Great Eastern Shipping Co. Ltd. Vs. Union of India (Uoi)

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Court : Kolkata

Decided On : Aug-14-1970

Reported in : AIR1971Cal150

Judge : S.C. Deb, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 8, Rule 2; ;Constitution of India - Article 299; ;Contract Act, 1872 - Sections 70 and 73; ;Limitation Act, 1963 - Section 30 - Schedule - Articles 18 and 113

Appeal No. : Suit No. 1669 of 1963

Appellant : Great Eastern Shipping Co. Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : Dilip K. Sen and ;A.K. Panja, Advs.

Advocate for Pet/Ap. : A.K. Roy Mukherjee and ;J. Ghosh, Advs.

Disposition : Suit decreed

Judgement :

ORDER

S.C. Deb, J.

1.This suit was filed by the plaintiff with leave under Clause 12 of the Letters Patent on 12th September, 1963, claiming Rs. 26,721/- as outstanding balance of freight payable by the defendant with interest thereon in respect of a cargo of coal carried by the plaintiff in Voyage No. 31 by the vessel 'JAG SEVAK'.

2. In the plaint it is, inter alia, alleged that the Chief Commercial Superintendent of Eastern Railway Administration on behalf of the defendant shipped 7730 metric tons of steam coal on board the plaintiff's said vessel 'JAG SEVAK' for being carried by the plaintiff from the port of Calcutta and for being delivered at the Port of Cochin to the Southern Railway Administration of the defendant. The plaintiff duly carried the said cargo by that vessel under a Bill of Lading dated November 10, 1960 and duly delivered those goods to the defendant's said Railway Administration at the Port of destination on 25th November, 1960.Under the Bill of Lading the total freight payable to the plaintiff was Rs. 2,66,755-50, out of which the defendant through its Eastern Railway Administration paid Rs. 2,40,034-50 p. leaving a balance sum of Rs 26,721/- still payable to the plaintiff.

3. On 3rd November, 1963, the defendant filed its written statement, inter alia, pleading that the said contract of carriage was void due to non-compliance with the provisions of Article 299 of the Constitution. The defendant, however, admitted the contents of the Bill of Lading mentioned in the plaint and by way of defence alleged that the defendant had paid Rs. 2,51,818.87 p. as freight under another Bill of Lading for a different cargo of 7182 tons of coal boarded on another vessel 'S. S. JAGJANANI' belonging to the plaintiff for shipment from Calcutta to Cochin. The said vessel 'S. S. JAGJANANI' however, ran aground and thereafter the said cargo was off loaded in lighters and out of the total quantity of the said goods only 6784 tons were transhipped by the plaintiff by other vessels which were discharged at different ports, the distances of which were shorter than the original destination. The balance quantity of 398 tons of coal became unsuitable for shipment and were not transhipped at all. In these circumstances, the consideration for the sum of Rs. 26,721/- representing the freight for the said off loaded 398 tons of coal including the difference in freight for not carrying 6784 tons of coals to their original destination have totally failed and the said sum of Rs. 26,721/- became payable by the plaintiff to the defendant in respect of 'S. S. JAGJANANI'.

4. In the written statement it Is further pleaded that the 'defendant thereafter duly and with the consent of the plaintiff deducted the said sum of Rs. 26,721/- out of the total sum of Rs. 2,66,755.50 p. being the freight due to the plaintiff, on account of the aforesaid carriage of coal by the said vessel 'JAG SEVAK' and the balance sum of Rs. 2,40,034.50 p. was duly paid up by the defendant to the plaintiff', and 'there was full accord and satisfaction in respect of the plaintiff's dues on account of the said freight for the sum of Rs. 2,66,755-50 p.' After pleading that 'the plaintiff dispensed with and/or remitted the said sum of Rs. 26,721/-' the defendant, in the alternative, claimed to set off the said sum of Rs. 26,721/- against the claim of the plaintiff and disputed the validity of the Notice under Section 80 of the Code of Civil Procedure and alleged that this Court had no jurisdiction to try this suit.

5. In view of the defence as to the invalidity of the contract of afreightmentbeing taken in the written statement the plaintiff after serving a fresh notice under Section 80 of the Code of Civil Procedure applied for amendment of the plaint which was allowed by an order dated 8th August, 1966 by Binayak Banerji, J. By the said amendment the plaintiff inter alia pleaded necessary averments required by Section 70 of the Contract Act and claimed Rs. 26,721/- with interest as the balance sum representing the compensation payable by the defendant to the plaintiff.

6. It is to be noticed here that the said amendment of the plaint was allowed without prejudice to the rights and contention of the defendant that the claim introduced by way of such amendment on the date of that order was barred by the law of limitation. Leave was given to the defendant to file an Additional Written Statement which was how-ever, not filed within the period mentioned in the said order. At the time of hearing of the suit the defendant prayed for an extension of time to file its Additional Written Statement which was granted by me and it was filed on 16th March 1970 denying the allegations made in the amended portion of the plaint and disputing the liability of the defendant to pay any sum to the plaintiff.

