concerned goods to the ultimate consignee in question.

65. Apart from the aforesaid aspect of inapplicability of the aforesaid conditions, even otherwise on the face of it, the said conditions cannot come to the aid of the defendant no. 3. The defendant no. 3 has sought to rely upon Clause 4 of the aforesaid conditions, which speaks of "right to lien and detention". The same reads as under:

> "....
>
> 4. Right to lien and detention:
>
> (a) Constituents shall pay the bills presented by the Forwarder within 15 days of their presentation, failing which penal interest at 3% above Bank's lending unless specifically agreed to that contrary rate of interest shall become due and payable from due date or 15 days as applicable.
>
> (b) The Forwarder has a right to lien and a right of detention over the goods or other securities and effects lying within his power of disposal in respect of any amount whether already due for payment or not which the Forwarder is entitled to receive in respect of services to the customer. In exercise of the lien under this clause, the Forwarder shall be entitled to dispose of the goods, either by public or private sales upon which lien is exercised, to recover his dues, provided that he gives a written notice of at least 7 days to the customer of his intention to do so. The Forwarder is entitled to recover all the balance amount from the customer after recovery of the dues by the sale of the goods under this clause and the right exercised by Forwarder

> under this clause shall not be deemed to have been waiver of his right to take further legal steps to recover the dues.
>
> ....."

66. A bare perusal of the aforementioned stipulation reveals that:-

> a) Lien can be exercised to recover the dues "in respect of services to the customer". Obviously, the services contemplated thereunder are those referable to the goods in respect of which lien is sought to be exercised.

It is evident that the lien cannot be exercised in respect of goods, with regard to which the concerned freight forwarder has been paid for the services provided in connection therewith.

b) The aforesaid rule contemplates that a written notice of at least 7 days be given to the customer of its intention to exercise lien over the goods with the freight forwarder. In the present case, no notice as contemplated thereunder appears to have been given by the defendant no.3. On the contrary, the learned counsel for the defendant no. 3 states that the said defendant has initiated arbitration against the defendant no. 2 for recover of its dues from the said defendant.

c) In the present case, the goods are no longer in possession of defendant no.3 as they have been shipped, and already arrived at the port of destination. As such, there is no occasion to exercise the lien as contemplated under the aforesaid rule.

d) The aforesaid rule contemplates that the freight forwarder shall be entitled to dispose of the goods either by public or private sale. Since, the goods have reached the port of destination, there is no question of the defendant no.3 conducting a "public or private sale" of the goods. In fact, for the purpose of questioning the locus of the plaintiff, it was contended by the defendant no. 3 itself that the consignee has rights in respect of the goods in question.

e) The aforesaid stipulation cannot apply in derogation to the statutory prescription in Section 170 of the Indian Contract Act and in the Multimodal Transportation of Goods Act, 1993 (which have been elaborated herein below).

67. As such reliance by the defendant no.3 on the aforesaid Standard Trading Conditions (supra) is misconceived for all the aforesaid reasons.

68. Reliance has been sought to be placed by the defendant no.3 on Section 170 and 171 of the Indian Contract Act, 1872, to contend that it has a right of lien in respect of the goods as a "bailee" is also wholly misconceived. Sections 170 and 171 of the Indian Contract Act, 1872, read as under:

> "....

> 170. Bailee s particular lien.--Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.
>
> 171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.--Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.1 --Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.
>
> ....."

69. A bare perusal of the Section 170 of the Contract Act reveals that lien contemplated thereunder is only in respect of "due remuneration" for "services rendered" in respect of the goods.

70. In the present case, admittedly all the invoices raised by the defendant no.3 upon the defendant no.2 prior to shipment of the goods have been duly paid to the defendant no.3 and only one invoice of amounting to Rs. 44,560.27/- has been stated to have not been paid. It is rightly pointed out by the defendant no. 2 that the said invoice is dated 13.06.2023, whereas the goods in question had reached the port of destination i.e. New York on 12.06.2023 itself, and the plaintiff was denied the consignment on 12.06.2023 itself (i.e., prior to issuance of invoice dated 13.06.2023) on account of the exercise of the so called lien by the defendant no. 3. Moreover, and importantly, lien has sought to be exercised by the defendant no. 3 in respect of services performed by the defendant no. 3 in relation to some other consignment unconnected with the plaintiff and unconnected with the services performed by the defendant no.3 in respect of the plaintiff s goods. This is clearly beyond what is contemplated under Section 170 of the Indian Contract Act, 1872.

