Supreme Court E-Library

the legality of his dismissal by filing a separate complaint for *illegal dismissal.*[8]

WHEREFORE, in view of the foregoing, the resolution of the National Labor Relations Commission dated October 25, 1985 is MODIFIED. Petitioner is hereby ordered to reinstate Rodolfo S. Caballo to his former position without loss of seniority rights and other benefits with three (3) years backwages, ₱5,000.00 as moral damages, and ₱2,000.00 as attorney's fees.

SO ORDERED.

Gutierrez, Jr., Bidin, and *Cortés, JJ.*, concur.

Feliciano, J., on leave.

THIRD DIVISION

[G.R. No. 80936. October 17, 1990]

EASTERN SHIPPING LINES, INC., *petitioner, vs.* **COURT OF APPEALS, HONGKONG & SHANGHAI BANKING CORPORATION, and CONSOLIDATED MINES, INC.,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; TRANSPORTATION LAWS; MARITIME COMMERCE; BILL OF LADING; DEFINED. — In *Macondray and Company Inc. v. Acting Commissioner of Customs* (62 SCRA 427 [1975]), it was held that a bill of lading is ordinarily merely a convenient commercial instrument designed to protect the importer or consignee. And in *Phoenix*

---

[8] *Nasipit Lumber Company, Inc. vs. NLRC, et al.*, G.R. No. 54424, August 31, 1989.

Supreme Court E-Library

Assurance Co., Ltd. v. United States Lines (22 SCRA 674 [1968]), it was held that as a receipt, a bill of lading recites the place and date of shipment, describes the goods as to quantity, weight, dimensions, identification marks, condition, quality and value.

2. ID.; ID.; ID.; ID.; THE GENERAL RULE REGARDING THE SURRENDER OF THE BILL OF LADING IS INAPPLICABLE IN CASE AT BAR. — Other pieces of evidence found in the records indicate that the parties knew that respondent CMI was indeed the owner of the goods in question, to wit: Firstly, even respondent HSBC expressly admitted in its complaint that "pursuant to the BILL OF LADING the shipment was issued 'To Shipper's Order.'" It never alleged therein that it was the consignee of the shipment in question. Similarly, by respondent HSBC's own documentary evidence, respondent CMI is the buyer-owner of the shipment, to wit: "'SOLD BY ORDER AND FOR ACCOUNT AND RISK OF MESSRS. CONSOLIDATED MINES INC. 6799 AYALA AVE. MAKATI, METRO MANILA PHILIPPINES.'" Secondly, the *Buyer* referred to in the Certificate issued by the shipper NANYO CORPORATION should perforce refer to CMI to wit: "We hereby certify that Original Consular Invoice had been airmailed directly to Buyer. We also certify that advance copies of Commercial Invoice Packing List and Bill of Lading were airmailed directly to Buyer." Thirdly, respondent HSBC has established by its own documentary evidence, more particularly, the CONSULAR INVOICE, that the *consignee of the shipment in question is respondent CONSOLIDATED MINES, INC.*. Hence, in view of the admissions of the respondent, exceptional circumstances allow a deviation from the general rule regarding the surrender of the bill of lading. The rule cannot always be absolute. On the other hand, petitioner-carrier Eastern Shipping Lines, Inc., averred in its answer as one of its special and affirmative defenses that respondent CMI is the consignee of the shipment in question and offered in its formal offer of evidence before the Trial Court the subject Bill of Lading as its "Exhibit 1". The Rules of Court provide that: "Admissibility of evidence. — Evidence is admissible when it is relevant to the issue and is not excluded by these rules." "Judicial admissions. — Admissions made by the parties in the pleadings, or in the course of the trial or other proceedings do not require

Supreme Court E-Library

proof and cannot be contradicted unless previously shown to have been made through palpable mistakes."

3. **ID.; ID.; ID.; ID.; IF THE CONSIGNEE CANNOT RETURN UPON RECEIVING THE MERCHANDISE THE BILL OF LADING SUBSCRIBED BY THE CARRIER, HE SHALL GIVE SAID CARRIER A RECEIPT OF THE GOODS DELIVERED.** — But assuming that CMI may not be considered consignee, the petitioner cannot be faulted for releasing the goods to CMI under the circumstances, due to its lack of knowledge as to who was the real consignee in view of CMI's strong representations and letter of undertaking wherein it stated that the bill of lading would be presented later. This is precisely the situation covered by the last paragraph of Art. 353 of the Corporation Code to wit: "If in case of loss or for any other reason whatsoever, the consignee cannot return upon receiving the merchandise the bill of lading subscribed by the carrier, he shall give said carrier a receipt of the goods delivered this receipt producing the same effects as the return of the bill of lading."

