

A THE BOARD OF TRUSTEES OF THE PORT OF  
BOMBAY AND ORS.

v  
M/S SRIYANESH KNITTERS

JULY 30, 1999

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[B.N. KIRPAL AND U.C. BANERJEE, J.J.]

*Major Port Trusts Act, 1963—Sections 2(o), 29(2), 42, 43, 45, 47, 48, 59, 61, 68, 70, 71, 126, 131—Board refusing to release goods imported by the respondents and demanding payment in respect of wharfage and demurrage due from the respondents in respect of earlier consignments imported by them on the basis of a Circular—Tenability of—Held, the Board being a wharfinger, can have a general lien under Section 171 of the Contract Act and retain the goods bailed to it for any amount due in respect thereof—Expression “general balance of account” occurring in Section 171 cannot be given a restricted meaning to mean only wharfage charges and not including demurrage—Once the goods are taken charge of by the Board as a wharfinger, in respect of the services rendered, any amount due and payable would be regarded as “general balance of account” in respect of which it has a general lien over the goods bailed to it—Circular issued by the Board, upheld—Indian Contract Act, 1872—Sections 151, 152, 161, 171.*

*Board claiming general lien relying on the provisions of Section 171 of the Contract Act as the Major Port Trusts Act did not provide for such general lien—Permissibility of—Held the general lien of the type claimed by the appellants in respect of the past dues, not being provided for by the Major Port Trusts Act, it is permissible for the Board to rely on the provisions of Section 171—Major Port Trusts Act not being an exhaustive and comprehensive code, the said Act has to be read together with other Acts whenever it is silent in respect of any matter—The enactment of Major Port Trusts Act does not ipso facto exclude the operation of other laws which may be applicable.*

*Lien—Specific and General—Differentiation in—Held, with regard to the current dues in respect of existing goods in their possession, the Board not only has a lien under the Major Port Trusts Act but it also has the power to sell the said goods and realise its dues—Before selling the goods as provided for, no order of any Court or other judicial authority is required—*

*On the other hand, the general lien contemplated under the Contract Act only enables the retention of the bailed goods as security and does not give any power to sell the goods—The wharfinger in such a case will have to take recourse to other proceedings in accordance with law for securing an order which would then enable the goods to be sold for realisation of the amounts due to it.* A

*Bailor and bailee—Relationship of—The contract in a bill of lading being between the Port Trust and the holder of bill of lading (i.e), the consignee in this case, it is the consignee which is the bailor and the Port Trust the bailee—High Court erred in holding that the contract in a bill of lading was between the ship owner and the Port Trust—Port of Bombay (Responsibility of Goods) Regulations, 1975—Bill of Lading Act, 1856—Section 1.* B C

*Words and Phrases—Wharfinger—Meaning of.*

**Respondents were the importers who imported various goods from time to time. They imported various consignments of woollen rags over a period of time. After the arrival of these consignments at the port, a dispute arose between the respondents and the customs authorities. During this period, the imported goods remained at the docks till the order of confiscation was passed and goods confiscated by the Customs authorities. In respect of the period during which the goods remained at the docks, the appellant issued notices to the respondents demanding demurrage charges, which liability was denied by the respondents.** D E

**Subsequently, acrylic fibre was imported by the respondents. However, these goods were not released by the Port Trust as it demanded payment in respect of wharfage and demurrage which was due from these respondents in respect of earlier consignments of woollen rags which had been imported by them. Such refusal to release the goods was on the basis of a Circular issued by the appellant.** F

**The respondents then filed a writ petition in the High Court seeking a declaration that the aforesaid Circular was ultra vires of the Major Port Trusts Act, 1963 and was violative of Articles 14, 19, 265 and 300A of the Constitution of India. During the pendency of the writ petition, Single Judge of the High Court, by an interim order, directed the release of the consignments of acrylic fibre on the undertaking of the respondents to give a bank guarantee for an amount due. The said writ petition was allowed by** G H

- A** the Single Judge thereby holding that the appellants could not in law claim general lien under Section 171 of the Contract Act and directed them to withdraw or cancel the impugned Circular. The order of the Single Judge was challenged unsuccessfully by way of Letters Patent Appeal before a Division Bench of High Court. Hence the present appeal. Other appeals raising similar question regarding existence of general lien of the appellant over the consignments imported by the importers at the port, for their dues in respect of the past imports made by the said importers, were also heard together.

- C** On behalf of the appellants, it was contended that the appellants were wharfingers and the goods which were imported and off loaded at the port were with them as bailee; that in the absence of a contract to the contrary, as bailee of the goods now imported, namely, acrylic fibre, the said consignment could be retained by the appellants as security for the amount due to them towards wharfage and demurrage charge in respect of the earlier consignments of woollen rags under Section 171 of the Contract Act; that the High Court erred in coming to the conclusion that the Major Port Trusts Act was a complete code in itself and that Section 171 of the Contract Act was not applicable.

