

appellant/complainant US\$ 500750/- or Rs. 20 lakhs is less along with 9% per annum compensation with effect from 31.07.1996 till its realization.

2. The case of the appellant/complainant is that it is an exporter of all kinds of handicrafts goods to several countries including USA. The appellant/complainant had received an order from M/s. Williams Sonoma Inc. USA for supply of handicraft goods. Accordingly, the appellant/complainant had to send three shipments of 1538 packages weighing 26,859.5 kg. to the consignee on an urgent basis, which was specifically informed to the respondents. On 22.07.1996, the goods were tendered to respondent no. 1 through respondent no. 2 after getting an assurance that the shipments will reach destination at Memphis within 7 days and delivery schedule was handed over to the appellant/complainant. As per the schedule, the entire consignment was supposed to reach at Memphis by 31.07.1996.

3. The consignments did not reach the destination at Memphis (USA) as per the delivery schedule. On enquiry, respondent no. 1 expressed its inability to deliver the consignments as per the delivery schedule provided to the

appellant and a revised delivery schedule was given on 05.08.1996, which mentioned the date of delivery on 06.08.1996. However, the consignment did not reach at the destination even as per the revised delivery schedule.

4. On non-receiving the goods, the consignee expressed its anguish by sending a letter dated 23.08.1996 and informed the complainant that the goods are not received in toto, and respondent no. 1 was unable to tell where the remaining cartons are.

5. It is also on record that 69 cartons were lying with Lufthansa. The respondent no. 1, by its letter dated 30.08.1996 addressed to respondent no. 2, accepted the short delivery. On 07.09.1996, the appellant/complainant made a modest claim against the respondents for refund of full freight. In response to the said claim, respondent no. 2 confirmed having short delivered 104 cartons out of 288 cartons but did not state whether the other cartons had arrived at the destination. The appellant served the legal notice dated 04.08.1997 on the respondents, which evoked no response.

6. Ultimately, the appellant/complainant lodged a complaint before the NCDRC with the prayer that respondent no. 1 be

directed to refund a sum of Rs. 24,48,345/- being the fair charges for the consignments; pay a sum of Rs. 20 lakhs as compensation for loss of business and reputation; pay US\$ 7042.00 being the value of the goods short delivered; pay interest @ 18% as well as cost of litigation, which was disposed of as abovesaid. Hence these appeals.

7. Learned counsel for the appellant would submit that admittedly, the shipments booked by the appellant on 24.07.1996, which were to be delivered by 31.07.1996, were delivered to the handling agent of the Consignee only in the month of September, 1996 from 03.09.1996 to 12.09.1996 with delay of more than 40 days.

8. Learned counsel submitted that the goods were tendered to respondent no. 1 on a specific representation that the same will be delivered within seven days, therefore, time is the essence of the contract between the parties. It is next argued that in the case in hand, it is clear from the material on record that respondent no. 1 has been highly negligent in rendering its services to the appellant.

9. Learned counsel further submits that once the NCDRC arrives at the conclusion that there is delay in delivery of

consignment due to negligence of respondent no. 1, fair, just and reasonable compensation must be awarded in accordance with conditions of the contract and statutory provisions of the Carriage by Air Act, 1972.

10. *Per contra*, learned counsel for respondent no. 1 submitted that there was no deficiency in service rendered by respondent no. 1. All reasonable care in performing its duties under the contract of carriage were discharged diligently. He would submit that no specific instructions were given by the appellant with regard to the time by which the consignments had to reach its destination, therefore, time was not the essence of contract entered into between the parties.

11. Learned counsel next submits that respondent no. 1 should not be held liable for delay in service, as in spite of being aware of the fact, the appellant sent the consignment through Kuwait Airways, which has various stops over at Kuwait, Chicago and Memphis, which would consume a lot of time period to deliver the consignment.

12. Learned counsel lastly submits that the compensation awarded by the NCDRC is excessive, unjust and unfair and is based on the conjectures and surmises.

13. We have heard learned counsel for the appellant as well as the respondents at length and perused the material placed on record meticulously.