4. **CIVIL LAW; SPECIAL CONTRACTS; AGENCY; IF AN AGENT ACTS IN HIS OWN NAME, THE PRINCIPAL HAS NO RIGHT OF ACTION AGAINST THE PERSONS WITH *WHOM THE AGENT HAS CONTRACTED, NEITHER* HAVE SUCH PERSONS AGAINST THE PRINCIPAL; CASE AT BAR.** — That respondent HSBC is the more negligent party as against the petitioner-carrier becomes more evident when aside from having allowed respondent Consolidated Mines, Inc. to be designed in the bills of lading, as the party to be notified, it allowed the latter to be designated as the consignee in the Consular Invoice, the original of which was directly furnished to respondent Consolidated Mines, Inc. by and as certified to by the shipper Nanyo Corporation. With such vast powers, akin to an agent of respondent HSBC, respondent Consolidated Mines, Inc. acted within its authority, and even if it acted on its own; consequently, respondent HSBC may *not hold the petitioner-carrier liable because Art. 1883 of the* Civil Code provides that: "If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted, neither have such persons against the principal. In such case the agent is the one directly bound in favor of the person with whom he has contracted, as

Supreme Court E-Library

if the transaction were his own, except when the contract involves things belonging to the principal. The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent."

APPEARANCES OF COUNSEL

Quisumbing, Torres & Evangelista for petitioner.
Belo, Abiera & Associates for respondent HSBC.

D E C I S I O N

GUTIERREZ, JR., *J.*:

Assailed herein is the decision of respondent Court of Appeals in C.A.-G.R. CV-08707 *Hongkong & Shanghai Banking Corporation (HSBC) v. Eastern Shipping Lines, Inc.* (ESLI) dated June 30, 1987 as well as its Order dated November 24, 1987 denying herein petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration, which in effect affirmed the decision of the trial court holding the petitioner liable for the value of the goods it allegedly misdelivered as well as for damages and attorney's fees.

The basic facts are as follows:

On February 24, 1980, the Nanyo Corporation of Kobe, Japan shipped a cargo consisting of five (5) packages of supplies and materials for "1200 W x 2500 LMM Apron Feeder and 200 W x 5850 LMM Apron Feeder," (p. 22, *Rollo*), covered by a bill of lading. The cargo was loaded on board the S/S Eastern Adventure destined for Manila. The vessel is operated by herein petitioner-carrier.

The bill of lading was consigned to "Shipper's Order," with "Address Arrival Notice to Consolidated Mines, Inc. 6799 Ayala Avenue, Makati, Metro Manila, Philippines" (p. 22, *Rollo*). Consolidated Mines, Inc. (CMI) is one of the private respondents herein.

The cargo arrived in Manila on March 4, 1980.

Supreme Court E-Library

A few days later, on the basis of an Undertaking for Delivery of Cargo but without the surrender of the original bill of lading presented by CMI, petitioner-carrier released the shipment in question to CMI.

In said guaranty, CMI undertook to indemnify petitioner carrier "harmless from all demands, claiming liabilities, actions and expenses" (p. 5, *Rollo*).

About five (5) and a half months later, or specifically on August 19, 1980, the petitioner received from Hongkong and Shanghai Bank (HSBC) co-respondent of CMI in the case at bar, a letter (Annex B of complaint, p. 8, Original Records) stating thus:

"We refer to the above mentioned cargo and would advise that we hold title to the goods and have in our possession the full set of original bills of lading a copy of which is enclosed for your perusal.

"*We are unable to locate the cargo and it would appear that it has been released by you to Consolidated Mines, Inc.*

"We shall be grateful therefore if you will look into the matter and advise us." (Italics supplied.)

Considering that there was no reply from the petitioner, HSBC wrote another demand letter through counsel dated October 29, 1980 (Annex C of Complaint, p. 7, Original Records) in contemplation of a legal action against ESLI should it not make good HSBC's claim.