- E** On behalf of the respondents, it was contended that under Section 171 of the Contract Act the lien was available only in the absence of a contract to the contrary; that Chapter VI of the Major Port Trusts Act was a contract to the contrary between the parties and hence no lien was available to the appellants under Section 171 of the Contract Act; that even if Section 171 of the Contract Act applies, the appellants can exercise their lien under Section 171 of the Contract Act for recovery of their dues for the services rendered by them as wharfingers only and not for any other services provided by them as detailed in the Major Port Trusts Act; that once the appellant takes charge of the goods from the ship owner, it does not act as a wharfinger but acts in another capacity which may be that of warehouse owner, bailee, etc. and, therefore, lien cannot be claimed in respect of demurrage etc. but, at best, can be claimed only for wharfage charges.

**G** Allowing the appeals, this Court

- H** HELD : 1. The appellant could retain the goods, under Section 171 of the Contract Act, which were in their possession as bailees, as security for realisation of the amount of wharfage, demurrage and other charges which

were due to them and the Circular issued in this regard is valid. The first part of Section 171 of the Contract Act identifies five categories of persons who can have a general lien and retain the goods bailed to them. Wharfinger is one of them. The said Sections enables these five categories to retain as security the goods bailed to them in respect of "general balance of account" of the amount legally due. The appellants come in the category of wharfinger, namely, the owners of the wharf. The services which are undertaken by them have to be paid for and any amount due in respect thereof will be regarded as "general balance of account". Once goods are taken charge of by the appellants as a wharfinger, then in respect of the services rendered, any amount due and payable to it would be regarded as "general balance of account" in respect of which it has general lien over the goods bailed to it.

[1258-C-F]

2.1. The Major Port Trusts Act is not an exhaustive and comprehensive code and the said Act has to be read together with other Acts wherever the Major Port Trusts Acts is silent in respect of any matter. It is permissible to read the provisions of the two Acts together when the same are complementary to each other. The Major Port Trusts Act itself refers to other enactments which clearly indicates that the said Act is not a complete Code in itself which ousts the applicability of other Acts. The Preamble of the Act does not show that it is a codifying Act so as to exclude the applicability of other laws of the land. Even if it is a codifying Act unless a contrary intention appears it is presumed not to be intended to change the law.

[1247-H; 1248-A]

*J.K. Steel Limited v. Union of India*, [1969]2 SCR 481; *B.C. Shukla v. Khubchand*, [1964]6 SCR 129; *State of Madras v. V. Iyer*, [1958] SCR 580; *Mannan Lal v. Mst. Chhotaka Bibi*, [1971] 1SCR 253 and *V.R. Shelat v. Pranlal*, [1975]1 SCR 534, relied.

*Pioneer Aggregate (U.K.) Ltd. v. Secretary of State for the Environment and Others*, (1984)2 All.E.R 358, referred to.

*Bennion's Statutory Interpretation*, 2nd edition, page 444, referred to.

2.2. The Major Port Trusts Act and Sections 59 to 61 in particular do not give to the appellants the general lien which it is claiming. The lien conferred on the Board under Section 59 of the Act is not a general lien but is a lien on specific goods. In other words, it is because the Major Port Trust Act does not provide for a general lien that the appellants are relying on the provisions of Section 171 of the Contract Act. This is permissible. The

