Indian Maritime Disputes: a collection of excerpts

Mayank Suri*

Agent's argument of acting on shipowner's instructions versus Duty to issue bills of lading

"Once a mate's receipt is issued to the shipper on delivery of the goods to the ship, issue of bill of lading in respect of such goods cannot be postponed on any ground except where the person claiming the bill of lading is not the shipper. Once the mate's receipt is issued to the shipper (or its agent) and the demand for issue of a bill of lading in terms of the mate's receipts is made by the shipper (or its agent), the owner of the vessel is bound to issue the bill of lading and cannot deny or delay the issue of the bill of lading. If the arrangement was that the agent of the owner of the vessel will issue the bill of lading, or if the owners' agent had held out that it will issue the bill of lading, the agent cannot withhold the bills of lading once the mate's receipt is issued, irrespective of any instructions to the contrary, issued by the owner of the vessel subsequent to the issue of mate's receipt and departure of the vessel with the goods from the port. If the issue of bill of lading is denied or delayed as a consequence of which the shipper suffers loss, the owner of the vessel and its agent will jointly and severally be liable to make good the loss by way of damages."

An excerpt from Shaw Wallace & Co Ltd versus Nepal Food Corporation - 2011 (15) SCC 56 - Supreme Court of India

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Shipowner's argument against encashment of performance guarantee versus Arbitration clause

"A performance guarantee must be honoured on the terms. No case of fraud or irretrievable injustice has been made out. A bank guarantee is a contract between the issuing bank and the beneficiary (charterer). The guarantee is independent of the underlying contract between the beneficiary (charterer) and the party (shipowner) at whose behest it is issued. In this case, the rights of the appellant (shipowner) are sufficiently safeguarded. Should the appellant (shipowner) establish its claim in the arbitral proceedings, it would be entitled to seek a refund of its monies. Hence, neither, has any prima facie case been made out, nor is the balance of convenience in favour of the appellant (shipowner). In this view of the matter an ad interim injunction was not warranted."

An excerpt from Rolv Berg Drive A/S Versus Oil and Natural Gas Corporation Ltd - 2007 SCC OnLine Bom 1577 - High Court of Bombay

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Charterer's argument of delay versus No date of delivery in the charterparty

"in case when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him. Therefore, the first condition which is required to be satisfied for claiming compensation for loss or damages is that there must be a contract which has been broken. Considering the charter party it does not provide that the defendant vessel/ship would reach Kandla on a particular date and/or on or before particular date. Therefore, as such there is no contract that the vessel/cargo would reach and/or would be delivered on or before a particular date, which has been broken (due to arrival of vessel/cargo at Kandla after alleged delay of 20 to 25 days.)."

An excerpt from M V Quang Minh 126 versus Bohra Industries Ltd - 2010 SCC OnLine Guj 3217 - High Court of Gujarat

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Function of Notice of readiness

"Under Maritime Law, after the vessel sets sail and gives Notice of Readiness at the agreed destination, Laytime commences in accordance with the provisions of the Charter Party and once the Laytime expires, demurrage period commences, entitling the shipowner to a special compensation for any delay or excess time resulting in loss. Two principles are clearly discernible with respect to the starting of the Laytime. Firstly, the vessel must reach the agreed destination and must become an ‘arrived ship’ at the port of loading or discharge as stipulated in the Charter Party. Secondly, the vessel must be ready in all respects to load or discharge and must tender a Notice of Readiness confirming her arrival and readiness."

An excerpt from Bridge Marine Ltd versus Indian Oil Corporation Limited - 16th June 2021 - High Court of Delhi

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Charterer's request for vessel movement under arrest versus Lack of class survey, dry dock, and other certificates

"Before such a relief is granted, a foundation for the same has to be laid. (...) The defendant-vessel has been under arrest since 8th June, 2018. During this entire period, there is no class survey or statutory drydock carried out. Therefore, it is not known whether the defendant-vessel is in class so that it can be permitted to ply. Further, in the absence of the drydock survey, the condition of the vessel is also unknown. Over and above this, the condition of the defendant-vessel's hull and machinery and the P&I cover is also unknown. Therefore, if during the voyage, the defendant-vessel were to meet with any accident, collision or suffer any loss or become a wreck, then, the plaintiff's security is entirely at peril. "

An excerpt from Wizdoms Naik International Limited versus DSV Gerimal (IMO No. 7932240) - High Court of Bombay - 2020 SCC Online Bom 7647.