71. Further, a bare perusal of Section 171 of the Indian Contract Act, 1872, reveals that it is clearly and unambiguously inapplicable to the defendant no. 3 inasmuch as the "general lien contemplated thereunder applies only to bankers, factors, wharfingers, attorneys of High Court and policy-brokers. Admittedly, there is no contract which enables the defendant no.3 to exercise general lien over the plaintiff s goods.

72. The Judgment of the Supreme Court in the case of Board of Trustees of the Port of Bombay and Others v. Sriyanesh Knitters12, while examining the issue as to whether a port trust constituted under the Major Ports Trust Act, 1963, could exercise a general lien for their dues over present or future consignment of importers, when the dues were in respect of past imports by the said

importers, clearly circumscribes the scope of Section 171 of the Indian Contract Act, 1872. Reference may be made to the following paragraphs of the said judgment :

> "……..
>
> 17. Having come to the conclusion that the MPT Act does not oust the provisions of Section 171 of the Contract Act what we have now to see is whether the appellants can claim any relief or benefit under the said section. Section 171 of the Indian Contract Act, 1872 reads as follows:
>
> "171. General lien of bankers, factors, wharfingers, attorneys, and policy-brokers.--Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

This section is in two parts. The first part gives statutory right of lien to four categories only, namely, bankers, factors, wharfingers and attorneys of High Court and policy-brokers subject to their contracting out of Section 171. The second part of Section 171 applies to persons other than the aforesaid five categories and to them Section 171 does not give a statutory right of lien. It provides that they will have no right to retain as securities goods bailed to them unless there is an express contract to that effect. Whereas in respect of the first (1999) 7 SCC 359 category of persons mentioned in Section 171 the section itself enables them to retain the goods as security in the absence of a contract to the contrary but in respect of any other person to whom goods are bailed the right of retaining them as securities can be exercised only if there is an express contract to that effect. ……..

27. We are unable to accept this submission. As has already been held earlier the general lien contained in Section 171 of the Contract Act is not covered by the provisions of Chapter VI of the MPT Act. The MPT Act no doubt deals with lien in respect, inter alia, of the goods imported but it does not deal with the general lien of the type we are concerned with in this case, namely, amounts due in respect of earlier consignments for which payment has not been made. The contract to the contrary as envisaged in Section 171 of the Contract Act has to be specific. The MPT Act including Chapter VI nowhere provides that the general lien under Section 171 of the Contract Act would not be available to the wharfingers in a case where the MPT Act is applicable. ……."

73. Thus, it is only with respect to the category of persons specified in Section 171 that it is permissible to retain goods bailed to them as security and exercise a "general lien" in respect thereof.

74. The matter is put beyond the pale of doubt by a judgment of the Bombay High Court in Anax Industries Pvt. Ltd. v. Micro Logistics (I), Pvt. Ltd., Mumbai13, where the High Court of Bombay specifically dealt with the right of lien sought to be exercised by a freight forwarding agent. As a

result of the lien sought to be exercised in that case, the plaintiff therein was compelled to pray for a mandatory injunction seeking release of bills of lading illegally withheld by the freight forward agent. The Bombay High Court after taking note of Section 170 and 171 of the Indian Contract Act, 1872, and the judgment of the Supreme Court in Board of Trustees of the Port of Bombay and Others v. Sriyanesh Knitters (supra) held as under:

> "……
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> 2020 SCC OnLine Bom 4352
>
> 24. The Hon'ble Apex Court in the case of Board of Trustees of the Port of Bombay v. Sriyanesh Knitters, (1999) 7 SCC 359 has observed in paragraph 17 thus:
>
> "17 Having come to the conclusion that the MPT Act does not oust the provisions of Section 171 of the Contract Act what we have now to see is whether the appellants can claim any relief or benefit under the said section. Section 171 of the Indian Contract Act, 1872, reads as follows: 171 General lien of bankers, factors, wharfingers, attorneys, and policy- brokers - Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect. This section is in two parts. The first part gives statutory right of lien to four categories only, namely, bankers, factors, wharfingers and attorneys of High Court and policy-brokers subject to their contracting out of Section 171. The second part of Section 171 applies to persons other than aforesaid five categories and to them Section 171 does not give a statutory right of lien. It provides that they will have no right to retain as securities goods bailed to them unless there is an express contract to that effect. Whereas in respect of the first category of persons mentioned in Section 171 section itself enables them to retain the goods as security in the absence of a contract to the contrary but in respect of any other person to whom goods are bailed the right of retaining them as securities can be exercised only if there is an express contract to that effect.
>
> In the case in hand, pleadings of either party do not suggest that bailee was empowered to exercise the general lien envisaged under Section 171 of the Indian Contract Act, 1872.
>
> ……..
>
> 25. Thus, in consideration of the facts, evidence and circumstances emerging and flowed therefrom, I hold that:
>
> ……..

