

42/85

IN THE JUDICIAL COMMITTEE OF THE

No.25 of 1983

PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL IN SINGAPORE

10 B E T W E E N:

CHABBRA CORPORATION PTE LIMITED

Appellants

- and -

THE OWNERS OF AND OTHER PERSONS  
INTERESTED IN THE SHIP OR VESSEL  
"JAG SHAKTI"

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Respondents

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CASE FOR THE RESPONDENTS

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1. This case is lodged by the Owners of the "Jag Shakti" ("the Shipowners") in answer to the Appeal by the Appellants ("Chabbra") from the order of the Court of Appeal in Singapore ("the Court of Appeal") made on 19th August 1982, pursuant to leave to appeal granted by the Court of Appeal on 17th January 1983.

Record

Pages 55 - 56

Pages 57 - 58

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2. For the avoidance of confusion, in this Case Singapore dollars will be designated as dollars "S\$" and United States dollars as "US\$" respectively.

3. Procedural background

(1) On 15th July 1977 the Shipowners issued bills of lading

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acknowledging shipment of a total of 5,000 tons of salt for carriage from Tuticorin in India to Chittagong in Bangladesh.

Pages 4 - 5

(2) On 12th July 1978 Chhabra brought proceedings in the High Court of Singapore as holders for value and/or indorsees of those bills for non-delivery under the contract of carriage and/or conversion, claiming S\$512,380 (the equivalent of US\$220,000) the alleged value of the goods.

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Pages 42 - 43

(3) On 16th March 1981 A.P. Rajah J. gave judgment at first instance in favour of Chhabra, awarding Chhabra the sum of S\$389,117.62 plus interest. The basis for the quantum of the award was that this represented the Singapore dollar equivalent of 2.7 million takas, "the amount of the indemnity against which the [Shipowners] released the goods".

Pages 40 line 50 to Page 41 line 6

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(4) On 19th August 1982 the Court of Appeal (inter alia) varied the judgment of the Court below, by reducing the sum awarded to Chhabra to S\$275,620.82. The basis of the quantum of this award was that this represented the figure (agreed between Counsel) that had been incurred in opening letters of credit to cover the shipment (including bank charges and insurance premiums).

Pages 52 lines 24 - 26 and 36 - 38 and Page 53 lines 49 - 51

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Pages 49 lines 21 - 23

(5) At no stage did any Court award Chhabra the sum which had originally been claimed by them, namely S\$512,380. Chhabra cross-appealed to the Court of Appeal, alleging that the learned judge had erred in law and in fact in awarding judgment for a sum of less than US\$220,000 (i.e. S\$512,380). The Court of Appeal dismissed this cross-appeal. The basis for the dismissal of the cross appeal was that there was no evidence that Chhabra had in fact on-sold the cargo for US\$220,000.

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Page 52 lines 52 to Page 53 line 4

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Page 58 lines 7 - 10

(6) The leave to appeal granted by the Court of Appeal to Chhabra on 17th January 1983 covered both

(i) the dismissal of the cross-appeal and

(ii) the variation of the leaned judge's judgment so as to reduce the sum awarded.

10 (7) In their Petition of Appeal to the Judicial Committee, Chabbra have only prayed the Committee to take into consideration the Court of Appeal's decision to reduce the sum recovered to S\$275,620.82, and have not sought to appeal against the dismissal of their cross-appeal. This Case is therefore addressed solely to the decision to reduce the sum awarded.

4. The issue

20 The only issue on the appeal is whether the Court of Appeal were right in their decision to reduce the Judge's award of S\$389,117.62 (2.7 million takas) to S\$275,620.82 (US\$110,000 plus bank charges and insurance).

5. The nature of the transaction

30 The Court of Appeal correctly found that the essential nature of the transaction was that Atlas Enterprises had agreed with Mumtazuddin ("M") that they would finance M's purchase of the salt by causing letters of credit to be opened by banks in Singapore in favour of I.O.C. to pay for the goods. The only reliable evidence of the transaction was documentary, and the only contemporary documents showed a sale by I.O.C. to M of 7,000 tons at \$US22 per ton, partially financed by letters of credit opened by Atlas Enterprises covering 5,000 tons, for which Atlas Enterprises invoiced M. The bills of lading were therefore held by Atlas Enterprises (and subsequently Chabbra) as pledgees for repayment of the sums advanced to finance the transaction.

Page 52 lines  
10 to 16

Page 103  
Page 113

Pages 104  
and 105

6. The claim in contract

As such pledgees, Chabbra on receipt of the bills of lading in respect of the 5,000 tons had transferred to them the property in the goods which it was "the intent of the transaction to transfer" (per Lord Selborne L.C. in Sewell v. Burdick (1884) 10 App. Cas. 74 at page 80). The "property" which was transferred to Chabbra was therefore the right of a pledgee to hold the bills of lading as security for the sums lent. The Court of Appeal was thus correct in holding that (emphasis added):-

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"In the circumstances, [Chabbra] are not entitled to recover on the basis of the arrived market value of the goods. They are entitled to recover what they had incurred under the two letters of credit. They are accordingly entitled to recover the said sum of S\$275,620.82".

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46 to 52

7. The claim in tort

On the alternative basis of a claim in conversion for the failure of the Shipowners to deliver up the goods to Chabbra on presentation of the bills of lading, Chabbra had a cause of action independent of the Bills of Lading Act 1855 (see Bristol and West of England Bank v. Midland Railway Company [1891] 2 Q.B. 653 and the analysis of that case in Margarine Union G.m.b.h. v. Cambay Prince Steamship Co. Ltd. [1969] 1 Q.B. 219 at pages 246 letter B to page 250 letter D). In conversion, Chabbra were only entitled to damages which reflected their interest in the goods. Thus is London Joint Stock Bank v. British Amsterdam Maritime Agency (1910) 16 Comm. Cas.102 (a case on which the Court of Appeal expressly relied, correctly describing Chabbra as being "in exactly the same circumstances as the successful plaintiff bank"), Channel J. said at the conclusion of his judgment (at page 108)

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Page 54 lines  
4 to 9

"In an action like this between parties, each of whom has an interest in the subject matter, the plaintiffs are not necessarily entitled to the full value ... the plaintiffs are only entitled to the amount for which they held the bill of lading ...".

10 8. In any event, quite apart from the matters of law set out above, the sums incurred under the two letters of credit (including bank charges and insurance premiums) were in themselves the best evidence of the value of the goods. Both the Judge and the Court of Appeal summarily rejected Chhabra's primary case that there had been a sub-sale to M at US\$220,000 and as to this decision there is now no appeal. As to the Judge's figure of S\$389,117.62, this was based solely on the sum  
20 deposited by M with the Rupali Bank in order to induce them to provide an indemnity to the Shipowners, and necessarily represents a larger sum than the Bank's own assessment of the value of the goods.

Page 40 lines  
46 to 48  
Page 53 lines  
1 to 3

Page 39 lines  
8 to 16

#### Conclusion

30 9. The Shipowners submit that the appeal should be dismissed and the decision of the Court of Appeal affirmed for the following among other

#### REASONS

(1) BECAUSE the decision of the Court of Appeal was right

(2) BECAUSE S\$275,620.82 represents Chhabra's loss.

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TIMOTHY WALKER

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