- A Major Port Trusts 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 contemplated by Section 171, namely, amounts due in respect of earlier consignments for which payment has not been made. The Major Port Trusts Act nowhere provides that the general lien under Section 171 of the Contract Act would not be available to the wharfingers in case where the Major Port Trusts Act is applicable. [1250-B-C]
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- 2.3. Section 171 of the Contract Act only enables the retention of bailed goods as security. On the other hand in respect of current dues in respect of existing goods in their possession, the Board not only has a lien under Section 59 of the Major Port Trusts Act but it also has the power to sell the said goods and realise its dues by virtue of Section 61 of the Major Port Trusts Act. Before selling the goods no order of any court or other judicial authority is required. Whereas, if payment is not made by the consignee to the wharfinger, in a case where Section 171 of the Contract Act applies, the wharfinger can only retain the goods bailed as security and will have to take recourse to other proceeding in accordance with law for securing an order which would then enable the goods to be sold for realisation of the amounts due to it. It may in this connection, be necessary for the wharfinger to file a suit for the recovery of the amount due to it and Section 131 of the Major Port Trusts Act clearly provides that such a remedy of filing a suit is available to the Board. The added advantage of sale given by Section 61 of the Major Port Trusts Act in respect of current dues cannot be regarded as whittling down the right of general lien contained in Section 171 of the Contract Act in respect of the old dues. [1250-D-G]
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3. Section 171 of the contract Act is in two parts. The first part gives statutory right of lien to four categories, 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 the goods bailed to them as securities unless there is an express contract to that effect. [1251-C-D]
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4. The appellants are wharfingers who not only provide space at the port for the loading and unloading of the goods but also provide for the storage of the goods till the same are removed. The relationship of bailor and bailee comes into existence when the appellant-Board is required to store the imported goods. The contract in a bill of lading is between the Port Trust
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and the holder of bill of lading which, in this case would be the consignee. It is the consignee which is the bailor with the Port Trust being the bailee. The consignee of the goods named in the bill of lading or every endorsee of the bill of lading, for the purpose of the Major Port Trusts Act, is regarded as the owner of the goods and it is from that owner that the appellant is entitled to recover charges under the Major Port Trusts Act in respect of the said goods. [1255-E-H; 1257-B-C]

*Sun Export Corporation and Anr. v. Board of Trustees of the Port of Bombay*, [1998]1 SCC 142, relied on.

*The Trustees of the Port of Madras by its Chairman v. K.P.V. Sheik Mohamed Rowther & Co. and Ors.*, [1963] Supp. 2 SCR 915, held inapplicable.

*Jowitt's dictionary of English, Second Edition; Webster dictionary; Ramanatha Aiyar's The Law of Lexicon, Second Edition*, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6185 of 1983 etc.

From the Judgment and Order dated 11/12.8.82 of the Bombay High Court in A.No. No. 78 of 1982.

R.N. Trivedi, Additional Solicitor General, R.F.Nariman, Ms. A.K. Verma, U.J. Makhija, Hemant Shah, B.A.Ranganathan for M/s. J.B.Dadachanji & Co. (M/s. Gagrath & Co.) for (N.P.), (D.M.Nargolkar) (NP), Pramod B Aggarwala, Ms. Praveena Gautam, Ramesh Singh, Ms. Bina Gupta, Ms. Vanita Bhargava. Ms. Jugnu Bagga and Ms. Rakhi Ray for the appearing parties.

The Judgment of the Court was delivered by

**KIRPAL, J.** The common question involved in these appeals is whether the appellant - Board of Trustees of the Port Trust constituted under the Major Port Trusts Act, 1963 (for short 'the MPT Act') have a general lien for their dues over the present or future consignments imported by the importers at the Bombay Port when the said dues are in respect of the past imports made by the said importers.

The respondents in these appeals are importers who had imported various consignments of woollen rags from time to time. After the arrival of these consignments at the Bombay Port a dispute arose between the respondents and the custom authorities as to whether the imported goods

A were woollen rags or woollen garments. After considerable period of time the imported goods were confiscated by the custom authorities but the importers secured orders to get the goods released on payment of fine. During this period the imported goods remained at the docks till the order of confiscation was passed.

B In respect of the period during which the goods remained at the docks the appellants issued notices to the respondents demanding demurrage charges. With the exporters denying the liability the Port Trust authorities instituted various suits to recover wharfage and demurrage charges. We are in these appeals not concerned with the suits.

C After the aforesaid suits had been instituted acrylic fibre was imported by the respondents. When the consignment arrived in Bombay Port the respondents filed bills of entry for clearance of the goods for home consumption. When necessary permission was granted by the custom authorities the appellant Board was called upon to release the goods. These  
D goods were not released by the appellant as it demanded payment in respect of wharfage and demurrage which was due from these respondents in respect of earlier consignments of woollen rags which had been imported by them. This refusal of the appellants to allow the removal of the goods was based on a circular dated 2nd October 1979 which had been issued by the appellants.

E The said circular, inter alia, stated as follows:

F “The Board of Trustees of the Port of Bombay have been advised that under Section 171 of the Indian Contract Act, 1872, they have a general lien which they can exercise on the goods which came into their custody of importers, exporters, owners, consignee who have for any reason whatsoever not paid the Port Trust charges such as wharfage, crainage, storage demurrage or any other dues in respect of any earlier consignment/s imported/exported or sought to be exported by them.

G In the circumstances this department will exercise a lien for General Balance of account in respect of wharfage, crainage, storage, demurrage and other dues of the Board of Trustees of the Port of Bombay against the importers/exporters, owners of consignees of the goods taken charge of by the Board of the Trustees.”

