

Present:  
Mr. Justice Md. Iqbal Kabir  
And  
Mrs. Justice Jesmin Ara Begum

First Appeal No. 187 of 2000

M/s. Atlas Shipping Lines Ltd., Chattogram  
....Appellant

Versus

Sadharan Bima Corporation, Sadharan Bima  
Bhaban, Pathantooly, P.S.-Doublemooring, District-  
Chattogram, and others

....Respondents

Mr. Muhammad Ohiullah, Advocate  
....For the Appellant

No one appears  
....For the Respondents

Heard on 03.11.2025, 06.11.2025 and Judgment on  
24.11.2025.

Md. Iqbal Kabir, J:

At the instance of the defendant No. 1/appellant, this First Appeal is directed against the judgment and decree dated 06.10.1999 and 12.10.1999 respectively, passed by the learned Subordinate Judge, 2<sup>nd</sup> Court, Chattogram, in Money Suit No. 208 of 1990.

The short facts of the plaintiff's case leading to preferring this appeal are that the plaintiff is an Insurance Company and the pro-forma defendant No. 2, for the use of and on account of pro-forma defendant No. 3, imported a consignment of 8000 bags-200 Pallets of Potassium Carbonate from Seoul, Korea, covered by Invoice No. 88 CHO78 dated 15.09.88 of M/s. Golden Ball Co Ltd. Seoul, Korea. The said goods were packed in 8000 bags, 200 Pallets at the Port of Busan, Korea, per vessel M.V. AL-SALMA under B/L No. CHI 1-10 dated 30.07.88 for carriage to and delivery at the port of Chattogram. However, the said carrying vessel arrived at the Port of Chattogram on or about 21.08.1988 in Rot No. 667/88 and delivered her cargoes on subsequent dates at Chittagong Port Jetty Shed No. 7 and thereafter, a surveys were carried out at the time of discharge of the goods from the carrying vessel and as per the

survey reports there was alleged shortage of cargo for which the pro-forma defendants suffered a loss of Tk. 5,51,507.00, and for which the pro-forma defendants lodged a claim with the plaintiff. The goods were insured with the plaintiff under its Marine Policy No. DAK/LO/Cert/Fex-994/88 covering various risks of loss, and the pro-forma-defendants, having lodged a claim with the plaintiff, the plaintiff settled the same on payment of a sum of Tk. 5,05,089.60 paisa and the pro-forma defendant No. 2 on receipt of the same executed receipt and letter of subrogation and abandoned all of their rights in the suit consignment in favour of plaintiff and that the plaintiff as subrogate lodged claim with the Defendant No. 1 for settlement of their subrogated amount but the Defendant No. 1 did not settle the claim and as such the plaintiff has filed this suit.

The Defendant No. 1/Atlas Shipping Lines Ltd./Appellant and the Defendant No. 2/ Chattogram Port Authority entered appearance in the suit and filed separate written statements. Both Defendant Nos. 1 and 2 have contended in the case by filing their written statement, according to them the suit is hopelessly barred by limitation under the Carriage of Goods by Sea Act, 1925, and hence liable to be dismissed as the plaintiff failed to file the instant suit within the prescribed period of limitation of 1(one) year. The Defendant Nos. 1 and 2 have also contended in their written statement that the consignee, subsequent to discharge of the cargo from the carrying vessel M.V. AL SALMA, has taken delivery of the entire cargo in full.

The plaintiff–respondent is an Insurance Company. Pro-forma defendant No. 2, for the use and benefit of pro-forma defendant No. 3, imported a consignment comprising 8,000 bags (200 pallets) of Potassium Carbonate from Seoul, Korea, under Invoice No. 88 CHO78 dated 15.09.1988 issued by M/s Golden Ball Co. Ltd., Korea. The consignment was shipped from the Port of Busan by the carrying vessel M.V. AL-SALMA under Bill of Lading No. CHI 1-10 dated 30.07.1988 for carriage to and delivery at the Port of Chattogram. The carrying vessel arrived at the Port of Chattogram on or about 21.08.1988 under

Rot No. 667/88 and discharged the cargo at Chattogram Port Jetty Shed No. 7 on subsequent dates. Surveys conducted at the time of discharge allegedly revealed shortage of cargo, resulting in an alleged loss of Tk. 5,51,507.00 to the pro-forma defendants. The said goods were insured with the plaintiff-respondent under Marine Policy No. DAK/LO/Cert/Fex-994/88 covering the relevant risks. Upon lodgment of claim, the plaintiff-respondent settled the claim by paying Tk. 5,05,089.60 to pro-forma defendant No. 2, who, upon receipt thereof, executed a valid receipt and letter of subrogation in favour of the plaintiff-respondent, thereby, assigning all rights and remedies in respect of the said consignment. Thereafter, the plaintiff-respondent, as subrogee, lodged its claim with defendant No. 1-appellant, Atlas Shipping Lines Ltd., for recovery of the subrogated amount. As the appellant failed and neglected to settle the claim, the plaintiff-respondent instituted the instant suit.