Charterer's lack of due diligence at the time of formation of contract versus Its attempt to invoke in-rem jurisdiction

"... even upon assumption of the appellant’s case at its highest, no credence can be attached thereto. The disponent owner was not a demise charterer but it is on the happening of such an event in futuro that such a fixture note has been issued. In our view there is no sufficient evidence available as regards the action in rem making the vessel liable in the contract said to have been entered into, as recorded in the fixture note."

An excerpt from Epoch Enterrepots versus MV Won Fu - (2003) 1 SCC 305 - Supreme Court of India

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Consignee's argument of incorrect shipping mark versus Its obligation under a bank-guaranteed letter of indemnity

"In the instant case, the appellant took the risk of unconditional wording of the letters of indemnity executed by its bankers, the Allahabad Bank. There is really no equity in favour of the appellant. The Shipping Company on the faith and assurance of the letters of indemnity which was duly countersigned by the appellant, gave delivery of the goods without production of the original shipping documents. The appellant have sold the goods and realised the proceeds amounting the huge sum of Rs. 17,50,000 and have not paid a farthing to respondent No. 1, the sellers, and have instead brought the instant suit claiming that the goods supplied were of inferior quality and not the goods contracted for. The High Court has rightly held that the mark 5202 pertained not to the quality of the grade but to the shipping mark. We are satisfied that the appellant has no prima facie case. "

An excerpt from Centax (India) Ltd versus Vinmar Impex Inc - AIR 1986 SC 1924 - Supreme Court of India

Charterer's heavy hatch formula interpretation versus Express mention of overall rate of discharge

"the clause did indeed provide for an overall rate of discharge, and did not expressly provide for a rate per hatch, despite the existence of well-known authorities dealing with clauses which so provided. They were simply not prepared to ignore the express provision for the overall rate; they preferred to treat the reference to “available workable hatches” not as substituting a rate per hatch for the expressly provided overall rate for the ship, but rather as imposing a qualification upon it. This was the reaction of commercial men, who must have been well aware of the practical consequences of their decision, and who must also have been well aware how charter-parties are negotiated and how they are likely to be understood by practical men in the trade."

They effectively adopted the majority view in President of India versus Jebsens (UK) Ltd & Ors (1991) Ll.L.Rep 1. An excerpt from Union of India versus Great Eastern Shipping Company - 2nd December 2013 - High Court of Bombay.

Charterer's absolute obligation to supply cargo versus Argument of foreseeable delay

"Where the cargo stipulated for is to be one provided from a particular place (e.g., a certain colliery) circumstances affecting supply from that source may, if known to both parties, be circumstances with reference to which the charterer's promise to have a cargo ready has to be construed... (However,) When the parties have agreed on the terms of the exception clause in view of the facts known to them and of the extent of the risk each is prepared to take; to impute to the (ship) owner's (agent's) knowledge the charterer's intention to limit himself to loading one ship at a time, knowledge of his proposed sources of supply, and of his general practice in deciding between the claims of one customer as against another; to treat these matters as a qualification of (charterer's) undertaking to have a cargo of coal ready - this is to (make) have little or nothing of the well-recognised principle of commercial law that the (charterer) merchant is under an absolute obligation to supply the cargo."

An excerpt from William Henry Turner versus Kilburn and Co - 101 Ind Cas 854 - High Court of Calcutta

Effect of an Incorporation Clause in contracts of identical nature and between the same parties

"The contracts in this case are similar and between the same parties. The cases dealing with the question of incorporation of a clause in a charter party containing an arbitration agreement in a bill of lading are not relevant to such cases. Authorities which consider whether an arbitration agreement contained in a clause between two parties is incorporated in an agreement where one or all the parties are different also stand on a different basis. Even in such case the arbitration clause in the contract between two parties can be incorporated in a contract between one such party and another or even between two different parties if the terms of the latter contract incorporate the former and the arbitration clause is germane to and consistent with the same. The question of incorporation of clauses in different agreements between the same parties especially when they are similar in nature are relatively simple. "

An excerpt from United Shippers Limited versus Tata Power Company Limited - 2010 SCC OnLine Bom 2284 - Bombay High Court

Contract of Affreightment (CoA): buyer's liability to pay demurrage: damages versus indemnity

"When there is a controversy between the two parties regarding the real meaning to be attached to the clause in the contract, the safest method to find out what is the correct meaning of the clause is to find out as to how the parties understood the clause from their conduct during the currency of the contract. Material available on record shows that at no point of time till reply in arbitration before the arbitrator was filed the petitioner asked the respondent to produce either charterparty entered into between the respondent and the vessel-owner nor did it ask for production of any receipts which were issued by vessel owner in favour of the respondent towards payment of demurrage. Had the petitioner construed clause (10) to be in the nature of indemnity clause, every time when claim for demurrage was made by the respondent, it would have asked for production of copy of the charterparty to find out whether there is a liability created on the respondent for payment of demurrage and would have asked for production of documents which will establish that the respondent has actually made payment of the amount of demurrage to the vessel-owner."