On December 23, 1980 CMI wrote a letter (Annex C of Third Party Complaint, p. 33, Original Records) to HSBC admitting that they received the shipment in question due to a guarantee executed by them, and requested HSBC that legal action be held off for at least thirty (30) days, promising to settle its account with HSBC from the funds it was expecting from Benguet Corporation.

On January 14, 1981 the petitioner-carrier wrote a reply to HSBC (Annex D of Complaint, p. 10, Original Records) as follows:

Supreme Court E-Library

"In this connection, we deeply regret releasing the cargo without the consent of your client. However, *we are constrained to release the same in view of the consignee's strong representation and guarantee that they will settle their obligation with the bank.* You must be aware of the fact that said consignee directly communicated with your client bank requesting for an extension of thirty (30) days within which to settle their account, to which we hope you will accommodate. Should consignee fail to comply with their commitments, please advise us immediately. (Italics supplied.)

CMI having failed to fulfill its promise, HSBC filed a complaint before the then Court of First Instance of Rizal against herein petitioner praying for actual and compensatory damages in the amount of $168,521.16 representing the value of the goods covered by the Bill of Lading, exemplary damage in the amount deemed just by the court and ₱50,000 attorney's fees plus expenses of litigation and judicial costs.

After two motions for extensions, the petitioner-carrier filed its answer with counterclaim alleging *inter alia* that:

x x x x x x x x x

"That it ADMITS paragraph 7 insofar as it alleges that defendant is duly bound not only to transport the goods entrusted to it safely but to deliver them to the person indicated in the Bill of Lading, which obligation was religiously and faithfully complied with by defendant, but DENIES the allegation that goods will be released only as soon as the original Bill of Lading is presented; The truth being that it is not mandatory for defendant to require the consignee to present the original Bill of Lading for as long as the consignee has proof that it is the owner and besides in this particular case, the consignee, Consolidated Mines, Inc. not only proved that it is the owner of the cargo but it has executed a Letter of Guaranty signed by its President, JOSE MARINO OLONDRIZ, which is hereto attached and marked as Annex "I" and made an integral part of this answer, which not only proved ownership over the cargo but further warrants that defendant herein is free from whatever liability;

"That it ADMITS paragraph 8 insofar as it alleges that the Bill of Lading covering the shipment of goods in question is made to "TO SHIPPER'S ORDER" the rest of the allegation is DENIED for lack of knowledge or information sufficient to form a belief as to the

Supreme Court E-Library

truth or falsity of the allegation therein contained and for further reasons stated in the Special and Affirmative Defenses;

"That it DENIES paragraph 9, the truth of the matter being there was no misdelivery, as the goods was received by the consignee and for further reasons stated in the Special and Affirmative Defenses";

x x x x x x x x x

SPECIAL AND AFFIRMATIVE DEFENSES

"BY WAY of Special and Affirmative Defenses, defendant respectfully states: —

"That plaintiff has no cause of action against defendant;

"That herein defendant is not aware that plaintiff is the consignee bank as the bill of lading only bears to "SHIPPER'S ORDER" and when the shipment arrived Manila on March 4, 1980 or even before its arrival, plaintiff did not notify defendant that they have a lien over the shipment;

"That answering defendant only became aware of that fact that plaintiff is the consignee bank sometime on August 19, 1980 thru their letter dated August 11, 1980, to which such notice was received by the defendant several months after the shipment in question was released to the consignee Consolidated Mines, Inc.;

"That answering defendant released the shipment in question to Consolidated Mines, Inc. pursuant to the provision of the last paragraph of Article 353 of the Code of Commerce which provide as follows:

> "*In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier because of its loss or any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading.*" (Italics supplied)

"That the consignee (Consolidated Mines, Inc.) in compliance with the above-cited provision, executed a Letter of Undertaking for Delivery of Cargo without surrendering the Bills of Lading signed by its President, MR. JOSE MARINO OLONDRIZ and the original Bill of Lading will be surrendered by them later on;

"That the consignee (Consolidated Mines, Inc.) acknowledges the receipt of the goods and likewise its obligation with the plaintiff by virtue of their letter dated December 23, 1980 signed by its President;