14. Initially, the NCDRC passed a final order on 21.05.2003 holding that there has been a short delivery of 104 pieces equal to 1822 Kgs. Therefore, in view of Rule 22 of Carriage by Air Act, multiplying this weight by US \$ 20 per Kg., the amount payable work out to US \$ 36440 which becomes payable by the respondent to the complainant for the loss of goods. This amount was directed to be paid by the respondent along with interest @ 9% from 01.10.1996. In so far as the issue concerning delay in delivering the consignment, the NCDRC found that in the absence of any communication emanating from the respondent No.1-Kuwait Airways promising to deliver the goods by any particular date, the plea raised by the complainant regarding delay in delivering the goods is not sustainable.

15. Challenging the above order dated 21.05.2003 of the NCDRC, the complainant preferred Civil Appeal bearing C.A.No. 8211 of 2003 which was allowed by this Court on 15.03.2011.

This Court observed that the issue concerning delay in delivery of goods has been decided by NCDRC without appreciating the material and evidence available on record. Resultantly, the matter was remitted back to NCDRC for fresh consideration of the complainant case vis-à-vis delay in delivering the consignment.

16. After the remand, the present impugned order has been passed holding that there was delay in delivering the consignment on time for which the complainant is entitled to compensation of 25037.5 Kg. multiplied by US \$ 20 Kg. each which comes to US \$ 500750 which exceed the sum of Rs. 20 lakhs claimed by the complainant therefore the complainant was only entitled to have compensation of Rs. 20 lakhs along with interest @ 9% w.e.f. 31.07.1996 till its realization as also the litigation charges and compensation for harassment and mental agony in the sum of Rs. 5 lakhs.

17. Basing on the material available on record, the NCDRC has held that the fax message sent by respondent No.2-agent through whom the consignment was booked to be shipped by the respondent No.1 goes to show that the goods shall be

delivered at Chicago Memphis on 29.07.1996, 31.07.1996 and 31.07.1996. However, when the consignment did not reach the destination, appellant - M/s Rajasthan Art Emporium informed the respondents whereafter, the respondent no. 2 provided a revised schedule, however, the shipments did not reach the destination even as per the revised schedule, according to which the goods were to reach the destination on 06.08.1996.

18. The evidence on record shows that the parts of the shipments were received at Memphis on 30.08.1996 as admitted by the respondent No.1 in its letter dated 24.09.1996. Referring to the documents showing business relation between complainant and his buyer, the NCDRC would observe that the buyer was the largest customer of the complainant. Thus, the complainant has suffered huge loss due to transaction and the goods were received in the first week of September, 1996.

19. We have perused and examined the material available on record and we are satisfied that the NCDRC has not committed any illegality or perversity in recording the finding that there was delay in delivery of consignment. As a matter of fact, it is an admitted position that the consignment which was booked

on 24.07.1996, was delivered after one and a half month i.e. from 03.09.1996 to 12.09.1996.

20. In its reply before the NCDRC, the agent-respondent No.2 (Dagga Air Agents) admitted that at the time of booking, the complainant was informed about the tentative date of arrival of goods at Memphis by 31.07.1996 and thereafter a revised schedule was also given to the complainant. Once the agent has issued a time schedule for delivery of consignment, it cannot be said that there is no material indicating that there was no agreement for delivery of the consignment in time. respondent no.1 - Kuwait Airways has never taken the stand in any of the communication arising from its office that the respondent No.2 is not its agents or that there was no agreement or promise by its agent that the consignment will be delivered in 07 days. The NCDRC has rightly noted that the appellant has paid air freight which is ten times more than the sea freight only to ensure that the consignment reaches its destination within a week because sea cargo would have taken 25 to 30 days for delivery and the appellant has paid such huge freight charges for ensuring early delivery, hence, the delay in delivery of consignment has necessarily inflicted damage to the

appellant which is liable to be satisfied by the respondent No.1 as provided under Section 19 and 13(3) of the Carriage by Air Act 1972.

21. The provisions contained in Section 19 and 13 (3) of the Carriage by Air Act 1972 read as follows:

“19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.”