7. Leave was also given to the plaintiff to file an Additional Written Statement which was filed on 26th March, 1970 in which the plaintiff denied the defendant's claim for set off including the plea of accord and satisfaction as alleged in the written statement of the defendant. The plaintiff further denied that it remitted or dispensed

with the payment of the said sum of Rs. 26,721/-and pleaded that the alleged agreement resulting in accord and satisfaction was void as it did not comply with the requirements of Article 299 of the Constitution.

8. It is now necessary to say here that by consent of the parties I allowed these two Additional Written Statements to be filed and thereafter, the counsel for the defendant abandoned the plea of accord and satisfaction and to shorten the litigation the following issues suggested by him were accepted by the counsel for the plaintiff and they agreed to go to the trial on these issues only:

'1(a) Did the defendant with the consent of the plaintiff deduct the said sum of Rs. 26,721/- out of the total sum of Rs. 2,66,755.50 p. in respect of freight for coal carried on 'JAG SEVAK' Voyage No. 31 as alleged in paragraph 2 of the Written Statement?

(b) Did the plaintiff dispense with or remit the payment of the said sum of Rs. 26,721/- as alleged in paragraph 2 of the Written Statement?

2. Is the defendant entitled to set off the sum of Rs. 26,721/- against the claim of the plaintiff as alleged in paragraph 6 of the Written Statement?

3. Did any part of the cause of action arise within the jurisdiction and does this Hon'ble Court have jurisdiction?

4. Whether notice under Section 80 of the Code of Civil Procedure valid or sufficient?

5. Is the claim of the plaintiff barred by limitation?

6. To what relief, if any is the plain-tiff entitled?'

9. Mr. Sukumar Dey, on behalf of the plaintiff, gave evidence but no one was called by the defendant to give evidence in this suit. Several documents were exhibited by consent of the parties but the bill of lading in respect of the Steamship 'JAGJANANI' was neither disclosed nor tendered in evidence, on which the defendant's claim for set off was based.

10. There is no dispute that 7182 tons of coal were loaded on board the vessel 'JAGJANANI' on 2nd September, 1960 and the freight in respect of that cargo being Rs. 2,51,818.87 p. was paid by the defendant to the plaintiff. It was admitted that the vessel 'JAGJANANI' ran aground and 398 tons of coal were not transhipped and they were consumed by the Eastern Railway,

11. So far as the vessel 'JAG SEVAK' was concerned it is an admitted fact that the cargo loaded on board that ship was carried by the plaintiff at the instance of Eastern Railway and the said cargo was received by the Southern Railway. It is also an admitted fact that the defendant withheld payment of Rs. 2,66,755.50 p. payable by the defendant to the plaintiff for carrying that cargo by the vessel 'JAG SEVAK' for a long time on the allegation that Rs. 26,721/-was liable to be deducted in respect of 'JAGJANANI'.

12. As the defendant withheld payment of such a large sum of money and insisted on its alleged right to deduct Rs. 26,721/- the plaintiff by a letter dated 1st December, 1960 (page 11 of Ext. A) informed the defendant that the plaintiff would forward the

defendant's alleged, claim for deduction of freight in respect of 398 tons of coal to Average Adjusters in London for their opinion and by a letter dated 13th December. 1960 (page 18 of Ext. A) the plaintiff claimed the payment of Rs. 2,66,755.50 p. for carrying the other cargo by 'S. S. JAG SEVAK.'

13. Hogg, Lindlay & Co. of London were the Average Adjusters and their opinion dated 16th December, 1960 (page 33-B of Ext. A) was relied on by both the parties. Counsel for both theparties stated that Hogg, Lindlay & Co. was one of the leading Average Adjusters of the World and both of them accepted the opinion of that firm as correct. In the opinion of Hogg. Lindlay & Co. the defendant was not entitled to deduct the freight for 398 tons in respect of 'JAG JANANI' from the freight payable for 'JAG SEVAK' but if both the Bill of Lading of these two vessels were void then the defendant could claim and deduct the said amount from the freight payable for 'JAG SEVAK'. As said before this opinion of Hogg, Lindlay & Co. was accepted as correct, and I also find no reason to differ from their opinion.