(3) Defendants were not entitled to exercise general lien in terms of Section 171 of the Indian Contract Act, 1872.

.....

26. Goods cargo in the second shipment is a paper, a perishable product, which may loose its utility if kept for long period. Even otherwise, plaintiffs have paid sea freight for second consignment. Therefore, it is just and proper to direct defendants to release bills of lading immediately. In fact, it appears, that since second consignment has not been released within reasonable time, plaintiffs' vendees have cancelled the orders. Therefore, the balance of convenience also tilts in favour of the plaintiffs. ....."

75. The above judgement squarely applies to the facts of the present case. In terms thereof, a freight forwarding agent like the defendant no.3 is not empowered to exercise "general lien" as envisaged in the Section 171 of the Indian Contract Act, 1872.

76. The above position is reinforced by the statutory prescription contained in the Multimodal Transportation of Goods Act, 1993. Reference is apposite to the following provisions of the Multimodal Transportation of Goods Act, 1993:

".....

2. Definitions.--In this Act, unless the context otherwise requires,--

(l) "multimodal transport contract" means a contract under which a multimodal transport operator undertakes to perform or procure the performance of multimodal transportation against payment of freight; (la) "multimodal transport document" means a negotiable or non-negotiable document evidencing a multimodal transport contract and which can be replaced by electronic data interchange messages permitted by applicable law;]

(m) "multimodal transport operator" means any person who-- (i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf; (ii) acts as principal, and 2 [not as an agent either of the consignor, or consignee or of the carrier] participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract; and (iii) is registered under sub-section (3) of section 4;

.....

22. Right of multimodal transport operator to have lien on goods and documents.--(1) The multimodal transport operator who has not been paid the amount of consideration stipulated in the multimodal transport contract shall have a lien on the consignment and on the documents in his possession. (2) Notwithstanding anything contained in sections 13, 16 and 18, the period during

which the goods are in possession of the multimodal transport operator in exercise of his right of lien referred to in subsection (1) shall not be included for the purposes of calculating the time of delay under any of those sections.

....."

77. A bare perusal of the above provisions makes it clear that the question of lien arises only if the concerned "multimodal transport operator" has not been paid the amount of consideration stipulated in the "multimodal contract"

> in question. In such a situation, the lien contemplated is on the particular consignment which is covered by the concerned "multi modal transport contract" and not in respect of other third party contracts.

78. It has been rightly contended on behalf of the defendant no.2 that all the relevant invoices raised by the defendant no. 3 upon it in respect of the consignment in question have been paid [these have been filed alongwith the reply of the defendant no. 2], except for a belated invoice of Rs. 44,560.27 which was raised after the goods had reached New York on 12.6.2023. It has also been brought out that even prior to raising of this belated invoice [dated 13.6.2023], the defendant no. 3 had sought to exercise its "lien", as a result of which the plaintiff was denied consignment on 12.6.2023.

79. There is another aspect of the matter. Whereas in the HBOLs (Supra) and the SBOLs (Supra), the plaintiff was referred to as the consignor and L.N.K. International Inc., as the consignee, in the bill of lading stated to have been furnished by the defendant no.4 to the defendant no.3, even though it is in respect of the same consignment and there is reference to the same container numbers which are referred to in the "HBOLs" and the "SBOLs", the consignor s names is mentioned as Cogoport Private. Limited. (the defendant no.3) and the consignee is mentioned to be "Citi Freight Logistics Inc." This is clearly incongruous, and indicative of the fact that the defendant no.3 has adopted a stratagem to prevent release of goods to the plaintiff at the port of destination, and with a view to exercise illegal "lien" on the goods in question.