Supreme Court E-Library

"That plaintiff prior to the filing of this instant case is already fully aware of the fact that herein answering defendant is not liable to them but still insisted in suing defendant carrier without even impleading Consolidated Mines, Inc. who accepted their obligation;

"That speaking of negligence and bad faith, answering defendant maintains that plaintiff is the one that is negligent and in bad faith for the following reasons: —

"That at the earliest time possible when plaintiff became in possession of the original bill of lading, they did not at once notify the defendant carrier that they are the consignee bank and that they have lien over the goods for failure of Consolidated Mines, Inc. to pay the value of said goods. They only notify (sic) the defendant carrier after five (5) months from the arrival of the goods in Manila;

"Plaintiff is in bad faith in suing the carrier alone knowing fully well that it is Consolidated Mines, Inc. who has the obligation with them and same was acknowledged by its President per letter dated *December 23, 1980 addressed to plaintiff.*"

x x x x x x x x x

"WHEREFORE, it is most respectfully prayed of this Honorable Court that after proper proceedings judgment be rendered herein: —

a) Dismissing the complaint;

b) Ordering the plaintiff to pay defendant moral damages in the amount of ₱200,000.00;

c) Sentencing plaintiff to pay defendant the sum of ₱50,000.00 as compensatory damages, litigation expenses and attorney's fees and granting unto the defendant such other reliefs which are just and equitable in the premises."

(pp. 20-24, Original Records.)

On August 15, 1981, the petitioner-carrier filed a third party complaint against CMI seeking reimbursement from the latter of whatever pecuniary obligations the petitioner may be liable to HSBC, as well as moral damages.

During trial, CMI filed a Motion to Stay Action in view of the pendency of involuntary insolvency proceedings commenced

Supreme Court E-Library

against it in the meantime by its creditors which included HSBC. This motion was denied by the trial court.

On the basis of the evidence presented by HSBC and the petitioner, as CMI failed to present its evidence, the court on January 15, 1985 rendered judgment as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant Eastern Shipping Lines, Inc., ordering the latter to pay the sum of $168,521.16 or its equivalent in Philippine Currency representing the value of the goods covered by the Bill of Lading plus interest thereon from the filing of the complaint, until fully paid; ₱20,000.00 as and for attorney's fees and to pay the costs.

"With respect to the Third Party Complaint, judgment is hereby rendered in favor of the Third Party Plaintiff, Eastern Shipping Lines, Inc., and against the Third Party Defendant, Consolidated Mines, Inc., ordering the latter to pay all the liabilities of the former in favor of the plaintiff consisting of the value of the goods covered by the Bill of Lading in the sum of $168,521.16 or its equivalent in Philippine Currency plus interest from the filing of the Third Party Complaint until fully paid; attorney's fees of ₱20,000.00 and to pay the costs." (p. 27, *Rollo*)

Its motion for reconsideration having been denied, the petitioner appealed to herein public respondent Court of Appeals.

On January 30, 1987, the Court of Appeals rendered the decision now assailed, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED *in toto*.

"Costs against appellant.

"SO ORDERED." (p. 40, *Rollo*)

Hence, this petition for review on the following grounds:

"I

"The Court of Appeals erred in refusing to apply the principle that "Where one of two innocent persons must suffer, that person

Supreme Court E-Library

who gave occasion for the damages to be caused must bear the consequences'" — on the finding that petitioner carrier "committed gross error and negligence when it released the cargo to CMI" and without considering the fault, gross error and negligence of respondent Hongkong Shanghai Banking Corporation." (p. 7, *Rollo*)

"II

"Although irrelevant to the application of the principle or doctrine here involved, the Court of Appeals was unduly prejudiced by petitioner carrier's polite 'apologetic admission.'" (p. 16, *Rollo*)

The resolution of the dispute in the case at bar pivots upon the determination of who the consignee is in the bill of lading in question.

At the outset, the Bill of Lading which was issued by the carrier but contained articles furnished by the Shipper, shows on its face that the Shipment is consigned "TO SHIPPER'S ORDER" with "ADDRESS ARRIVAL NOTICE TO CONSOLIDATED MINES, INC. 6799 AYALA AVE. MAKATI, METRO MANILA, PHILIPPINES" (Annex A of Complaint, p. 7, Original Records). Nowhere did the Bill of Lading refer to respondent HSBC as the consignee or the one to be notified.