14. Along with the letter dated 17th March, 1961 (page 33-A of Ext. A) the plaintiff sent to the Director General of Shipping, Government of India, a copy of the opinion of Hogg, Lindlay & Co. and in this letter after writing that the defendant was not entitled to make any deduction from the plaintiff's dues, it was written by the plaintiff as follows:

'We shall be grateful if you will kindly pass immediate advices to the Dy. Coal Controller to arrange payment of the freight amount of Rs. 2,66,755.50 p., which has become due on a shipment of 7608 long tons coal per S. S. Jag Sevak Voy. 31, from Calcutta to Cochin. The vessel sailed from Calcutta for Cochin on 17-11-1960 and our Calcutta office debit note No. AC/60-61/11 dated 17-11-1960 was submitted to the Chief Accounts Officer (Fuel), Eastern Railway. The nonpayment of such a big amount for nearly 4 months is causing us great inconvenience. Pending consideration of the position explained by us in our letter, we suggest you telegraph the Dy. Coal Controller at Calcutta requesting him to pay Rs. 2,66,755.50 p. minus their alleged claim of Rs. 26,721.00 in respect of Coal Shipment per S. S. Jag Janani. The payment of the balance amount of Rs. 26,721 may be made to us after you have studied our and our Average Adjusters letters and appreciated the correctness of our position.'

15. By a letter dated 1st April, 1961 (page 33K of Ext. A) the Assistant Director of Shipping, Govt. of India, wrote to the Assistant Dy. Coal Controller, Eastern Railway, inter alia, as follows:

'In any case, there does not seem to be any justification for withholding freight to the tune of 2.6 lakhs rupees when the dispute with the company is only for an amount of Rs. 26,721.00.

Pending final settlement of the case, the Southern Railways may therefore be requested to arrange payment of the withheld freight to the company after deducting Rs. 26,721/- if necessary. Even this deduction also Is not permissible.strictly speaking. But, since the ship owners have voluntarily agreed to it, there does not appear to be any serious objection to it.'

16. In the letter dated 18th May, 1961 (page 39 of the Ext. A) the plaintiff wrote to the Dy. Coal Controller of Eastern Railway Administration that the claim for Rs. 26,721/- of the defendant was wholly unjustified and requested him to advise Eastern Railway

to make immediate payment of freight for 'Jag Sevak' without any deduction and by another letter dated 31st May. 1961 (page 43 of Ext. A) the plaintiff reiterated its positions and asked for immediate payment of its dues,

17. In the letter dated 17th June, 1961 (page 45 of Ext. A)---Accounts Officer. Eastern Raiway. Calcutta, wrote to the plaintiff to submit a duplicate bill for Rs. 2,66,755.50 p. for receiving payment of that amount and by a letter dated 3rd June. 1961 (page 49 of Ext. A) the Chief Accounts Officer, Eastern Railway, directed the Commercial Superintendent, Eastern Railway, Calcutta, that since the plaintiff had objected to the deduction of Rs. 26.721/- entire freight in respect of 'Jag Sevak' had to be paid to the plaintiff.

18. By a letter dated 8th July, 1961 (page 50 of Ext. A) the plaintiff wrote to the Dy. Coal Controller, Calcutta, for immediate payment of its dues in respect of Jag Sevak and by another letter dated 2nd August, 1961 the plaintiff threatened to take legal actions against the Eastern Railway if its dues were not paid within a fortnight.

19. As no payment was made, the plaintiff through its solicitor served a notice (page 57 of the Ext. A) under Section 80 of the Code of Civil Procedure claiming Rs. 2,66,755.50 p. and then on 28th August, 1961 the plaintiff authorised one of its officers in writing (page 59 of Ext. A) to receive payment of Rs. 2,40,034.50 p.

20. On 29th August, 1961 the defendant paid Rs. 2,40,034.50 p. to the plaintiff and thereafter on 28th September, 1961 the plaintiff's Solicitor gave another notice (page 69 of Ext. A) under Section 80 of the Code claiming the said balance sum of Rs. 26,721/- from the defendant. In reply to this notice the General Manager, Southern Railway, by his letter dated 16/21 November, 1961 (page 78 of Ext. A) after reiterating the claim of the Government for Rs. 26,721/-in respect of 'Jag Janani' denied the liability of the Government to pay the balance sum of Rs. 26,721/- on the ground that the plaintiff was not 'legally entitled' to claim that amount. In the last paragraph of this letter it was said that 'the withholding of the sum ofRs. 26,721/- is in order and your clients M/s. Great Eastern Shipping Company have no claim for the amount withheld,'