“13 (3). If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.”

By virtue of the above provisions, the consignee is entitled to seek damages for delay in delivering the consignment. It is not the case of the respondent No.1 that the respondent No.2 had acted beyond the terms of agency. Neither it is averred that the respondent no.2 was not the agent of respondent No.1.

22. Section 186 of the Contract Act, 1872 provides that authority of an agent may be expressed or implied. Similarly, Section 188 of the Contract Act, 1872 prescribes that an agent,

having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act. In ***Dilawari Exporters v. Alitalia Cargo & Ors.***² this Court has observed in Paragraph 17 to 20 as follows: -

“17. Section 186 of the Contract Act, 1872 (for short “the Contract Act”) lays down that the authority of an agent may be expressed or implied. As per Section 187 of the Contract Act, an authority is said to be express when it is given by words spoken or written, and an authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, which may be accounted circumstances of the case.

18. Section 188 of the Contract Act prescribes that:

“188. Extent of agent's authority.—An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.”

19. Section 237 of the Contract Act provides that:

“237. Liability of principal inducing belief that agent's unauthorised acts were authorised.—When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and

² (2010) 5 SCC 754

obligations were within the scope of the agent's authority.”

20. There is no gainsaying that onus to show that the act done by an agent was within the scope of his authority or ostensible authority held or exercised by him is on the person claiming against the principal. This, of course, can be shown by practice as well as by a written instrument. Thus, the question for consideration is whether on the evidence obtaining in the instant case, can it be said that Respondent 3 had an express or implied authority to act on behalf of Respondent 1 as their agent? If Respondent 3 had such an authority, then obviously Respondent 1 was bound by the commitment Respondent 3 had made to the appellant.”

23. In the case at hand, in the absence of a plea by the respondent No.1, that the respondent no. 2 was not its agent or that he had no authority to give schedule of delivery of consignment, the onus has not been discharged. Therefore, the respondent No.1 is bound by the promise held by its agent - respondent No.2, that the goods shall be delivered within one week and when the time schedule expired and the goods were, in fact, delivered after one and a half month, there was negligent delay in delivery of consignment.

24. The grievance of the appellant in this appeal is mainly on account of the NCDRC not allowing the entire claim for compensation by calculating the total weight of the subject consignment at 2507.5 Kg. multiplied by US \$ 20 per Kg. According to the appellant, in view of Rule 22 (2) of Schedule-III of the Carriage by Air Act, 1972 (as amended by the Hague Protocol) the amount thus calculated would exceed the sum of Rs. 20 lakhs. The appellant would thus claim the entire amount equivalent to US \$ 50070 without limiting it to Rs. 20 lakhs. However, on this point also, we approve and sustain the order passed by the NCDRC for the reason that in its complaint under Section 21(a)(i) of the Consumer Protection Act, 1986, the complainant/appellant has sought damages for Rs. 20 lakhs only as compensation for loss of business and reputation. It is a trite law that a party is not entitled to seek relief which he has not prayed for. For this proposition we may profitably refer to this Court's judgments in **Merrrs. Trojan & Co. Vs. RM.N.N. Nagappa Chettiar³, Krishna Priya Ganguly etc. etc. Vs. University of Lucknow & Ors⁴., Om Prakash & Ors. Vs. Ram Kumar & Ors⁵., Bharat Amratlal Kothari Vs.**

3 AIR 1953 SC 235

4 AIR 1984 SC 186,

5 AIR 1991 SC 409

***Dosukhan Samadkhan Sindhi & Ors*⁶, **Manohar Lal (Dead) by Lrs. Vs. Ugrasen (Dead) by Lrs. & Ors.**⁷**

25. In view of the forgoing reasons, we are not inclined to interfere with the Order passed by the NCDRC and resultantly both the Civil Appeals deserve to be and are hereby dismissed.

The parties shall bear their own costs.

Pending application(s), if any, shall stand disposed of

.....J.
(A.S. BOPANNA)

.....J.
(PRASHANT KUMAR MISHRA)

NOVEMBER 09, 2023.
NEW DELHI.