H The respondents then filed writ petitions under Article 226 of the Constitution of India in Bombay High Court seeking a declaration that the

aforesaid circular was ultra virus of MPT Act and was violative of Articles 14, 19, 265 and 300A of the Constitution of India. The relief which was sought was that the appellants herein should withdraw or cancel the circular and deliver the consignments of goods imported by the respondents and detained under the Circular. During the pendency of the writ petition a single judge of the High Court, by an interim order, directed the release of the consignments of acrylic fibre on the undertaking of the respondents to give a bank guarantee for an amount due which may be claimed by the appellants in respect of the suits filed in the court.

The contention of the respondents before the High Court was that the appellants were not entitled to claim general lien under Section 171 of the Contract Act, inter alia, for the reason that there was no existing contractual relationship between the appellants and the respondents. They also contended that the MPT Act was a complete code in itself and it was not permissible for the appellants to rely on the provisions of the Contract Act so as to claim a general lien. The appellants herein contended that they were entitled to exercise general lien as provided by Section 171 of the Contract Act as they were wharfingers to whom acrylic fibre had been bailed.

The single judge by judgment dated 24th November, 1982 allowed the writ petition and granted the relief sought for. The appellants were directed to withdraw or cancel the circular dated 2nd October, 1979 and it was, inter alia, held that the appellants herein could not in law claim general lien under Section 171 of the Contract Act. The appellants then filed LPA before the High Court, but without any success. The Division Bench held as under:

- (a) There is no right of general lien in favour of the Port Trust under the provisions of the Port Trust Act.
- (b) The Port Trust does not have a right of general lien under Section 171 of the Indian Contract Act.
- (c) The right of the Port Trust flows only from the provisions of the Port Trust Act and thus the claim for a general lien by reason of a possessory bailment has been negated by the Learned Judges.
- (d) The general lien in favour of the Port Trust is excluded by the provisions of the Port Trust Act which is a complete code itself and is comprehensive in respect of collection and recovery of charges".



A The learned Additional Solicitor General first contended that the appellants had a general lien under the provisions of the MPT Act on the acrylic fibre which had been imported in respect of the earlier dues. For this submission reliance was sought to be placed primarily on Sections 59 and 61 of the MPT Act. Section 59 and sub-section (1) of Section 61, which are relevant, read as follows:

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*“59. Board’s lien for rates—*[1] For the amount of all rates (leviable under this Act) in respect of any goods, and for the rent due to the Board for any buildings, plinths, stacking areas, or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods and may seize and detain the same until such rates and rents are fully paid.

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[2] Such lien shall have priority over all other liens and claims, except for general average and for the ship-owner’s lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of Section 60, and for money payable to the Central Government (under any law for the time being in force relating to customs, other than by way of penalty or fine.]

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*61. Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged—*[1] A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit, sell by public auction (or in such case as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner], such goods or so much thereof as, in the opinion of the Board, may be necessary -

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(a) if any rates payable to the Board in respect of such goods have not been paid, or

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(b) if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid, or

(c) if any lien of any ship-owner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charge has made

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to the Board an application for such sale."

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Plain reading of Section 59 shows that in respect of any goods which are imported the Board has a lien for the amount of all rates leviable under the Act and for the rent due to it and it also has a lien on such goods and the Board may seize and detain the same until such rates are paid. It is clear that it is only in respect of the amount due qua the goods imported and existing there that the Board has a lien under Section 59. Under Section 61 (1), in exercise of its lien, the Board is empowered to sell the said goods for realisation of the amount due to it. Reading the two sections together it is clear that the goods which can be sold in exercise of its lien are only those in respect of which amount is due and payable to the Board. The words 'such goods' in Section 61 (1) has reference to those goods in respect of which rates due to the Board have not been fully paid.

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Coming to the facts of the instant case the amount which was claimed by the appellants was in respect of the consignment of woollen rags. There can be little doubt that in respect of the amount claimed by the Board the provisions of Sections 59 and 61 (1) would have been applicable with regard to the said consignment of woollen rags. But the contention now is that it is in respect of the said dues, relating to woollen rags, that the Board has a general lien on the subsequent consignment of acrylic fibre. This contention is clearly untenable because, as we have already observed, Sections 59 and 61(1) give a lien on those goods in respect of which amount is claimed or due under Section 59. The Board was not demanding or claiming lien on acrylic fibre on the ground that any amount in respect of acrylic fibre was due. Once it appears that the lien referred to in Sections 59 and 61(1) is only those goods in respect of which amount is due it is clear that the said provisions do not contemplate a general lien as contended by the appellants. The High Court, in our opinion, was right in coming to the conclusion that the lien conferred on the Board under Section 59 of the MPT Act was not a general lien but was a lien on specific goods.