The appellant-defendant No. 1 and defendant No. 2 contested the suit by filing separate written statements, contending, and inter-alia, that the suit is hopelessly barred by limitation under the Carriage of Goods by Sea Act, 1925, as it was not instituted within the statutory period of one year, and is therefore liable to be dismissed. It was further contended that the consignee took delivery of the entire consignment in full after discharge of the cargo from the vessel.

Based on the pleadings filed by the parties, the trial Court framed as many as seven issues which are as follows:

- (1) Is the suit maintainable in its present form and manner?
- (ii) Is there any cause of action for filing the instant suit?
- (iii) Is the instant suit barred by limitation and by estoppel, waiver, and acquiescence?
- (iv) Is the suit bad for the defect of the parties?
- (v) Is the plaintiff entitled to a decree as prayed for?
- (vi) To what other reliefs is the plaintiff entitled to?

It is pertinent to note that during the course of the trial, the plaintiff examined one witness and the defendant No. 2 examined one witness, and both were cross-examined.

However, upon considering the evidence and materials on record, the trial Court decreed the suit by its judgment and decree dated 06.10.1999 and 12.10.1999 respectively in Money Suit No. 208 of 1990 against the Defendant No. 1/Appellant.

Being aggrieved with the aforesaid judgment and decree, the Defendant No. 1/Appellant has preferred the instant First Appeal No. 187 of 2000 before this Court.

Mr. Muhammad Ohiullah, learned Advocate on behalf of the Appellant/Defendant No. 1 by way of submission brought our notice that the suit having been brought beyond the prescribed period of limitation of 1(one) year from the date when the goods have been discharged from the ship. According to him the trial Court failed to appreciate and consider in not holding that-(I) the suit was hopelessly barred by limitation under Article 3 Rule 6 of the Schedule to the Carriage of Goods by Sea (Act XXVI of 1925) and, as such, the impugned judgment and decree passed by the Court below Court is liable to be set aside, (II) the trial Court erred in holding the defendant No. 1/Appellant liable notwithstanding the fact that the Plaintiff/Respondent No. 1's claim against the defendant No. 1/Appellant is hopelessly barred by limitation, (III) the trial Court erred in holding the defendant No. 1/Appellant liable although it has clearly stated in its own judgment that the plaintiff had failed to bring its alleged claim against the Defendant No. 1/Appellant within one year from the date of discharge or delivery of the cargo as prescribed by Article 3 Rule 6 of the Carriage of Goods by Sea Act, 1925, (IV) the trial Court erred in holding the fact that the plaintiff Respondent No. 1 had filed the suit for its alleged claim against the defendant No. 1/Appellant 2(two) years after the goods were discharged or delivered, (V) the trial Court erred in holding the Defendant No. 1/Appellant liable notwithstanding the fact that the Defendant No. 1/Appellant had

discharged the full consignment of the cargo into the care and custody of the Chattogram Port Authority and as such the Defendant No. 1/Appellant is not liable for the alleged claim of the plaintiff/Respondent No.1, (VI) the trial Court erred in holding the Defendant No. 1/Appellant liable although the entire cargo consignment was delivered to the consignee i.e. the pro-forma defendant Nos. 2 and 3/Respondent Nos. 2 and 3 and (VII) and parties cannot, by agreement, override the statutory period of limitation and hence, any alleged extension of time up to 21.08.1990 is not tenable in the eye of law and even acknowledgement of liability cannot extend the period of limitation fixed by the statute. He submits that in view of the above the impugned judgment and decree passed by the Court below is liable to be set aside.

Mr. Ohiullah submits that the suit, having been brought beyond the period of limitation of one year from the date when the goods have been delivered, or discharged from the ship, which the trial Court failed to appreciate and consider in not holding that the suit was hopelessly barred by limitation under the provision laid down in Carriage of Goods by Sea, 1925. However, in support of his submission, cited decisions delivered in the case of Gladstone Wyllie & Co., Ltd. vs. Shahidi Trading Corporation Ltd. and another, reported in 10 D.L.R. (1958)-307, Continental Traders vs. Bangladesh Textile Mills Corporation and others, reported in 59 D.L.R. (2007)-151, Polish Ocean Lines and another vs. Al-Amin Seatrans Ltd. and others, reported in 19 BLC (2014)-38, Chittagong Steamship Corporation Ltd. vs. Central Insurance Company Ltd and others, reported in 1986 MLD 59, Karachi, M/s. National Insurance Corporation vs. M/s. Pakistan National Shipping Corporation and others, reported in 1986 MLD 1885, Karachi, Eximpo Trading Limited vs. M.V. Banglar Kakoli and other, reported in 9 LM (AD) [2020 and East and West Steamship Co. vs. S.K. Ramalingam, reported in AIR, 1960.