80. The defendant no. 1, the defendant no. 2 and even the defendant no. 4 [which was engaged by the defendant no.3 itself] have also affirmed and contended that the defendant no.3 is not entitled to exercise any „lien or withhold the plaintiff s consignment in the manner sought to be done.

81. The judgments which have been cited by learned senior counsel for the defendant no.3, far from supporting the case of the defendant no.3, reinforces the unsustainability of the defendant no.3 s action.

82. In M/s. Rasiklal Kantilal And Company Vs. Board of Trustee of Bombay And Others14, the Supreme Court was concerned with a situation where the original consignee referred to in the Bills of Lading failed to lift the consignment and consequently the unclaimed consignments were purchased by the appellant therein. It was in this context that the appellant sought to contend that the liability to pay demurrage for the period anterior to the appellant s acquisition of title, be

collected from the steamer agent of the vessel and not from the appellant. In that context it was observed by the Supreme Court as under:

> "..... 
>
> 50. As rightly opined in Forbes case [Forbes Forbes Campbell & Co. Ltd. v. Port of Bombay, (2015) 1 SCC 228 ], there is no bailor and bailee relationship between the Board (the first respondent) and the consignee (the appellant); either voluntarily or statutorily compelled but such a relationship exists between the first respondent and the owner of the ship (through the steamer agent). It is possible in a given case where the consignee or any other person (such as the appellant herein) claiming through the consignor, eventually may not come forward to take delivery of the goods for a variety of reasons -- considerations of economy or supervening disability imposed by law, etc. Therefore, in such cases, to say that merely because the bill of lading is endorsed or the delivery order is issued, the consignor or his agent is absolved of the responsibility for payment (of rates or rent for services rendered with respect to goods) would result in a situation that the Board would incur expenses without any legal right to recover such amount from the consignor and be driven to litigation for recovering the same from the consignee who did not take delivery of the goods with whom the Board (2017) 11 SCC 1 had no contract of bailment and consequently, no contractual obligation to pay the "rates or rent.
>
> ....."

83. The above observations clearly reinforce the locus standi of the plaintiff "consignor" in respect of the goods in question, inasmuch as it is recognised that notwithstanding that a bill of lading may be endorsed in favour of a particular consignee, yet, the consignor is not absolved of the responsibility for payment of requisite charges to the concerned port authorities.

84. In paragraph 51 of the judgment of Supreme Court again reiterated as under:

> "51.....Depending on the nature of the relationship between the consignor and consignee, the liability may befall either of them....."

85. Importantly, in paragraph 58 of the said judgment, the Supreme Court considered the scope of lien under Section 171 of the Indian Contract Act, 1872, and relied upon the judgment in Board of Trustees of the Port of Bombay and Others v. Sriyanesh Knitters held (supra) and held as under:

> ".....
>
> 58. Section 59 of the Act creates lien in favour of the first respondent in respect of any goods and also authorises the first respondent to seize and detain the goods, it clearly makes a special provision. Under the Contract Act, 1872, every bailee has no lien on the goods delivered to him. Such a lien is available only to limited classes of bailees

specified under Section 171 [Port of Bombay v. Sriyanesh Knitters, (1999) 7 SCC 359, p. 370, para 17"17. ... This section is in two parts. The first part gives statutory right of lien to four categories only, namely, bankers, factors, wharfingers and attorneys of High Court and policy-brokers subject to their contracting out of Section 171. The second part of Section 171 applies to persons other than the aforesaid five categories and to them Section 171 does not give a statutory right of lien. It provides, that they will have no right to retain as securities goods bailed to them unless there is an express contract to that effect. Whereas in respect of the first category of persons mentioned in Section 171 the section itself enables them to retain the goods as security in the absence of a contract to the contrary but in respect of any other person to whom goods are bailed the right of retaining them as securities can be exercised only if there is an express contract to that effect."] . They are bankers, factors, wharfingers [ For the sake of completeness in the narration it must also be mentioned that this Court held in Port of Bombay v. Sriyanesh Knitters, (1999) 7 SCC 359 (at para 22) that a Board constituted under the Act is a wharfinger.] , attorneys of a High Court and policy-brokers. It can be seen from Section 171 that only those specific categories of bailees have a right to retain goods bailed to them as security for the amounts due to them. No other category of bailee has such a right unless there is an express contract creating such a lien.