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It was then contended on behalf of the appellants that as wharfingers they are entitled to a general lien under Section 171 of the Contract Act. In this connection it was submitted that the High Court erred in coming to the conclusion that the MPT Act was a complete code in itself and that Section 171 of the Contract Act was not applicable.

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The MPT Act is not, in our opinion, an exhaustive and comprehensive code and the said Act has to be read together with other acts wherever the

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- A MPT Act is silent in respect of any matter. The MPT Act itself refers to other enactments which would clearly indicate that the MPT Act is not a complete code in itself which ousts the applicability of other acts. The preamble of the Act does not show that it is a codifying Act so as to exclude the applicability of other laws of the land. Even if it is a codifying Act unless a contrary intention appears it is presumed not to be intended to change the law. [See
- B Bennion's Statutory Interpretation, Second Edition page 444] Furthermore where codifying statute is silent on a point then it is permissible to look at other laws. In this connection it will be useful to refer to the following observation of the House of Lords in *Pioneer Aggregates (UK) Ltd. v. Secretary of State for the Environment and others*, (1984) 2 All ER 358 at page
- C 363.

- “Planning law, though a comprehensive code imposed in the public interest, is, of course, based on land law. Where the code is silent or ambiguous, resort to the principles of private law (especially property and contract law) may be necessary so that the courts may resolve
- D difficulties by application of common law or equitable principles. But such cases will be exceptional. And, if the statute law covers the situation, it will be an impermissible exercise of the judicial function to go beyond the statutory provision by applying such principles merely because they may appear to achieve a fairer solution to the problem being considered. As ever in the field of statute law it is the
- E duty of the courts to give effect to the intention of Parliament as evinced by the statute, or statutory code, considered as a whole.”

- In *J.K. Steel Ltd. v. Union of India*, [1969] 2 SCR 481, it was held that cognate and pari-materia legislation should be read together as forming one system and as interpreting and enforcing each other. In *B.C. Shukla v. Khubchand*, [1964] 6 SCR 129, it was held that Code of Civil Procedure has to be read along with the Limitation Act. In *State of Madras v. V. Iyer*, [1958] SCR 580, at page 590 it was held that Prevention of Corruption Act should be read along with the Evidence Act. In *Mannan Lal v. Mst. Chhotaka Bibi*, [1971] 1 SCR 253, it was held that the Code of Civil Procedure has to be read
- F along with the Court Fees Act. In *V.R. Shelat v. Prantal*, [1975] 1 SCR 534, this Court observed that the Companies Act should be read along with the Transfer of Property Act.
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- From the aforesaid decisions it clearly follows that it is permissible to read the provisions of the two Acts together when the same are complementary
- H to each other. In fact some provisions of the MPT Act themselves show that

other laws are applicable.

It is an Act which makes provision for the constitution of port authorities and vests the administrative control and management of such ports in such authorities and provides for matters connected therewith. To the extent provisions of the said Act are applicable, there can be little doubt that any provision which is in conflict therewith contained in any other Act would not apply. The enactment of MPT Act does not *ipso facto* exclude the operation of other laws which may be applicable. Wherever a departure from the general law has to be made the Act specifically provides for the same. This is evident from the following provisions:

- (a) Section 29 (2) provides that the provisions of the Industrial Act 1947 or any other law for the time being in force will not apply to the claim for compensation made by an employee whose services are transferred to the Board.
- (b) Section 47 of the MPT Act provides for compensation payable in certain cases where use of any private wharf etc. is rendered unlawful. Sub-section (3) provides for the manner in which the compensation is to be determined and in the absence of agreement arbitration is contemplated. Clause (i) of Section 47(3), however, specifically states that the Arbitration and Conciliation Act, 1996 shall not apply to the arbitrations under the said section. The said provision makes the general law of arbitration contained in the Arbitration and Conciliation Act, inapplicable.
- (c) Section 68 of the MPT Act is important as it provides that notwithstanding the provisions contained in Section 45 of the Indian Contract Act, 1872 in case of Port Trust security payment would be made to joint promise in accordance with the provisions contained in Section 68 of the MPT Act and not in accordance with Section 45 of the Indian Contract Act. Thus Section 68 makes a specific departure from the provisions of Section 45 of the Indian Contract Act.
- (d) Sections 70 and 71 of the MPT Act make specific departure of the provisions contained in the Negotiable Instruments Act, 1881 regarding endorsements to be made on Port Trust security and the effect thereof.

The aforesaid sections of the MPT Act clearly show that the said Act

A is not exhaustive or comprehensive code and it envisages joint reading with other relevant statutes. Whenever any departure has to be made from other laws specific provision to that effect has been made in the MPT Act.