An excerpt from Larsen and Toubro Ltd versus Sunfield Resources Pvt Ltd - 2005 (4) MhLj 607 - Bombay High Court

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A comment on Voyage Charterparty

"The contract was a voyage charter. There are several modes of taking a vessel on hire and the Voyage Charter is one of them. Voyage Charter is an agreement for carriage of full cargo, not for a period of time but for a voyage between two specified ports with charges fixed as per the tonnage of cargo loaded. Under the Voyage Charter the owner of the vessel is interested in expeditious completion of the voyage. Certain grace period given to the Charterer for loading and discharge of the cargo. If the voyage exceeds beyond the stipulated period the owner is put to loss as the vessel then cannot be let out on hire to other Charterers. Thus for speedy completion of voyage the owner provides both, an incentive as well as a deterrent. If the Charterer is not able to load and discharge the cargo within the grace period, the Charterer has to pay penalty to the owner in the form of demurrage. On the other hand if the Charterer is able to complete the loading and discharge before the grace period and frees the ship before the period agreed under charter, the owner rewards the Charterer by paying an incentive, termed as dispatch. The dispatch is payable both at the time of loading as well as discharge. The agreement may contain, as in the present one, that the loading and discharge of cargo will be done by the Charterer s agent and the port authorities will be paid by the owner. When the vessel arrives in the port territory and is ready to discharge, the owner intimates the charterer by an advance notice so that the charterer can arrange for discharge of the cargo. The intimation is called Notice of Readiness. The liability of the charterer to unload the cargo begins when the notice of readiness is received. Within this period certain agreed rate of cargo has to be discharged. This is called laytime. The parties may agree that in certain contingencies the period which has started running when the notice of readiness is received, will be suspended. Barring these exceptions agreed between the parties the settled norm under the Voyage Charter is that the time period for discharge of cargo begins to run from the time the notice of readiness is received, subject to the conditions specifically agreed. The disputes normally arises under Voyage Charter as to whether the time period in which the Charterer could not load/discharge the cargo, should be excluded or not. Clauses dealing with such exclusions are also fairly settled in the shipping trade and their meaning and purport are generally commonly understood."

An excerpt from Steel Authority of India Limited versus Mercator Lines Limited - (Lexis Nexis) IND 2012 BOM 951 - High Court of Judicature at Bombay

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Charterer versus Common Carrier

"it is more than doubtful whether a ship under charter as distinct from a general ship taking the goods of several shippers under separate bills of lading on the same voyage is properly described as a common carrier at all. It is not necessary to decide that point fortunately in this case but it is

one that has been frequently discussed in commercial circles and amongst commercial lawyers for the past 70 years and there are a very considerable number of expressions of opinion by eminent commercial lawyers on the Bench that a chartered ship is not a common carrier."

An excerpt from Gandha Korliah versus Janoo Hassan - ILR (1926) 49 Mad 200 - Madras High Court

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Effective NoR versus Customs Authority Requirements

"Viewed from a commercial perspective, there is nothing to restrict the plain and literal interpretation of the expression(s) 'after receipt of Master's written Notice of Readiness to discharge', 'also having been entered at Custom House and in free pratique whether vessel in berth or not'. (...) Moreover, the first requisite of lay-time commencing 24 hours after receipt of Master's written Notice of Readiness, constitutes an objective fact. The latter part about the Notice of Readiness 'having been entered at Custom House' qualifies this objective fact. The entry of the Notice of Readiness, which is furnished by the Master is no less, a notice and in fact, constitutes the basis for an order under Section 31(1) (of the Customs Act, 1962)."

An excerpt from Jayshree Shipping versus Food Corporation of India Limited - 2008 Indlaw DEL 2183 - Delhi High Court

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Consignee's sequential demand for an extension of the delivery period versus Agreed contractual procedure

"It is clear from the above that (the consignee) had sought the extension on account of shipment holiday in the month of July 2018 and the delivery extension for a period of three months in sequence thereof. (...) As noticed by the Arbitral Tribunal, (the consignee) had exercised its option of declaration of shipment holiday and extension of delivery in a sequence. First, it declared July 2018 as a period of shipment holiday followed by the extension of delivery. Therefore, the exercise of option of extension of delivery could not be read on a standalone basis. (...) (This was not a valid exercise of the option.)"