....."

86. Thus, the above judgment reiterates the position that no general lien can be exercised under Section 171 of the Indian Contract Act, 1872, in the absence of an express contract creating such a lien. As such, the aforesaid judgment clearly supports the case of the plaintiff.

87. In Shipping Corpn. Of India Ltd. Vs. C.L. Jain Woollen Mills And, Others.,15 the Supreme Court was concerned with the issue as to whether any liability could be fastened on an importer to pay demurrage charges in a context of a situation where goods had been detained by the custom authorities, and the action of the custom authorities was successfully assailed by the importer.

88. It was in this context that the right of the bailee (Shipping Corporation of India i.e. the petitioner therein) to recover its dues for storage of goods in question was considered by the Supreme Court. In that context, it was observed in paragraph 7 of the said judgment as under:

"....

7. Before examining the correctness of the rival submissions, one thing is crystal clear that the relationship between the importer and the carrier of goods in whose favour the Bill of Lading has been consigned and who (2001) 5 SCC 345 has stored the goods in his custody, is governed by the contract between the parties. Section 170 of the Indian Contract Act engrafts the principle of bailee's lien, namely, if somebody has received the articles on being delivered to him and is required to store the same until cleared for which he might have borne the expenses, he has a right to detain them

> until his dues are paid. But it is not necessary in the case in hand to examine the common law principle and the bailee's lien inasmuch as the very terms of the contract and the provisions of the Bill of Lading, unequivocally conferred power on the appellant to retain the goods, until the dues are paid. Such rights accruing in favour of the appellant cannot be nullified by issuance of a certificate of detention by the Customs Authorities unless for such issuance of detention certificate any provisions of the Customs Act authorise. We had not been shown any provisions of the Customs Act which would enable the Customs Authorities to compel the carrier not to charge demurrage charges, the moment a detention certificate is issued.

It may be undoubtedly true that the Customs Authorities might have bona fide initiated the proceedings for confiscation of the goods which however, ultimately turned out to be unsuccessful and the Court held the same to be illegal. But that by itself, would not clothe the Customs Authorities with the power to direct the carrier who continues to retain a lien over the imported goods, so long as his dues are not paid, not to charge any demurrage charges nor the so-called issuance of detention certificate would also prohibit the carrier from raising any demand towards demurrage charges, for the occupation of the imported goods of the space, which the proprietor of the space is entitled to charge from the importer. The importer also will not be entitled to remove his goods from the premises unless customs clearance is given. But that would not mean that demurrage charges could not be levied on the importer for the space his goods have occupied, since the contract between the importer and the proprietor of the space is in no way altered because of the orders issued by the Customs Authorities...

.....]"

89. In reaching the above conclusion, the Supreme Court relied upon the judgments in "International Airports Authority of India Vs. Grand Slam International",16 and Union of India Vs. Sanjeev Woolen Mills17, in which it was affirmed that the customs authorities have no power to prevent the proprietor of the space where the goods are stored, from levying demurrage (1995) 3 SCC 151 (1998) 9 SCC 647 charges. Importantly, the Supreme Court recognised the principle embodied in Section 170 of the Indian Contract Act, 1872, to the effect that lien can be exercised only in respect of the charges referable to articles/goods in question.

90. The judgment in the case of Coats Viyella India Ltd. Vs. India Cements Ltd.18, cited by the learned senior counsel for the defendant no.3, again, supports the case of the plaintiff.

91. In that case, the respondent therein had been engaged by the State Trading Corporation ("STC") to act as its agent to arrange for actual loading and shipping of a particular consignment of cement. In connection therewith, the respondent had engaged the appellant. The question that arose before the Supreme Court was whether the monetary claim sought to be raised by the appellant could be passed on to the STC. It was held by the Supreme Court that since the appellant s privity of contract was only with the respondent, the claim sought to be made by the appellant, could not be passed on to the owners of the vessels in question or to the STC since they were not parties to the inter-se agreements between the petitioner and respondent therein. The observations of the Supreme Court

are as under:

> "……..
>
> 10…..
>
> From the facts enumerated hereinabove it is quite clear that as far as the appellant is concerned it had privity of contract only with the said respondent. The said agreement contemplated a sort of bonus being paid to the appellant in case of quicker or speedy loading of the ship by the appellant of the cement supplied by the said respondent. At the same time, the said agreement also contemplated that the appellant would be liable to pay demurrage to the said respondent in case the required rate of loading as contemplated by the agreement was not maintained. The agreement dated 5-12-1974 was only between the appellant and Respondent 1 and the charges referred to in clause 7 of the agreement relating to handling charges for cement, stevedoring rates etc. were (2000) 9 SCC 376 admittedly payable to the appellant by the respondent alone. Clause 14 of the said agreement contemplated that on the basis of the laytime statements which are prepared, Respondent 1 was to make claim on the ship-owners presumably in respect of the handling and other charges.