B The High Court has rightly come to the conclusion that the MPT Act and Sections 59 and 61 in particular do not give to the appellants the general lien which it is claiming. In other words it is because the MPT Act does not provide for a general lien that the appellants are relying on the provisions of Section 171 of the Contract Act. This, in our opinion, is permissible. It is not possible to hold that the MPT Act ousts the applicability of the provisions of Section 171 of the Contract Act under which the Board is claiming a right of general lien as a wharfinger. The general lien of the type contemplated by C Section 171 in respect of the past dues is not provided for by the MPT Act.

There is another aspect which is relevant. Section 171 of the Contract Act only enables the retention of goods as security. On the other hand in respect of current dues in respect of existing goods in their possession the D Board not only has a lien under Section 59 of the MPT Act but it also has the power to sell the said goods and realise it's dues by virtue of Section 61 of the MPT Act. The procedure for exercising this power of sale of the goods in respect of which the Board has lien is contained in the said section. Before selling the goods no order of any court or other judicial authority is required. E On the other hand the general lien contemplated by Section 171 of the Contract Act only enables the retention of the bailed goods as a security. Their retention does not give any power to sell the goods, unlike the power contained in Section 61 of the MPT Act. If payment is not made by the consignee to the wharfinger, in a case where Section 171 of the Contract Act applies, the wharfinger can only retain the goods bailed as security and will F have to take recourse to other proceedings in accordance with law for securing an order which would then enable the goods to be sold for realisation of the amounts due to it. It may in this connection, be necessary for the wharfinger to file a suit for the recovery of the amount due to it and Section 131 of the MPT Act clearly provides that such a remedy of filing a suit is available to G the Board. The added advantage of sale given by Section 61 of MPT Act in respect of current dues cannot be regarded as whittling down the right of general lien contained in Section 171 of Contract Act in respect of old dues.

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 H 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 bailed to them unless there is an express contract to that effect. Whereas in respect of the first category of person 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.

The appellants in the present case are contending that they are wharfingers and the goods which were imported and off loaded at the port were with them as bailee. The submission of the learned counsel for the appellants was that in the absence of a contract to the contrary as bailee of the goods now imported, namely, acrylic fibre the said consignment could be retained by the appellants as security for the amount due to them towards wharfage and demurrage charges in respect of the earlier consignment of woollen rags. While considering this contention we have also to examine whether the claim for wharfage and demurrage could be covered by the expression "general balance of account" occurring in Section 171 of the Contract Act.

*Wharf is defined in Jowitt's dictionary of English, Second Edition, as being "a broad plain place, near some creek or haven, to lay goods and wares on th' are brought to on from the water". In Webster dictionary wharf is defined as "a structure of masonry or timber erected on the shore of a harbour, river, or the like, alongside which vessels may lie to load or unload cargo, passengers etc.; also, any landing place for vessels, as a pier*

- A or quay." Ramanatha Aiyar's *The Law Lexicon, Second Edition*, defines wharf as "a landing stage built especially along the shore for loading or unloading vessels". The MPT Act contains an inclusive definition of wharf in Section 2 (za) and provides that wharf includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods, or for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

Wharfinger is not defined in the Act but in Jowitt's dictionary of English Law wharfinger is defined as the occupier of wharf and it is further stated that "as a rule, wharfingers have a general lien for the balance of their account". In Ramanatha Aiyar's *The Law Lexicon* wharfinger is defined as meaning "the occupier of a wharf" or "a person who owns a wharf".

The appellants are the owners of the wharf at Bombay where the consignments of the respondents were discharged. The services which are provided by the appellants in respect thereof as wharfingers are, inter alia, contained in Section 42 of the MPT Act which reads as follows:

"42. *Performance of services by Board or other person*—[1] A Board shall have power to undertake the following services -

- [a] landing, shipping or transshipping passengers and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the Board;
- [b] receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;
- [c] carrying passengers by rail or by other means within the limits of the port or port approaches, subject to such restrictions and conditions as the Central Government may think fit to impose;
- [d] receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or vice versa, as a railway administration under the Indian Railways Act 1890 (9 of 1890); (and)
- [e] piloting, hauling, mooring, remorring, hooking, or measuring of vessels or any other service in respect of vessels.

[2] A Board may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall

give a receipt in such form as the Board may specify.

A

[3] Notwithstanding anything contained in this section, the Board may, with the previous sanction of the Central Government, authorise any person to perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon.

B

[4] No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount (specified by the Authority, by notification in the Official Gazette).

[5] Any such person shall, if so required by the owner, perform in respect of goods any of the said services and for that purpose take charge of the goods and give a receipt in such form as the Board may specify.

C

[6] The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872).