21. Counsel for the defendant relying on these documents contended that the defendant deducted the said sum of Rs. 26,721/- out of the said sum of Rs. 2,66,755.50 p. with the consent of the plaintiff. It is true that the plaintiff consented to the said deductions but these documents clearly show that the plaintiff did not give up Its claim for that amount. The plaintiff all through contended that the plaintiff was not liable to pay Rs. 26,721/- and this fact was admitted by the Assistant Director of Shipping as said before. These letters further show that for a paltry sum of Rs. 26,721/- the defendant wrongfuly withheld Rs. 2,66,755.50 p. and unnecessarily harassed the plaintiff who was suffering a great inconvenience due to non-payment of such a large sum of money for about a year. In these circumstances the plaintiff was suffering a loss due to wrongful withholding of Rs. 2,66,755.50 p. and had to consent to the deduction of Rs. 26,721/-pending the consideration of the opinion of Hogg. Lindlay & Co. by the defendant. The opinion of Hogg, Lindlay & Co. was accepted, as said before, as correct not only by the counsel for the defendant but also by Assistant Director of Shipping and the Deputy Coal Controller of the defendant but still the defendant wrongfully took advantage of withholding of such a large sum to put pressure on the plaintiff and in those circumstances the plaintiff had to consent to the withholding of Rs. 26,721/-. These letters, as said before, conclusively show that the

plaintiff never gave up its claim for Rs. 26,721/-.

22. In my opinion the plaintiff did not dispense with nor it remitted the payment of the said sum of Rs. 26,721/- as alleged in the written statement though it consented to the withholding of the said sum of Rs. 26,721/- in the circumstances stated above. Moreover the defendant being legally liable to pay Rs. 26,721/- there must be a consideration for dispensing with or remitting the payment of the said money. In any event there must be valid and binding agreement between the plaintiff and defendant for dispensing with and for remitting the payment of Rs. 26,721/- and this agreement must be In accordance with the provisions of Article 299 of the Constitution. No such agreement was entered into and the above letters relied on by the counsel for the defendant do not comply with the provisions of Article 299 of the Constitution. In these circumstances, I am unable to accept the defence of the defendant. The plea of accord and satisfaction was expressly abandoned by the counselfor the defendant and so the defendant can only succeed if its claim for set off is allowed.

23. The defendant's claim for set off is based on the bill of lading of 'Jag Janani' but it was neither disclosed nor tendered in evidence. Whether the defendant had any right to a refund of Rs. 26,721/- will depend on the terms and conditions of the contract of affreightment in respect of 'Jag Janani' but those terms and conditions not being proved by the defendant in my opinion it has failed to establish its claim. Moreover the counsel for the defendant had accepted the opinion of Hogg, Lindlay & Co. as correct and had said that the defendant was not entitled to retain Rs. 26,721/- out of the freight payable in respect of 'Jag Sevak'. He however, contended that the bill of lading of 'Jag Janani' wag void for the reason that it did not comply with the provisions of Article 299 of the Constitution but this plea was not taken in the written statement and it was not proved that it did not comply with the constitutional provision. In my opinion, the defendant by not taking this plea in its written statement is debarred from making this contention in view of the judgment of the Supreme Court in Kalyanpur Lime Works Ltd. v. State of Bihar, : [1954]1SCR958 , and I overrule this contention.

24. The plaintiff's claim, as said before, is now confined to Section 70 of the Contract Act. It is well established that an agreement which does not comply with the provisions of Article 299 of the Constitution is void. It is also well settled that Article 299 of the Constitution does not stand in the way of claiming compensation under Section 70 of the Contract Act. If any person lawfully does any work for another person, not intending to do so gratuitously and the other person has enjoyed the benefit of such works. Section 70 of the Contract Act enjoins the person receiving such benefit to pay compensation to the person who has done that work for him.

25. There is no dispute between the parties that the plaintiff lawfully carried the said cargo of coal by 'Jag Sevak' and delivered them to the defendant. Moreover the correspondence exhibited in the suit conclusively show that the plaintiff had rendered the said service to the defendant not intending to do so gratuitously. There is no dispute that the defendant had accepted the said works and had enjoyed the benefit of such works. In these circumstances the defendant had incurred a statutory liability to make compensation to the plaintiff under Section 70 of the Contract Act.

26. Section 70 is in Chapter V of the Act which deals with 'Relations Resembling Those Created by Contract'. Chapter VI of the Act deals with the consequences of a breach of contract and Section 73 is in Chapter VI of the Act. First paragraph of

Section 73 of the Act inter alia provides that whenever a party has suffered loss or damage in consequence of a breach of contract he is entitled to receive compensation from the party who has broken the contract Principle upon which such compensation is to be assessed is that a party injured by a breach of contract should be placed in the same position in terms of money as far as possible had the contract been performed by the party in default. This paragraph cannot have any application in those cases where agreements are void for any reasons whatever.

27. The third paragraph of Section 73 of the Act, however, provides that when an obligation resembling those created by contract has been incurred by a party and has not been discharged by him the injured party is entitled to receive compensation from the party in default, as if the party in default had agreed to pay him such compensation and had broken that agreement. This paragraph confers a statutory right on a person to receive compensation from the person who has incurred a statutory obligation to pay it under Section 70 of the Act and though there may not be any contract to pay compensation but 'the party in default' having incurred a statutory liability is enjoined to discharge it as if he had entered into a contract to pay compensation to the injured party and has broken such a contract.