An excerpt from Steel Authority of India Limited versus Jaldhi Overseas Pte Ltd - 2021 SCC Online Del 3002 - High Court of Delhi

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Email correspondence versus Formal execution of contract

"The minute to minute correspondence exchanged between the parties (...) All the above details clearly establish that both the parties were aware of various conditions and understood the terms (...) Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialed by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initialed."

A judgment that includes the transcribed text of the email exchange.

An excerpt from Trimex International FZE Ltd Dubai versus Vedanta Aluminium Ltd India - (2010) 3 SCC 1 - Supreme Court of India

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Charterer's default of hire payment versus shipowner's right to withdraw

"The charterers, he (the charterer's counsel) says, made an estimate and deducted the amounts. The shipowners should have objected to the deduction and in the next monthly payment the charterers would have settled the account after ascertaining the facts. (...) When this procedure, he argues, is prescribed the shipowners had no right to withdraw the vessel from their service. I

do not agree. (...) Clause 8 clearly provides that in default of payment of hire the owners may withdraw the vessel from the service of the charterers. That is the clear right of a shipowner. If monthly hire in advance is not paid strictly in terms of clause 8 the only thing he has to do is to serve a notice of seven days and if the amount is not paid within that period the shipowner has a right to withdraw the vessel. The shipowner need not make a demand for payment before exercising his right of withdrawal. All that is required is (1) default of payment and (2) the service of notice."

An excerpt from Indian Oil Corporation Ltd versus Thakur Shipping Co Ltd - ILR 1974 Delhi 650 - Delhi High Court

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Shipowner's silence and inaction versus 'readiness and willingness' to arbitrate

"Where a party to an arbitration agreement chooses to maintain silence in the face of repeated requests by the other party (to) take steps for arbitration, the case is not one of 'mere inaction'. Failing to act when a party is called upon to do so is a positive gesture signifying unwillingness or want of readiness to go to arbitration."

An excerpt from Food Corporation of India versus Thakur Shipping Co - AIR 1975 SC 469 - Supreme Court of India

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Avoidance of demurrage payment due to judicial injunction versus 'no fault' character of an exception clause

"A bare reading of clause 4 (exception clause) brings out that charterer is not liable to pay for any loss or damage caused by the events which occurred without the fault of the charterer and that the time lost due to occurrence of such events is not to be counted towards lay time. We have already held in preceding paragraphs that situation of restraints (an exception in the clause) being imposed upon IPL (charterer's agent) by the courts at Chennai from discharging the cargo from the vessel was brought about by the fault of the appellant (charterer's other agent) and IPL of not ascertaining the cargo unloaded by the SSL (stevedore responsible for injunction orders) and settling the accounts of SSL before terminating the services of SSL."

An excerpt from MMTC of India Ltd versus Interore Fertichem Resources SA - 2012 SCC OnLine Del 2497 - High Court of Delhi

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Port's protective rules versus Shipowner's (plaintiff) right to qualify bills of lading and the role of its port agent (defendant)

"Whereas under the Charterparty the master of the vessel was enjoined to load only such goods for which 'clean on board' bills of lading could be issued and were to be in good condition, under Rule 55 of the Port bye- laws/rules the master of the vessel was required to give clean mate's receipt for all goods shipped from the shores and no qualified receipt can be made except upon the written instructions of the shipper. Though under Rule 55 if the goods are not such as would require a clean receipt to be issued can be rejected, under the agreement of the defendant clean mate's receipt were only to be accepted without any provision for the right of rejection. Thus the specific assurance/agreement/undertaking of the defendant (by whatever way called) took away from plaintiff the right to reject the goods except upon the defendant's Surveyor sorting out the cargo for shipment."

An excerpt from Penguin Maritime Ltd versus Lee & Muirhead - 2014 SCC OnLine Bom 994 - High Court of Bombay

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Effect of Demurrage Clause versus General Burden of Proof

"The claimant would be required to prove his damage in general sense as the contract made by the parties estimating their damages is in itself evidence, unless there is some other evidence to show that the subject claim was unreasonable. The parties when agree to an amount to be paid in case of a breach, in such a case, there may not be any necessity of leading evidence for proving damages, unless the Court arrives at a conclusion that no loss is likely to occur because of such breach. More particularly when an agreement is executed by the experts in the field and when an agreement is so arrived in their commercial wisdom, it cannot be construed that the intention of the parties was different from what they have agreed in having such a stipulation in the contract. The burden in such a case would be on the party who contends that the stipulated amount in the agreement is not reasonable compensation, to prove the same."