This claim by the said respondent on the owners of the vessels or their agents could only have been made as a result or consequence of an agreement between the said respondent and STC or the owners/agents of the vessels for the simple reason that neither STC nor the said owners/agents were parties to the agreement dated 5-12-1974. Clause 14 in that sense indicated that what was payable to the appellant would be reimbursed to the said respondent. But we cannot read this agreement as a whole to mean that there was any liability of the ship- owners or STC to make any payment to the appellant. The agreement dated 5-12-1974 was a principal-to-principal contract between the appellant and the said respondent. The rights and liabilities of the appellant arise only under this agreement and they could make no claim on the other party on the basis of the laytime statements nor could, for that matter, STC or the owner of the ship raise a claim on the appellant for demurrage in the event of slow handling of the cargo. ……."

92. On the same analogy, the inter-se rights and liabilities of the defendant nos. 2 and 3 cannot be asserted against the plaintiff in absence of any principle to principle contract between the plaintiff and the defendant no.3. Thus, the said judgment again, clearly supports the case of the plaintiff.

93. In the above circumstances, the withholding by the defendant no.3 of the requisite documents/bills of lading, and exercise of "lien", as a result of which the plaintiff has been unable to get its consignment released at the port of destination, is ex-facie, impermissible under law.

94. Further, significant demurrage charges have been levied on account of the withholding by the defendant no.3 of the relevant documents and/or exercise of „lien by the defendant no.3. Prima facie, the additional liability on account of demurrage incurred at the port of the destination must fall on the defendant no.3.

Conclusion

95. Having considered the totality of circumstances, as enumerated above, grant of a mandatory injunction is clearly warranted in the facts and circumstances of the present case. It would completely defeat the ends of justice if the plaintiff s consignment is allowed to perish and/or if demurrage charges continue to be incurred in respect thereof, on account of the aforesaid actions of the defendant no.3. The purported exercise of „lien by the defendant no. 3 is expropriatory, completely contrary to law, and constitutes an egregious wrong. Not only will grave and irreparable prejudice be caused to the plaintiff if the goods in question are allowed to perish and/or continue to incur demurrage at the port of destination, the same will also not serve the defendant no.3 s avowed purpose, which is to realize monies in respect of services performed by the defendant no.3 for the defendant no.2, and for which it is stated to have initiated arbitration against the defendant no.2. Even though the goods reached the port of destination as far back as on 12.06.2023, the defendant no.3 has refused to part with the requisite documents/bills of lading to enable the plaintiff to get the goods released at the port of destination nor has it taken any steps to pay the demurrage that is being incurred on a day to day basis. In the circumstances, it is warranted that the plaintiff be allowed to get its goods released at the port of destination and realise requisite amounts from the consignee [assuming that the goods have not already perished]. The same shall be inherently subject to further order/s in the suit.

96. In the circumstances, a mandatory injunction is issued in favour of the plaintiff and against the defendant no.3 directing the defendant no.3 to forthwith release to the plaintiff all original documents/bills of lading in its possession in respect of the plaintiffs consignment, and such other document/s in its possession which are required to get the consignment/goods released at the port of discharge. The defendant no.3 is also restrained from obstructing or in any manner preventing the release of the consignment(s) in question at the port of discharge, either directly or through its agents/employees/representatives.

97. Although, as observed hereinabove, prima facie, the liability to pay demurrage for the period during which the goods have been held up at the port of destination on account of illegal exercise of „lien , must fall on the defendant no.3, however, in the interest of ensuring that the goods are released at the earliest, the plaintiff is directed to bear the demurrage charges, subject to further order/s in the suit.

98. The present application is disposed of in the above terms.

SACHIN DATTA, J JULY 28, 2023 ssc/rohit