28. Section 70 and third paragraph of Section 73 of the Act are based on the doctrine of Restitution which says that you cannot unjustly enrich yourself by retaining anything delivered to you which does not belong to you and you must return it to the person from whom you have received it. It says that if you cannot return them In specie you must pay him their equivalent in money. Similarly if anything is done by one person for the other this doctrine says to the person who has accepted such works that you having enjoyed the benefits of such works must compensate the person who had done that work for you and if you do not want to pay him you will be guilty of enriching yourself unjustly by the labour of the other person and so you must pay to the person from whom you have received such work. Principle of restitution is not primarily based on loss suffered by the plaintiff but on the benefit which is enioyed by the defendant at the cost of the plaintiff which is wholly unjustified for the defendant to retain.

29. In assessing the compensation payable under Section 70 and third paragraph of Section 73 of the Act, the Court shall take into account what the parties contemplated to be a reasonable compensation at the time when the works were done or the goods were delivered. So far as compensation for goods are concerned, the court will always take into consideration the market rate of those goods prevailing on the date on which they were delivered. In the case of works done the Court will similarly consider the remuneration that would have been charged by other persons on the date on which the plaintiff has rendered the said services to the defendant.

30. In Civil Appeal No. 19 of 1967 (Pilloo Dhunjishaw Sidhwa v. Municipal Corporation of the City of Poona) the Supreme Court, in its unreported judgment D/-15-1-1970 = : [1970]3SCR415 , laid down the law on the subject in the following terms:

'In our view the High Court was in error in holding that the plaintiff is entitled not to the invoice value of the goods, but only to 'the fair price' of the goods. Under Section 70 of the Contract Act, a person lawfully delivering goods to another, and not intending to do so gratuitously, is entitled to demand that the goods delivered shall be returned, or that compensation for the goods shall be made. Compensation would

normally be the market price of the goods. By refusing to return the goods, the person to whom the goods have been delivered cannot improve his position and seek to pay less than the market value of the goods. The High Court of Lahore in Secy. of State v. G. T. Sarin & Co., ILR 11 Lah 375 = (AIR 1930 Lah 364) held that a person without an enforceable contract in his favour supplying goods to a Government Department is entitled to a money equivalent of the goods delivered, assessed at the market rate prevailing on the date on which the supplies were made.

The plaintiff had made out an invoice in respect of the goods delivered. The Transport Manager accepted the goods on behalf of the Corporation and appropriated them. He had satisfied himself that the rates quoted were 'proper rates'. The plaintiff was paid in respect of other goods supplied at the rates quoted in the price-list together with incidental charges. The plaintiff was the sole selling agent fn the Bombay State and the additional 12 1/2% which the plaintiff claimed on the listed price was by reason of the increase in the price made by the manufacturers. There is no reason to hold that the invoice price was more than the market value of the goods. If it was the contention of the Corporation that the market ratewag less than the invoice price It was open to the Corporation to lead evidence about the ruling rates at which the spare parts were sold in India by other agents of the manufacturers. But no such attempt was made. The plaintiff, in our judgment, was entitled to the market value of the goods at the date of supply, and in our judgment, the invoice value was the prevailing market value of the goods.'

31. Coming now to the facts it was admitted that on 26th August, 1957 a Coastal Conference was held which was called by the Director General of Shipping, Government of India, in which the representatives of the Indian Ship-owners and the high officers of the Central Government participated and in this conference a recommendation was made to the Central Government to increase the rate of freight, inter alia, of cargoes of coal to be carried by the Ship Owners with retrospective effect from 1st April, 1956. The minutes of this Conference was included in Ext. D which was tendered by consent of the Parties. Ext D also contains a letter dated 30th August, 1957 written by the Assistant Secretary of the Indian Coastal Conference to the Ship Owners in which the revised freight to be charged by them as recommended by the Conference for carrying cargoes of coal, inter alia, from Calcutta to Cochin was shown as Rs. 35-1-0 per ton. The Assistant Director of Shipping of the Central Government by his letter dated 21st November, 1957 wrote to the Secretary of the Indian Coastal Conference which is also included in Ext. D, informing him that the Government of India had carefully considered the recommendations of the Coastal Conference and had accepted the said recommendation in the following words:

'The Government of India have carefully considered the above recommendation and have taken the following decisions:--

(ii) Coal: The Committee's recommendation is accepted. Having regard to the interim increase of 5% already allowed effective from 15th October, 1955 and the commitments made by the Government of India earlier that any revision recommended by the Committee would be given retrospective effect, an enhancement of 10% should now be allowed with effect from 1st April, 1956, thus making the total increase to 15% over the rates which were in force prior to the 15th October, 1955.'