This is a long-pending matter; on several dates, it has been appeared in the daily cause list for hearing. However, none of the learned Advocates appear for the respondents.

We have considered the submission made based on the cited decisions and law so placed by the learned counsel for the appellant, perused the memorandum of appeal and impugned judgment annexed herewith, and also perused the documents so exhibited by the parties.

It is pertinent to note that upon considering the papers and documents and records, including the exhibits of the instant case, it appears that the plaintiff-respondent No. 1 imported the cargo from Busan, Korea, through the ship M.V. AL-SALMA, which arrived at Chattogram Port on 21.08.1988 and discharged the said goods/cargoes within 04.09.1988 and left Chattogram Port. In the instant case the plaintiff alleged that there is a short delivery of Potassium Carbonate, which was subsequently repacked and delivered to the plaintiff. It appears from the survey reports Exhibits-1-Kha(1) that 8000 bags have been discharged from the vessel M.V. AL-SALMA and Exhibits (Kha) and Kha(1) of the Chittagong Port Authority dated 28.08.1998 show that subsequently 8000 bags of Potassium Carbonate 200 pallets were delivered to the consignee and the consignee took delivery of the same without any objection and as such, it cannot be said that there was a short landing or short delivery.

It also appears that the plaintiff filed the aforesaid suit on 21.08.1990, long after the discharge of the goods, whereas the ship arrived at Chattogram Port on 21.08.1988 and discharged the cargoes of the ship up to 04.09.1988 and left the Chattogram Port thereafter.

In the above context, the learned Advocate for the appellant brought out notice Article 3 Rule 6 of the Schedule to the Carriage of Goods by Sea, 1925. The alleged provision provides as follows:

"Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of "the goods as described in the bill of lading."

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of a joint survey or inspection.

In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."

Upon placing the above Article and Rule he submits if the compensation for loss of the potassium carbonate is to be claimed by the importer insured or insurance company i.e. the plaintiff from the Defendant No. 1/Appellant carrier then the same must be claimed within one year from the date of discharge of the cargo as required under Article 3 Rule 6 of the Schedule to the Carriage of Goods by Sea Act, 1925. Further it brings our notice that Zia Fertilizer Company Ltd (ZFCL) and its insurer/Plaintiff had clear knowledge of the limitation period for filing the suit. They mentioned it in their internal correspondence dated 24.06.1989, where it is mentioned that the deadline is 21.08.1989. According to him, the appeal has to be dismissed as the instant suit is hopelessly barred by limitation.

It has alleged, it is not disputed that the suit was filed beyond one year after the date of discharge of the goods and the trial Court also does not dispute the same but the trial Court most erroneously decreed the suit although the suit is hopelessly barred by limitation under Article 3 Rule 6 of the Schedule to the Carriage of Goods by Sea Act, 1925 which has specifically set out the limitation period of 1(one) year of the ship being discharged from all liabilities in respect of loss or damage. In case of loss and damage of the goods the suit must be brought within the limitation period of 1(one) year as specified under Article 3 Rule 6 of the Schedule to the Carriage of Goods by Sea Act, 1925 i.e., the carrier is discharged from all liabilities in respect of loss or damage of the goods unless suit is filed within 1(one) year from the date of delivery of the goods.

It has been settled proposition of law that the above provision is not merely a rule of limitation; it is a provision of the substantive law inasmuch as there is a complete extinguishment of liabilities. Further it appears from Exhibit-4 (Kha) and Exhibit-4 (Niyo) that the plaintiff/insurance company well conversant about the period of limitation and fixed the period of limitation for claim till 21.08.1989. But the plaintiff filed the aforesaid suit on 21.08.1990 i.e., beyond the period of limitation and long after the period of 2(two) years of discharge or delivery of the goods and, as such, the suit is hopelessly barred by limitation.

Against the above backdrops and relying upon the cited decisions, we are of the view that the learned Judge of the trial Court, passed the judgment and decreed erroneously, though it was barred by limitation as such, it is liable to be set aside.

For the reasons stated above and having regard to the facts and circumstances of the case and the principles laid down in the aforementioned decisions we find substance in this appeal. Consequently the Appeal succeeds.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 06.10.199 and 12.10.1999, respectively, passed by the learned Subordinate Judge, 2<sup>nd</sup> Court, Chittagong, in Money Suit No. 208 of 1990, are thus set aside without any order as to costs.

Let a copy of this judgment, along with the lower Court records, be communicated to the Court concerned forthwith.

Jesmin Ara Begum, J:  
I agree.