D

[7] After any goods have been taken charge of and a receipt given for them under this section, no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given or to the master or owner of the vessel from which the goods have been landed or transhipped."

E

Reading of the aforesaid section shows that the services required to be performed by the Board is not only of loading and unloading of the cargo but would also include storing and delivering of goods. Under sub-section (2) if the Board is requested by the owner to take charge of the goods then it is required to give a receipt in such form as the Board may specify. Sub-section (6), inter alia, states that responsibility of any such person who takes charge of such goods shall be that of a bailee under Sections 151, 152 and 161 of the Contract Act. Sub-section (7) absolves the person to whom receipt is given of any liability for any loss or damage which may occur to the goods. The responsibility of the Board for the loss of goods is provided for in Section 43 of the MPT Act which reads as follows:

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"43. *Responsibility of Board for loss, etc. of goods*—[1] Subject to the provisions of this Act, the responsibility of any Board for the loss, destruction or deterioration of goods of which it has taken charge

H



A shall,

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1890 (9 of 1890); and

B (ii) in other cases, be that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872), omitting the words "in the absence of any special contract" in Section 152 of that Act;

(Provided that no responsibility under this section shall attach to the Board -

C (a) until a receipt mentioned in sub-section (2) of Section 42 is given by the Board; and

D (b) after the expiry of such period as may be prescribed by regulations from the date of taking charge of such goods by the Board.)

[2] A Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf (from the date of taking charge of such goods by the Board) under sub-section (2) of Section 42.

E

Section 45 stipulates that all rates and other charges payable under the MPT Act for storage of goods shall be payable to the Board or to such person or persons appointed by the Board. Section 48 enables the authority to issue notification, from time to time, providing for scales of rates for services performed by Board or other person and the same reads as follows:

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*"48. Scales of rates for services performed by Boards or other person—*

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[1] The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under Section 42 at or in relation to the port or port approaches-}

H

(a) transshipping of passengers or goods between vessels in the port or port approaches;

- (b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches; A
  - (c) crantage or portage of goods or any such place; B
  - (d) wharfage, storage or demurrage of goods on any such place;
  - (e) any other service in respect of vessels, passengers or goods,
- [2] Different scales and conditions may be framed for different classes of goods and vessels.” C

For the use of property belonging to Board including for leasing of land or sheds by owners of goods imported or intended for export or for any other use of land, building etc. Section 49 enables the authority to fix the scale of rates in respect thereof. D

Reading the aforesaid and other provisions of the MPT Act it is abundantly clear that the appellants are wharfingers who not only provide space at the port for the loading and unloading of the goods but also provide for the storage of the goods till the same are removed. We may here notice that in exercise of the powers conferred by Section 126 read with Sections 42 and 43 of the MPT Act the Central Government issued a notification dated 1st February 1975 notifying the Port of Bombay (Responsibility for Goods) Regulations, 1975. The said regulations, inter alia, provide that a receipt referred to in sub-section (2) of Section 42 shall be given in the form annexed to the said regulations. The said form, which is a receipt contemplated by Section 42 (2), gives particulars of the goods which are unloaded and stored in a shed or open area of berth or a warehouse. E F

Whether the issuance of such a receipt would amount to an agreement or concluded contract coming into being between the appellants and the respondents is wholly immaterial because the receipt evidences the goods coming into the possession of the appellants and under Section 42 (6) the appellants would be regarded as a bailee thereof to whom the provisions of Sections 151, 152 and 161 of the Contract Act become applicable. It is because of this the relationship of bailor and bailee comes into existence when the Board is required to store the imported goods. G H

A At this juncture it is appropriate to deal with the conclusion of the High Court to the effect that with the issuance of the receipt under Section 42 (2) the contract, if any, is between the ship owner and the port trust and not between the consignee who is true owner of the goods" and the Port Trust. In coming to this conclusion the High Court has placed reliance on the decision of this Court in *The Trustees of the Port of Madras by its Chairman v. K.P.V. Sheik Mohamed Rowther & Co. and Ors.*, [1963] Supp. 2 SCR 915.

B In that case the question which arose was as to who was responsible for idle labour charges. Labour was supplied by the Port Trust authorities but their services were not fully utilised and the question arose as to whether it was the consignee or the ship owner who was liable to pay the said charges. This

C Court held that the Port Trust took charge of the goods on behalf of the ship owner and not on behalf of the consignee and whatever services were performed at the time of landing of the goods or on their removal were rendered to the ship owner and, therefore, the charges were rightly leviable not on the consignee but on the streamer agents. The service of providing

D the labour was, in that case, therefore, to the owners of the streamer and not to the consignee and it is for that reason the liability was held not to be that of the latter. This decision has no relevance to the point in issue which has to be decided in the present case.