32. In the written statement of the defendant it was admitted that Rs. 2,66.755.50 p. was the freight due to the plaintiff. The defendant accepted the said sum to be a

reasonable sum due tothe plaintiff and out of this sum the defendant retained Rs. 26,721/- towards its alleged claim in respect of 'Jag Janani'. The correspondence exhibited in the suit conclusively prove these facts and, moreover, the defendant, as hereinbefore stated, requested the plaintiff to submit a fresh bill for receiving Rs. 2,66,755.50 p. Both the parties proceeded on the basis that the said amount was neither excessive nor unreasonable. The defendant did not stop there and also accepted the said sum of Rs. 2,66,755.50 p. as a reasonable amount payable to the plaintiff and purported to deduct Rs. 26,721/- from that amount. In other words, it is an admitted fact that Rs. 2,66,755.50 p. is a reasonable amount payable by the defendant to the plaintiff. The rate of freight for carrying cargo from Calcutta to Cochin was fixed by the defendant after considering the recommendation made in the Coastal Conference. Moreover, had the contract of affreightment been valid and binding between the parties, the defendant would have been bound to pay Rs. 2,66,755.50 p. to the plaintiff and I fail to appreciate on what principle this Court will disallow the claim of the plaintiff.

33. The defendant did not adduce any evidence to show that the said amount was not a reasonable compensation for carrying the said cargo from Calcutta to Cochin. It was suggested to Mr. Dey in cross-examination and he admitted that the profits of the ship-owners were taken into consideration in fixing the revised rate and relying on this evidence it was contended on behalf of the defendant that 'profit' should be excluded in assessing the compensation. It is true that in assessing compensation under the doctrine of Restitution, the Court should not take into account the profit that the plaintiff would have earned but no ship-owners would have carried the said cargo from Calcutta to Cochin unless the same freight was paid as claimed by the plaintiff. The defendant would have to pay the same freight to other shipowners for carrying the said cargo unless, of course, someone would have done 'for love' (the expression used by the counsel for the defendant). In my opinion, all that the Court is concerned in assessing the compensation is that it will take into account the rate of freight that would have been charged by the other shipowners for carrying a similar cargo on the principles laid down by the Supreme Court in the above case.

34. Moreover if a lesser compensation is allowed to the plaintiff then it will amount to an unjust enrichment by the defendant at the cost of the plaintiff. The defendant has been benefited by thesaid service and has enjoyed the benefit at the cost of the plaintiff and it is unjust for the defendant not to pay the amount claimed by the plaintiff which the plaintiff is entitled to get as a reasonable compensation under Section 70 and third paragraph of Section 73 of the Contract Act. In my opinion, the reasonable compensation in the facts and circumstances of this case is the amount claimed by the plaintiff and I assess Rs. 26,721/- to be the balance of such compensation payable by the defendant to the plaintiff.

35. The next question to be decided is whether the Court has no jurisdiction to try this suit This suit was instituted with leave under Clause 12 of the Letters Patent on the allegations that a part of the cause of action arose within and the other parts arose outside the jurisdiction of this Court. In paragraph 1 of the plaint it is pleaded that office of the Deputy Coal Controller is situate at No. 1, Council House Street, Calcutta and the said shipment was made by the Chief Commercial Superintendent of the Eastern Railway Administration on behalf of the defendant In paragraph 2 of the plaint it is pleaded that the Bill of Lading in respect of the said cargo was issued by the plaintiff in Calcutta within the jurisdiction of this Court In paragraph 3 of the plaint it is pleaded that the freight payable under the said Bill of Lading was to be

paid to the plaintiff in Calcutta within the jurisdiction of this Court. In paragraph 4 of the plaint it is pleaded that the plaintiff made a demand on the defendant in Calcutta within the jurisdiction (sic) to pay the plaintiff's dues and on these averments leave under Clause 12 of the Letters Patent was obtained.

36. It was contended by the counsel for the defendant that as the suit was no longer based on the Bill of Lading of 'Jag Sevak' in view of the said amendment of the plaint, the pleadings made in connection with the said Bill of Lading should not be taken into consideration for deciding this question. It was further said that the demands made by the plaintiff for payment of balance amount within the jurisdiction of this Court did not constitute a part of the plaintiff's cause of action. It was further said that the order of the Deputy Coal Controller mentioned in paragraph 1 of the plaint also did not constitute a part of the cause of action for the plaintiff's claim. Assuming that these contentions are correct, though such an assumption is wholly unjustified, still in my opinion this Court has jurisdiction to try this suit.

37. Mr. Dey In Q. 28 said that the Head Quarters of the Eastern Railway is situate at Fairlie Place in Calcutta which fact was admitted by the counsel for thedefendant. There is no dispute that Fair-lie Place is situate within the jurisdiction of this Court In Union of India v. Ladulal Jain, : [1964]3SCR624 , the Supreme Court has laid down that Union of India in its Railway Administration carries on business within the meaning of Section 20 of the Code of Civil Procedure and it can be sued in a Court within whose jurisdiction one of the Headquarters of the Railways is situate. In view of the above decision, the counsel for the defendant rightly said that Union of India in its Railway Administration does carry on business within the meaning of that expression used in Clause 12 of the Letters Patent.