The foregoing information, without more, in effect makes respondent CMI for all practical intents and purposes the party named and ordered to receive the goods. The petitioner-carrier, not being privy to any transaction between HSBC and CMI, cannot be expected to look beyond what is contained on the face of the bill of lading in question and guess which of the many banks in Metro Manila or some other unrevealed corporation could possibly be the consignee. To consider otherwise would not be sound business practice as petitioner would be forced to wait for the real owner of the goods to show up, perhaps in vain. In *Macondray and Company Inc. v. Acting Commissioner of Customs* (62 SCRA 427 [1975]), it was held that a bill of lading is ordinarily merely a convenient commercial instrument designed to protect the importer or consignee. And in *Phoenix Assurance Co., Ltd. v. United States Lines* (22 SCRA 674 [1968]), it was held that as a receipt, a bill of lading recites the place and date of shipment, describes the goods as to quantity,

Supreme Court E-Library

weight, dimensions, identification marks, condition, quality and value.

It should likewise be noted that the shipment consisted of machinery materials and supplies for a mining company named in the bill of lading. In the absence of contrary instructions or at least knowledge of other facts, the carrier is not ordinarily expected to deliver mining equipment to an unnamed or unknown party lurking for several months.

Other pieces of evidence found in the records indicate that the parties knew that respondent CMI was indeed the owner of the goods in question, to wit:

Firstly, even respondent HSBC expressly admitted in its complaint that "pursuant to the BILL OF LADING (Annex "A" hereof) the shipment was issued 'To Shipper's Order.'" (p. 2, Original Records) It never alleged therein that it was the consignee of the shipment in question.

Similarly, by respondent HSBC's own documentary evidence, respondent CMI is the buyer-owner of the shipment, to wit:

"'SOLD BY ORDER AND FOR ACCOUNT AND RISK OF MESSRS. CONSOLIDATED MINES, INC. 6799 AYALA AVE. MAKATI, METRO MANILA, PHILIPPINES' (Exh. A-3, NANYO CORPORATION PACKING LIST; Exh. A-4 NANYO CORPORATION INVOICE; Exh. A-8, NANYO CORPORATION INVOICE." (pp. 68, 71-77, Original Records)

Secondly, the *Buyer* referred to in the Certificate (Exh. A-5) issued by the shipper NANYO CORPORATION should perforce refer to CMI to wit:

"We hereby certify that Original Consular Invoice had been airmailed directly to Buyer.

"We also certify that advance copies of Commercial Invoice Packing List and Bill of Lading were airmailed directly to Buyer." (p. 73, Original Records)

Thirdly, respondent HSBC has established by its own documentary evidence, more particularly, the CONSULAR

Supreme Court E-Library

INVOICE (Exh. A-6 dated February 25, 1980, issued in Tokyo, Japan by the Foreign Service of the Republic of the Philippines, that the *consignee of the shipment in question is respondent CONSOLIDATED MINES, INC.* as shown therein thus:

"Consignee	CONSOLIDATED MINES, INC.
"Address	6799 AYALA AVENUE MAKATI METRO MANILA PHILIPPINES" (p. 74, Original Records)

Hence, in view of the admissions of the respondent, exceptional circumstances allow a deviation from the general rule regarding the surrender of the bill of lading. The rule cannot always be absolute.

On the other hand, petitioner-carrier Eastern Shipping Lines, Inc., averred in its answer as one of its special and affirmative defenses that respondent CMI is the consignee of the shipment in question and offered in its formal offer of evidence before the Trial Court the subject Bill of Lading as its "Exhibit 1". (p. 146, Original Records)

The Rules of Court provide that:

"*Admissibility of evidence.* — Evidence is admissible when it is relevant to the issue and is not excluded by these rules." (Sec. 3, Rule 128, Rules of Court)

"Judicial admissions. — Admissions made by the parties in the pleadings, or in the course of the trial or other proceedings do not require proof and cannot be contradicted unless previously shown to have been made through palpable mistakes." (Sec. 2, Rule 129, Rules of Court)

But assuming that CMI may not be considered consignee, the petitioner cannot be faulted for releasing the goods to CMI under the circumstances, due to its lack of knowledge as to who was the real consignee in view of CMI's strong representations and letter of undertaking wherein it stated that the bill of lading would be presented later. This is precisely the situation covered by the last paragraph of Art. 353 of the Corporation Code to wit:

Supreme Court E-Library

"If in case of loss or for any other reason whatsoever, the consignee cannot return upon receiving the merchandise the bill of lading subscribed by the carrier, he shall give said carrier a receipt of the goods delivered this receipt producing the same effects as the return of the bill of lading."

