

good order and condition and after actually satisfying themselves in respect of the quality, quantity and in consideration of the freight charges paid in advance issued bill of lading No.LD/PQ-05 dated 12.11.1997 incorporating these particulars and also acknowledging quality, quantity, weight, marks and numbers and the good order and condition of the consignment. It is alleged that said consignment was insured with the Respondent under their Marine Insurance Policy No.-1/p/003/11/117820/01/98 dated 10.1.1998 in lieu of Cover Note No.003002224. The said marine insurance policy covered various risks including the risk of non-delivery/ shortage/damages. Applicant is the owner/charters of the said vessel "PACIFIC" and carrying on their business in Pakistan through their local agents, who are also personally liable for all claims for shortage/damage as they have filed General/Particulars/Bond/Undertaking Guarantee to the effect under the Customs Act. It is further alleged that said vessel "PACIFIC" arrived at the Port of Karachi on or about 07.12.1997 and subsequently discharged her import cargo into the land tanks of M/s. Mapak Qasim Bulker (Pvt.) Ltd., Karachi who acted as agents/bailees of the applicant and of the said vessel in relations to the goods discharged in their custody undertaking to deliver the said consignment to the respective importers against the delivery order issued by M/s. Pacific Maritime (Pvt.) Ltd. It is alleged that before the discharge of the consignment into the land tanks of the different receivers. The Respondent consignee deputed M/s. Iqbal 'N' Nanji & Company, surveyors to survey and to supervise the discharge of the consignment into the tanks and to report the same to the respondent. The said surveyors along with Chief Officer of the vessel and other surveyors of the receivers and the ship jointly checked and recorded the ullages, water checks, temperature of the ship tanks and that of

the land tanks before and after discharge of the consignment with the help of the calibration charts. According to the said report issued by M/s.Iqbal 'N' Nanji & Co. 991.202 metric tons was received in the land tanks from the vessel out of the total consignment of 1000.000 metric tons imported by the importer under the said bills of lading, 8,798 metric tons was received short out of the total consignment. In view of this, the apportioned shortage of the Importers come to 0.88% mertric tons after reasonable deductions of handing wastages. Applicant inspite of full knowledge of the said loss failed, avoided and / or neglected to settle the claim of the importers whereas respondent under the obligation of the contract of insurance settled the importers said loss under letter of subrogation thereby subrogated to all rights and remedies as envisaged U/s.135-A of the Transfer of Property Act. It is alleged that having been so subrogated the respondent thereafter lodged the claim with the M/s. Pacific Mertime (Pvt.) Ltd., on 16.04.1998 for Rs.92,064/- and forwarded all the claim documents through forwarding letter dated 03.06.1998. It is alleged that under the contract of affreightment and the provisions of law applicable thereto the applicant was under duty to take due and proper care, properly and carefully, load, stow, keep, carry, care for discharge and deliver the consignment in the same good order and condition as was received by their said vessel for carriage, the loss has occurred due to the fault/failure and/or negligence in their duties on the part of the applicant, his agents, employees, servants, and/or bailees, thereby rendering the respondent liable under the law for the loss suffered by the importer in the first instance and later-on to the applicant under the contract of the insurance. Ultimately the Respondent filed suit against the applicants and prayed for the following reliefs:-

i. To pass a judgment and decree in favour of Plaintiff and against the Defendants jointly / and or severally for a sum of Rs.92,064/- with interest thereon at the rate of 15% per annum from the date of this suit till full realization of the Plaintiff claim.

ii. Costs of the suit, and/or

iii. To grant such other relief or reliefs which this Court may deem fit and proper in view of the nature and circumstances of the case.

3. Applicant filed written statement and alleged that M/s. Ahmed Oil & Ghee Industries Ltd., Karachi imported 1000 metric tons of RBD palm oil or its value was US\$ 547,000/- or a letter of credit as alleged was established as alleged and specifically denied that the 1000 M.Tons of palm oil was fully and separately shipped as alleged. The facts are that at port of shipment M/s.Gardner Smith wanted to ship a quantity of 9800.509 M.tons palm oil to Karachi and entered into a chartered party agreement with the applicant and executed the same on 29.10.97 and caused to be shipped the said quantity through M/s. Kuak Oils and grains Pvt Ltd., for the delivery at Port Qasim. The quantity of 9800.509 M.tons as per its shore measurement was shipped on board the vessel in bulk and commingled condition at the port of Lahad datu. Malaysia for the said shipment various bills of lading were prepared by charterer and issued according to the provisions of charter party. The quantity of palm oil was shipped under said charter party was stored in different tanks with no segregation as to parcels. The shore tanks measured quantity of 9800.509 M.tons after loading was found to be 9819.531 M.tons. The Applicant had to deliver only loaded quantity at Port Qasim and to supervise the same surveyor were appointed by parties concerned. The applicant further contended that the consignment carried in commingle shape as part one of the original lot with no segregation. The vessel undertake to deliver only that portion of the

cargo actually loaded. Applicant further contended in written statement that the consignment was shipped in bulk as a quantity to be more or less. The description quantity, weight and quality of the goods were declared by the shippers at the time of shipment and was inserted by them in Bill of lading therefore the Bill of lading is not prima facie evidence of received of the consignment. The applicant denied that the claim is covered under the insurance policy or respondent is subrogated. The applicant further alleged that M/s.Pacific Maritime (Pvt.) Ltd., merely acted as agent of vessel and they denied liability as agent. The applicant denied that goods were insured at the relevant time or the claim is covered under the policy or respondent is subrogated. It is, however, admitted that M/s. Pacific Maritime merely acted as agent of the vessel in suit on her arrival at Karachi, the functions of the agent are not to comply with Customs and port formalities on behalf of the vessel its owner/ charterers. The shipping agent has no privity of contract with the respondent and have been wrongly impleaded in the above suit. The applicant denied that in case of oil consignment direct delivery is taken from the ship and for such storage they hired any shore tanks owner by private parties. M/s. Mapak Qasim Bulker (Pvt.) Ltd., were hired by receivers to take delivery and store their cargo in their shore tanks. The applicant has nothing to do with the shore tanks owner nor they acted as agent or bailee of the applicant. It is further submitted that after arrival of the vessel and before the commencing discharge joint survey of quantity in ship tanks was carried out and accordingly a quantity of 9818.565 M.tons of his commingled parcel was found in ship tanks No.2p 2s, 5p, 5s, 6p and 6s which was more than the B/L quantity alleged to be shipped as per shore measurements at port of shipment and the entire quantity arrived