38. No leave under Clause 12 is necessary if at the commencement of a suit the defendant carries on business within the jurisdiction of this Court. It does not matter in the least that leave under Clause 12 of the Letters Patent was obtained on the averments that a part of the cause of action had arisen within the jurisdiction of this Court. The defendant in its Eastern Railway Administration carried on and still carries on business from Fairlie Place which was and is still situate within the territorial limits of this Court and this Court having jurisdiction over the defendant to entertain the suit, no leave under Clause 12 of the Letters Patent was at all necessary.

39. It was further contended that as the said cargo was delivered to Southern Railway Administration, benefit under Section 70 of the Contract Act was enjoyed not by the Eastern Railway Administration but by the Southern Railway Administration and so this Court had no jurisdiction to try this suit. This argument is wholly misconceived and fallacious. It is true that the goods were delivered to Southern Railway Administration but the benefit of the works for carrying the said cargo was received by the Eastern Railway who was to send those goods to Southern Railway from Calcutta. Moreover, the suit is for realisation of compensation for services rendered by the plaintiff to the defendant and not for delivery of any goods belonging to the plaintiff.

40. Apart from what is said just now, this suit is against the defendant and not against any of the Railway Administrations. The defendant is the owner of all these Railway Administrations including the properties and assets of these Railways. These Railway Administrations have no legal entity and they can-not sue nor be sued in their names. Those Railway Administrations cannot have any right nor they can incur any liability

and it is the Union of India who can incur any liability and can enforce its rights in connection with its Railway under-takings. The defendant does carry on business within the jurisdiction of this Court, as said before, and the Court has jurisdiction to try this suit irrespective of the question whether any part of the cause of action had arisen within the jurisdiction or not and I overrule the contentions of the learned counsel for the defendant.

41. In any event the above compensation is payable by the defendant to the plaintiff in Calcutta within the jurisdiction of this Court on the principle that the debtor must find out the creditor and pay at the creditor's place as laid down by the 'Judicial Committee in Soniram Jeetmull v. R. D. Tata & Co., Ltd., 54 Ind App 265 = (AIR 1927 PC 156). It must be remembered that the plea of the defendant was that the contract of affreightment was void and so there cannot be any agreed place of payment. The defendant has incurred a statutory liability in Calcutta within the jurisdiction to pay the compensation to the plaintiff who carries on business within the jurisdiction of this Court. The defendant not having paid the balance of the compensation money a part of the cause of action has arisen within the jurisdiction of this Court and it does not matter in the least whether this part of the cause of action was not pleaded for invoking the jurisdiction of this Court inasmuch as when the Court assumed the jurisdiction at the initial stage there were sufficient averments in the plaint to grant leave under Clause 12 of the Letters Patent. For all these reasons I hold that this Court has jurisdiction to try this suit.

42. Coming now to the contention regarding the invalidity of the Notice under Section 80 of the Code of Civil Procedure it should be remembered that the said notice was served on the defendant before making the application for amendment of the plaint. This notice was tendered by consent of the parties andwas marked as Ext. B. It was urged by counsel for the defendant that the claim made by the plaintiff under Section 70 of the Contract Act was not properly stated in this Notice and so it was not a valid Notice which, however, I am unable to accept as this Notice clearly states 'in any event, our clients received the goods lawfully at Calcutta and carried on it lawfully to Cochin and lawfully delivered the same to the Southern Railway without intending to do so gratuitously and Union of India has undoubtedly enjoyed the benefit of the aforesaid work and services rendered by our clients and was obliged to pay compensation therefor. In the circumstances, our clients claim the sum of Rs. 29,835.28 p. which is the amount claimed in the said suit as the alternative grounds that the said sum represents the balance of reasonable compensation payable by the Union of India for the benefit and advantage accruing to them from the said carriage of goods'.

43. The only point that remains to be considered is whether the claim for the plaintiff was barred by the law of limitation on 8th August. 1966 when the said order of amendment was made. In support of this plea the counsel for the defendant firstly said that Article 56 of the Limitation Act 1908 which prescribes a period of three years was applicable in this case and as the cargo was delivered to the plaintiff on 25th November, 1960 the time started running from that date and so the claim of the plaintiff for compensation was barred on the date the said order was made. It was secondly said that as the order of amendment was made on 8th August, 1966, in any event, Article 18 of the Limitation Act, 1963 which reproduces Article 56 of the repealed Limitation Act, 1908 should apply and the claim of the plaintiff was time-barred on the date of the said amendment.