In *State Bonding and Ins. Co. Inc. v. Manila Port Service*, (11 SCRA 400 [1964]), it was held that the arrival of shipment is deemed admitted by an allegation of delivery to the consignee.

Under the special circumstances of this case, equity favors the petitioner which proved that it was in good faith while both respondents cannot claim the same.

While the goods in question were released on March 4, 1980 the records show that HSBC received the original bill of lading, as per testimony of its witness Ederlina Crisostomo (TSN, p. 29, July 13, 1982), only on April 1980 or long after the goods had been released. This circumstance goes against the claims of HSBC.

Thus HSBC in its original demand letter stated, "We are unable to locate the cargo and it would appear that it has been released by you to Consolidated Mines, Inc." (Annex B of Complaint, p. 8, Original Records). This proves that it had foreknowledge of the prior release to CMI.

And to make things worse, HSBC, despite CMI's admission that it received the goods, sued only the petitioner-carrier while at the same time claiming for the value of the goods in the involuntary insolvency proceedings of CMI *which the Bank itself*, together with others, initiated. Only later developments led to this case.

Notwithstanding that respondent HSBC admits even in its memorandum filed with the trial court that Consolidated Mines, Inc. is the consignee (p. 168, Original Records), yet HSBC pinpoints liability to the petitioner carrier by relying on the provisions of Article 1736 of the Civil Code of the Philippines which provides that:

"The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession

Supreme Court E-Library

of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them, without prejudice to the provisions of Article 1738."

Respondent HSBC wittingly or unwittingly overlooked the fact that the same article uses the conjunction "or" in reference to whom the goods may be delivered, that is, to the consignee, or to the person who has a right to receive them.

That respondent HSBC is the more negligent party as against the petitioner-carrier becomes more evident when aside from having allowed respondent Consolidated Mines, Inc. to be designed in the bills of lading (Exhibits A, A-1 and A-2, pp. 65-67, Original Records), as the party to be notified, it allowed the latter to be designated as the consignee in the Consular Invoice (Exhibit A-6, p. 74, Original Records), the original of which was directly furnished to respondent Consolidated Mines, Inc. by and as certified to by the shipper Nanyo Corporation (Exhibit A-5, p. 73, Original Records). With such vast powers, akin to an agent of respondent HSBC, respondent Consolidated Mines, Inc. acted within its authority, and even if it acted on its own; consequently, respondent HSBC may not hold the petitioner-carrier liable because Art. 1883 of the Civil Code provides that:

"If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal.

"In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.

"The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent."

For almost six months from the arrival of the goods HSBC did not do anything to claim the cargo. It could not possibly be left around lying idle when on the face of the bill of lading, there was a named owner to be notified.

Supreme Court E-Library

On the other hand, CMI secured the release of the goods through misrepresentation before the petitioner-carrier without settling its account with HSBC and thereafter did not bother to present evidence before the trial court, leaving the petitioner holding an empty bag as it were. These circumstances also prove bad faith on the part of CMI.

Under the exceptional circumstances and applying especially strong considerations of equity, the petitioner did not commit any fault sufficient to render it liable to HSBC. On the contrary, it was HSBC and CMI who were obviously in bad faith in dealing with the petitioner-carrier.

WHEREFORE, the petition is hereby GRANTED and the decision of the respondent Court of Appeals dated June 30, 1987 is SET ASIDE as well as its orders dated November 24, 1987 denying the petitioners' motion for reconsideration. The complaint before the trial court is dismissed for lack of merit but without prejudice to Hongkong & Shanghai Banking Corporation pursuing its claims herein against Consolidated Mines, Inc. in the proper proceedings.

SO ORDERED.

Fernan, C.J., Bidin, and *Cortés, JJ.*, concur.

Feliciano, J., on leave.