

**NATIONAL RICE AND CORN CORPORATION, PETITIONER, VS.
HONORABLE HIGINO B. MACADAEG, JUDGE OF THE COURT OF
FIRST INSTANCE OF MANILA, OVERSEAS FACTORS, INC., SOUTH SEA
SHIPPING COMP...**

G.R. No. L-9025. September 27, 1957

Ponente: REYES, A., J.

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REYES, A., J.:

This is a petition for certiorari to annul certain order: of the Court of First Instance of Manila in Civil Case No. 24972 of that court, entitled Overseas Factors, Inc., et al. vs. South Sea Shipping Co., Ltd., et al.

It appears that in September, 1954, the Overseas Factors Inc., contracted with the NARIC (National Rice and Corn Corporation) to supply the latter, at an agreed price with 7,500 tons of rice to be delivered at the NARIC warehouses in Manila not later than October 10 of that year. To cover the cost of the rice, including insurance and freight, the NARIC opened an Irrevocable foreign letter of credit for P1,574,745.00 in favor of a person to be named by the Overseas Factors.

To fulfill its undertaking under the contract, the Overseas Factors bought the necessary quantity of rice in Pakistan and then loaded it at Karachi for transportation to Manila on the S.S. "Ocean Trader" belonging to the South Seas Shipping Co., Ltd., of Hongkong, and represented in Manila by A. Magsaysay, Inc., a Philippine corporation. The charter party provided that the freight was "to be paid in cash without discount on signing bills of lading in British Pound Sterling transferable to the Owner at Hongkong within fourteen (14) days from the date of the vessel's departure from Karachi." The steamer arrived in Manila about the end of December 1954, but as the steamer's owners and agent refused to allow the rice to be unloaded without the freight being first paid, the Overseas Factors, together with the person who help; finance the rice transaction, brought suit in the Court of First Instance of Manila for the unloading of the rice, the number and title of the case being those already mentioned at the beginning of this opinion.

Upon the institution of that action in the lower court, a writ of preliminary mandatory injunction was issued, commanding the defendants to allow the cargo of rice to be unloaded^ the writ being later modified, by agreement of the parties, in the sense that the whole shipment of rice would be deposited in the NARIC warehouses on condition "that 2,000 metric tons thereof while deposited with the NARIC warehouse shall be set apart and placed under the constructive possession" of the carrier, subject to future disposition of the court for the satisfaction of such lien as the carrier might have over the whole shipment. And after the shipping company had filed its answer in the case with counterclaim against the plaintiffs and also against the South Sea Surety and Insurance Co., Inc. on the latter's bond guaranteeing the payment of the freight, the court, at the instance of the NARIC and with the conformity of the other parties, entered an order authorizing the sale of the 2,000 metric tons of rice set apart to answer for the carrier's lien, the proceeds of the sale to be deposited in court.

The NARIC commenced to dispose of the said 2,000 metric tons of rice but without depositing the proceeds

thereof in court. Called to account for this apparent disregard of a court order, the NARIC promised to make the deposit as soon as all the rice had been sold; but when ordered to make the deposit within 48 hours it asked for the suspension of the order until its petition to intervene in the case had been acted upon by the court. But the court denied the motion to suspend in an order from which the following is quoted:

"x x x It will be recalled that this order of this Court was issued in accordance with the agreement of the parties made in open Court. When such agreement was entered into, Manager Juan O. Chioco of the NARIC was present with his two lawyers, namely, Maximo Calalang and Bernardo R. Laureta. It was upon petition of these two lawyers and Manager Juan O. Chioco that the NARIC was given forty-eight hours within which to make the deposit instead of twenty-four hours as it was the intention of the Court. The NARIC, therefore,, was duly represented, but it seems now that an attempt is being made to dishonor an agreement made in open Court, This should not be encouraged because it affects the formality and sanctity of Court proceedings.

"Unless the deposit referred to in the Order of this Court dated March 29, 1955, is complied with within a reasonable time from today, the Court shall take such action as it will deem necessary against the guilty parties for non-compliance of such order."

The present, petition for certiorari impugns the validity of the various orders below for placing in custodia legis a portion of the disputed cargo or its proceeds to answer for the carrier's lien. But it would appear that such precautionary measure was ordered with the agreement of the parties. As a party to the agreement, it ill becomes the NARIC to now come to this Court and claim that the order was issued in excess of jurisdiction and with grave abuse of discretion. Having agreed to sell the rice on condition that the proceeds thereof would be deposited in court, it cannot, after selling the rice, go back on its agreement and retain the money obtained from the sale.

The petitioner claims that freight was already included in the purchase price paid by it to the Overseas Factors, That, however, even if true would not free the cargo of rice from the carrier's lien provided for in article 665 of the Code of Commerce if, as the carrier claims in the main case in the court below, the freight has not in fact been satisfied by the shipper. The fact that bond may have been given for the payment of such freight does not make it compulsory for the carrier to deliver the cargo before freight has actually been paid.

Petitioner has of late called attention to the fact that decision has already been rendered by the court below in the main case, holding that freight had already been paid in Karachi, Pakistan, before the shipment arrived in Manila, But we are also apprised by respondents that the decision is not yet final and we take judicial notice that the same is now on appeal to this Court. Pending resolution of that appeal, the proceeds of the sale of the rice earmarked for the carrier's lien must and should, as agreed to by the parties and ordered by the court, be judicially deposited to await its final disposition in the main case.

In view of the foregoing, the petition for certiorari is denied but without costs.

Paras, C.J., Bengzon, Padilla, Montemayor, A., Bautista Angelo, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.

Labrador, J., no part.

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