44. The language of these two Articles being same, one of them is set out below:

1st Column.2nd Column.3rd Column.

Or the price of works done by the plaintiff for the defendant at his request, where no time has been fixed for payment.3 years.When the work is done.

45. Counsel for the defendant placed reliance on Sachindra Nath Chatterjee v. Bengal Nagpur Rly. Co.. Ltd., AIR 1942 Cal 444, where in a suit brought by an advocate for his fees on the basis of quantum meruit it was held by a Division Bench of this Court that Article 120 of the Limitation Act had no application but Article 56 of the Act was applicable and the plaintiff's claim was time-barred. But no reason was given by the learned Judges why Article 120 of the Limitation Act was not applicable. Moreover, attention of the learned Judgeswas not drawn to the fundamental principle that payment of 'price' for works done can only arise under a contract and it can never arise when the claim is based on quantum meruit remedy for which is the payment of compensation and not the price. Still worse is that the attention of the learned Judges was not drawn to the judgment of Sir Asutosh Mookerjee, A. C. J. presiding over another Division Bench of this Court in the case of Upendra Krishna Mandal v. Naba Krishna Mandal. 25 Cal WN 813 = (AIR 1921 Cal 93), where it was held that Article 120 ofthe Limitation Act 1908 was the only appropriate Article which will apply for claim for compensation made under Section 70 of the Contract Act. In Nalini Ranian Guha v. Union of India, (1954) 93 Cal LJ 373 Bachawat J. also held that Article 120 of the Limitation Act, 1908 was the proper Article to govern the case falling under Section 70 of the Contract Act. In the State of Bihar v. Thawardas Pheruman, : AIR1964Pat225 , it was held that the claim for compensation under Section 70 of the Contract Act is governed by Article 120 of the Limitation Act. Moreover the expression 'where no time was fixed for payment' in Article 56 of the Limitation Act, 1908 and Article 18 of the present Act in my opinion suggests the existence of an agreement in which the time to pay the 'price' is not provided for the parties and I lay particular emphasis on the word 'fixed' in support of my opinion.

46. In my opinion Article 120 of the Limitation Act, 1908 and not Article 56 is applicable in this case and I will follow the judgment of Mookerjee, A. C. J. and the judgment of Bachawat J. in preference to the view of the learned Judges who have decided Sachindra Nath Chatterjee's case, AIR 1942 Cal 444. For the same reason I am unable to accept the contention of the counsel for the Government that Article 18 of 1963 Act is applicable to a claim for compensation made under Section 70 of the Contract Act. Order of amendment was made within 6 years and so the claim of the plaintiff is not barred.

47. It is to be remembered that Article 113 of the present Act reproduces Article 120 of the repealed Act excepting that the prescribed period has been reduced from 6 years to 3 years. Act of 1963 came into force on 1st January, 1964 and by Section 30 of the Act notwithstanding anything contained in it any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 may be instituted within a period of 5 years next from the commencement of the Act of 1963 or within the period prescribed for such suit by the Indian Limitation Act, 1903, whichever period expires earlier. This section enables a plaintiff to institute a suit within 5 years from 1st January, 1964 and in such a suit the period of 6 years prescribed in Article 120 of the Limitation Act, 1908 will apply instead of 3 years under the Act of 1963. I hold that the plaintiff's claim for compensation which

arose on 25th November, 1960 was not barred on 8th August, 1966 by the Law of Limitation.

48. Having disposed of all the contentions made on behalf of the defendant my answers to the issues are as follows:

Issue No. 1 : The plaintiff consented to a retention of Rs. 26,721/- by the defendant out of the total sum of Rs.2,66,755.50 p. but by so doing the plain-tiff did not give up its claim for that amount.

Issue No. 1 (b) : No.

Issue No. 2 : No.

Issue No. 3 : Yes. In any event this Court has jurisdiction to try this suit as the defendant carried on and still carries on business within the jurisdiction of this Court.

Issue No. 4: Yes.

Issue No. 5 : No.

Issue No.. 6 : The plaintiff Is entitled to a decree for Rs. 26,721/- and as the Supreme Court allowed 6 per cent interest in Pilloo Dhanji Shaw's case, Civil Appeal No. 19 of 1967, D/- 15-1-1970 = : [1970]3SCR415 the plaintiff is also entitled to get interest at the same rate from 25th November, 1960.

49. The plaintiff having succeeded in this suit and the defendant having failed in its defence including its claim for set off there will be a decree in favour of the plaintiff for a sum of Rs. 26,721/- with interest thereon at the rate of 6 per cent per annum from 25th November, 1960 until realisation and the plaintiff will be entitled to costs of this suit. Certified for two counsel. I fix three months' time for payment of this decretal amount by the defendant under Section 82 of the Code of Civil Procedure.