E Section 2 (o) contains the definition of 'owner'. In relation to goods the said section states that the word 'owner' includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods. By referring to this sub-section this Court in *Sun Export Corporation and Anr. v. Board of Trustees of the Port of Bombay*, [1998] 1 SCC 142, held that in the case of imports the liability to pay demurrage, on the endorsement being made on the bill of lading, would be that of the consignee. This is in

F consonance with the provisions of the Bills of Lading Act, 1856. The preamble of this Act provides that by custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner and,

G therefore, it is expedient that such rights should pass with a property. Section 1 of the Bills of Lading Act provides that rights under bills of lading vest in the consignee or endorsee and reads as under:

H "1. *Rights under bills of lading to vest in consignee or endorsee—*  
Every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods herein mentioned

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 bill of lading had been made with himself.” A

The provisions of Section 2 (o) of the MPT Act regards, in relation to goods, the consignee as the owner thereof. Reading the same along with the Bills of Lading Act the consignee of the goods named in the bill of lading or every endorsee of the bill of lading, for the purpose of MPT Act is regarded as the owner of the goods and it is from that owner that the appellant is entitled to recover charges under the MPT Act in respect of the said goods. The High Court was not right in holding that the contract was between the ship owner and the Port Trust. The correct position is that the contract is between the Port Trust and the holder of the bill of lading which, in this case, would be the consignee. It is the consignee which is the bailor with the Port Trust being the consignee. B C

It was then argued by Sh. Pramod Aggarwal that under Section 171 of the Contract Act the lien is available only in the absence of a contract to the contrary. He contended that the MPT Act was a special statute which provides not only the services of wharfingers to be provided by the Board but also for various other services to be provided by it. In respect of these services the Board is entitled to impose and recover rates/charges for the services rendered. Chapter VI provides for the scale of rates and the matters connected therewith including the exercise by the Board for its lien and for recovery of the charges due to it by sale of goods. In this context it was submitted that Chapter VI of the MPT Act is a contract to the contrary between the parties. D E

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 no where provides that the general lien under Section 171 of the Contract Act would not be available to the wharfingers in case where the MPT Act is applicable. It was also contended on behalf of the respondents that even if Section 171 of the Contract Act applies the appellants can exercise their lien F G H

- A under Section 171 of the Contract Act for the recovery of their dues for the services rendered by them as wharfingers only and not for any other services provided by them as detailed in the MPT Act. It was contended that wharfage is the money paid for landing goods at a wharf or for shipping and taking goods into a boat or barge. The general lien of wharfinger as understood
- B under Section 171 of the Contract Act would limit to the charges due to a wharfinger for the services rendered as a wharfinger and not otherwise. On this premise it was submitted that once the appellant takes charges of the goods from the ship owner it does not act as a wharfinger but acts in another capacity which may be that of warehouse owner, bailee etc. and, therefore, lien cannot be claimed in respect of demurrage etc. but, at best, can be claimed
- C only for wharfage charges.

- Attractive as it may appear, we do not find any merit in the aforesaid submission. The first part of Section 171 of the Contract Act identifies five categories of persons who can have a general lien and retain the goods bailed to them. Wharfinger is one of them. The submission of the learned counsel
- D for the respondents does not take into account the fact that Section 171 of the Contract Act enables these five categories to retain as security the goods bailed to them in respect of "general balance of account". The general balance of account has to be of the amount legally due to bankers, factors, wharfingers, attorneys and policy brokers. The appellants come in the category
- E of wharfingers, namely, the owners of the wharf. The duties which they are required to perform are provided in the statute itself, namely, Section 42 of the MPT Act. In other words the services which are undertaken under Section 42 have to be paid for and any amount due in respect thereof will be regarded as "general balance of account". There is no reason to give a restricted
- F meaning to the expression "general balance of account" to mean only wharfage charges which, according to the respondents, would imply the charges for loading or unloading of goods, and would not include demurrage. Once goods are taken charge of by the appellants as wharfingers then in respect of the services rendered, as contemplated by Section 42, if there is any
- G amount which is due and payable to it the same would be regarded as 'general balance of account' in respect of which it has a general lien over the goods bailed to it.

- In our opinion the circular dated 2nd October, 1979 issued by the appellants was valid and the appellants could retain the goods which were
- H in their possession as bailees as security for realisation of the amount of

wharfage, demurrage and other charges which were due to them. We accordingly allow these appeals and set aside the judgment of the High Court with the result that the writ petitions filed by the respondents in the High Court stand dismissed. The appeals are allowed with costs throughout. A

M.P.

Appeals allowed.

B