was discharged in shore tanks nominated by importers. The consignment in suit was commingled with the quantity of 9800.509 M.tons. In written statement it was further denied that there was any short landing or short delivery by the carrier or 8.798 M.tons were short as alleged. Applicant denied and stated that the suit consignment of 1000.000 M.tons was commingled with 9800.509 M.tons as per shore tank measurement of port of shipment it was found jointly by surveyors after arrival of the vessel as 9818.565 M.tons more than shipped quantity. The entire arrived quantity was discharged and delivered from ships tanks after completion of discharge from relevant tank surveyors jointly issued dry certificate thus there was no shortage or short landing. It is stated by the applicant that on account of short delivery of quantity as alleged the respondent suffered any loss of the alleged suit amount or any other sum being value thereof. It is alleged shortage has occurred due to fault.

4. The trial Court from the pleadings of the parties settled the following issue.

- i. What is the effect of Bill of lading No.LD/PQ/05 dated 12.11.1997?
- ii. Whether the Defendants had no means and opportunity to verify the contents mark, numbered, quality, quantity, value of the consignment at the time of shipment on board the vessel?
- iii. Whether 08.798 M.tons of Refined bleached deodorized Palm oil in bulk were received short out of manifested quantity of 1000.00 M.tons bleached deodorized Palm oil in bulk?
- iv. Whether joint survey was conducted at the time of discharging of the consignment, if so, its effect?
- v. Whether Defendant No.3 is personally liable to make good the loss suffered by the Plaintiffs?

- vi. Whether the Plaintiffs have been validly subrogated?
- vii. Whether Plaintiff, have right to sue and the suit as framed maintainable?
- viii. Whether there is any customary, natural and normal wastage in bulk oil transportation due to skin, stickage, temperature and measurement loss if so, to what extent?
- ix. Whether consignment was not discharged in full from the vessel if not what is the shortage, how caused and are Defendants liable for the same?
- x. What are the terms and conditions of the contract of carriage regarding shipment and delivery of consignment in suit?
- xi. What was the quantity of oil shipped by the supplier of the Plaintiffs?
- xii. Whether the suit instituted with authority, signed by a competent and duly authorized person if not to what effect?
- xiii. What should the decree be?

Plaintiff examined the following witnesses:

1. **PW/1** Muhammad Javaid Iqbal representative of Customs
2. **PW/2** Javed Ahmed Siddiqui representative of Bank
3. **PW/3** Zafar Hussain representative of Plaintiff
4. **PW/4** Faisal representative of clearing and forwarding agent
5. **PW/5** Kauser Ali Khan representative of surveyor
6. **PW/6** Abdul Jabbar representative of consignee
7. **PW/6** Fareed Khan representative of shore tanks

While the applicant/Defendant examined 03 witnesses. They were DW/1, representative of Defendant No.3 namely Waqar Ali, Muhammad Ali Seena, DW/2 Representative of Defendant No.1 and Ex.D/3 Muhammad Ameer Khan.

5. The learned trial Court decreed the suit of respondent by judgment dated 17.4.2008 and the appeal preferred by the present applicant was also dismissed by the first appellate Court by judgment

dated 09-12-2009. Therefore, the applicant preferred this Revision against the concurrent findings of facts.

6. I have heard learned counsel for the applicant and perused the record.

7. On facts, the findings of the two courts on the point that there was short delivery of refined bleached deodorized palm oil at Karachi, the evidence was clear. This short delivery was reflected in the documents originating from the port of consignment. There has been a clear-cut evidence which included the documents prepared in presence of the surveyor of all the parties at the time of the survey at the Port. The difference between the value of the goods and the value of the short delivery of goods was admittedly to the sum of Rs.92,064/- and the said amount was paid by the respondent under a letter subrogation to the importer. The bill of loading is available on record clearly shows the name of applicants and the quantity of palm oil in bulk. The measurement of the quantity on delivery in Karachi at Port Bin Qasim was certified by the representative of the applicants which shows that the vessel was responsible for short fall in delivery of the actual amount of goods after giving discounts under the law. The surveyor report also confirmed that there was a shortfall. In the evidence, the applicants were not able to cause any dent in the unimpeachable evidence of the respondents that liability was of the applicants which has been discharged by the respondents under its Marine Insurance Policy in which the agents who working at the Port are liable to compensate the losses. The claim was also lodged not only against the shipping company but also the present applicants. Learned counsel for the applicant was required to show from the evidence that there was any misreading of the evidence or

non-reading of certain piece of evidence which could adversely reflect on the findings of the two courts below. He was unable to point out a single piece of misreading and non-reading of evidence and/or failure of Court in exercising or not exercising the jurisdiction vested in the Courts. The record does not reflect any irregularity in the proceedings before the trial Court.

8. In view of the above, the concurrent findings of facts based on the documentary evidence cannot be interfered with in exercising of revisional jurisdiction, therefore, this Revision is dismissed.

J U D G E

Karachi,
Dated: 16.11.2016.

Ayaz Gul