An excerpt from Ultratech Cement Ltd versus Sunfield Resources Pvt Ltd - 2016 SCC OnLine Bom 10023 - High Court of Bombay

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Bills of Lading: Misstatements versus Obligation to Deliver

"It is not the case that the goods actually shipped were not delivered or short delivered or that there was delay in delivery or that the goods were damaged or affected in any manner to the plaintiffs' prejudice. It may be that the plaintiffs have a cause of action against the owners for issuing bills of lading containing misstatements or false statements but that is not a cause of action founded on breach of contract of carriage of goods or breach of duty in relation to carriage of goods. Carriage of goods, in this context, means carriage of goods actually shipped and not hypothetical goods which ought to have been shipped but were never shipped."

An excerpt from National Co Ltd versus MS Asia Mariner - Admiralty Suit No 01 of 1967 - High Court of Calcutta

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Bill of Lading: Weight Unknown versus Burden of Proof of Weight

"But in so far as the weight, contents and value are concerned, if there is an endorsement that they are not known or if there is a qualifying remark indicating that the master of the vessel has entered those particulars in the bills of lading in accordance with the figures given to him by the shipper or consignor, then the statements in the bills of lading regarding those particulars would not be binding on the shipowner and it will be for the shipper or consignor to prove that the consignments loaded on board the ship were of the same weight and the contents were of the same nature and the value was of the same figure as those noted in the bills of lading. The hypothesis on which such a dictum has been laid is not far off to see. In so far as the number of bags, tins or containers is concerned, they can be easily verified by a visual check and the checking process will not involve any complicated procedure. On the other hand, checking the weight or nature or the value of the contents in the consignment that is shipped will involve specialised tests and will also prove to be a time consuming exercise, which the ships cannot afford to do for various reasons, such as, the cost factor, the adherence to departure, and arrival, schedules, the lack of capabilities for conducting such checks etc."

An excerpt from Thakur Shipping Co Ltd Bombay versus Food Corporation of India - AIR 1983 MADRAS 105 - High Court of Judicature at Madras

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Safe Mooring: Duty of Ship Owner versus Port Nomination by Charterer

"Although, an attempt has been made on behalf of the Charterers to convince us that it was really the duty and responsibility of the Owner of the vessel to check whether the vessel could be safely moored at the SBM in Vadinar, we are unable to convince ourselves that such a duty was that of the Owners of the vessel and not the Charterers which had a choice of all the ports in India for

discharge of the cargo, as was subsequently done in Mumbai port. ..., the responsibility for the failure of the ship to moor at the SBM in Vadinar must lie squarely with the Charterers and the receiver as it was they who had nominated the SBM for the safe mooring of the vessel."

An excerpt from Shipping Corporation of India Ltd versus Mare Shipping Inc - (2011) 8 SCC 39 - Supreme Court of India

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Charterer's Silence versus Use of Ship

"It is, no doubt, true that the general rule is that an offer is not accepted by mere silence on the part of the offerree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offerree's silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance; an agreement sub silentio. Therefore, the terms of a contract between the parties can be proved not only by their words but also by their conduct."

An excerpt from Bharat Petroleum Corporation Ltd versus Great Eastern Shipping Co Ltd - (2008) 1 SCC 503 - Supreme Court of India

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Role of Inspection Company versus Expectations of Shipper:

"In the absence of any clause in the contract to ensure that the goods consigned has to meet the products specifications at the time of loading of consignment, the appellant cannot be held liable for change in specifications of the agricultural produce at the destination port after being in transit for two months on the high seas."

An excerpt from SGS India Ltd vs Dolphin International Ltd - 2021 SCC OnLine SC 879 - Supreme Court of India

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Act of God versus Expected Perils of the Sea:

"When a party seeks asylum under the defence of act of God, it is not enough that he makes a plea that the weather turned wild, or that a gale or a tornado developed and swells of height rolled up in the sea. Oceanic vicissitudes are not unknown. Fury of the waters near and off the shore is part of the erratic peculiarities of the sea which sailors anticipate during voyage. Such odds are occasionally faced by the seamen in maritime adventures. A carrier of goods by sea, if absolved from liability merely on account of fury of waters, the consignee of the cargo would very often go without his goods delivered and his loss reimbursed. A ship and her accessories must be so adapted or attuned as to afford adequate protection for the crew and the cargo in the ship against such tempestuous behaviour of the sea."

An excerpt from General Traders Ltd vs Pierce Leslie (India) Ltd - ILR 1987 (1) Ker 237 - High Court of Kerala

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