
(2009) 05 RAJ CK 0029
In the Rajasthan High Court

Amarji

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1989 — Section 80

Citation : (2009) 4 RLW 3699 : (2009) 4 WLN 37

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—This first appeal has been filed by the appellant plaintiff challenging the adjudication made by the trial Court with regard to issues No. 3 and 5 against him vide judgment dated 15.12.1986.

2. Brief facts of the case are that the appellant-plaintiff filed suit for recovery of Rs. 38,857.31 with interest and cost against the defendant-respondent, in which, it is averred that he is doing business of mahua flowers and vide bill No. 23 dated 07.05.1981 at the rate of 155/- per quintal he purchased mahua flowers from M/s Sadguru Prasad Suresh Chander and the said goods was booked on the same day with the malgodown of the Western Railway vide RR No. 153631 dated 07.05.1981. Further, it is stated that the above-said goods was to reach Dungarpur but the goods did not reach Dungarpur, therefore, on 03.08.1981 vide registered letter the plaintiff-appellant informed about the whereabouts of the flowers but no reply was received by him. Thereafter, he served a notice u/s 80, C.P.C., read with Section 78B of the Railway Act; but, no reply to that notice was given by the respondent. Thereafter, the plaintiff filed the suit.

3. In the suit, the trial Court issued notice and on behalf of the respondent-defendant, written-statement was filed on 08.09.1982, in which, all the liabilities were denied. On the basis of the pleadings of the parties, the learned District Judge framed as many as six issues and, at the trial, evidence was led by both

the parties. Ultimately, the learned District Judge dismissed the suit vide the impugned judgment dated 15.12.1986, in which, although issues No. 1, 2, 4 and 6 were decided in favour of the plaintiff-appellant but issues No. 3 and 5 were decided against the plaintiff-appellant.

4. In this appeal, the plaintiff-appellant is challenging the adjudication by the trial Judge with regard to issues No. 3 and 5 on the following grounds:

(A) According to the appellant, the learned District Judge has gravely erred in law as well as on facts while dismissing the suit of the plaintiff.

(B) The learned District Judge has committed serious error in not taking into account the amended provisions of Section 80 of the Railways Act, as amended by Act No. 30 of 1961, therefore, it is crystal-clear that suit can be filed against the Railway administration, within which, the destination lies.

(C) The learned Court below has gravely erred in deciding issues No. 3 and 5 against the plaintiff because the perusal of record would reveal that notice u/s 78B of the Railways Act, read with Section 80, C.P.C., was given on 08.10.1981. Further, it is contended that the composite notice u/s 78A and 78B of the Railways Act can be given as held by this Court in the judgment reported in AIR 1964 Raj. 41.

On the above contentions the plaintiff is challenging the adjudication made by the learned trial Court with regard to issues No. 3 and 5.

5. Learned Counsel for the respondent, on the other hand, argued that the learned trial Court has rightly adjudicated the issues No. 3 and 5 in favour of the respondent-defendant because the goods in question was booked at Amethi (District Sultanpur) and it did not reach Dungarpur railway station and, admittedly, Amethi station was within the jurisdiction of Northern Railway which was not impleaded as party in the suit. Therefore, no error has been committed by the trial Court while deciding issues No. 3 and 5 against the plaintiff-appellant.

6. Further, it is argued that the finding of the learned trial Court with regard to issues No. 3 and 5 was given after considering various adjudications made by this Court and Hon''ble Supreme Court and, admittedly, after amendment in Section 80B of the Indian Railways Act, it is only provided that the suit can be filed at a place where the commodity is to be delivered but it is nowhere provided that at the time of filing the suit the railway station from where the goods was booked should not be impleaded as party. The learned trial Court while taking into consideration the amendment made in Section 80 of the Indian Railways Act adjudicated the matter elaborately in para 17 and held that even through the composite notice u/s 78A and 78B was given; but, the said notice was to be given to both the stations from where the goods was booked and where the goods was to be delivered. Here, in this case, admittedly, the plaintiff-appellant has impleaded the Union of India as a party through the General Manager, Western Railway of India, Church Gate, Western Railway, Bombay;

meaning thereby, the trial Court has rightly decided issues No. 3 and 5 against the plaintiff-appellant that he has not impleaded proper party, so also, notice u/s 80 and 78B of the Railways Act was not sent to the proper parties. Therefore, the adjudication made by the Court below does not suffer from any illegality.

7. I have considered the pleadings of the appeal including the grounds taken for the appeal, so also, arguments advanced by learned Counsel for the respondent.

8. In this appeal, admittedly, the following issues were framed for adjudication by the trial Court:

1- vk;k oknh }kjk [kjhknk x;k egq, dh dher 38]657-31 iSl Fkh\\

2- vk;k oknh nkos dh dye uEcj 7 esa ntZvuqlkj :- 45386-37 iSl crkSj gtkZ ikus dk vf/kdkjh gS\\

3- vk;k oknh us 78 oka jsyos ,DV o nQk 80 lh-ih-lh- dk uksfVI fn;k\\

4- vk;k oknh us uksfVI fn;s tkus ds ckotwn fMyhojh eky ugh fy;k] ;fn gks rks bldk D;k vlj gS\\

5- vk;k mRrjh jsyos vko";d i{kdkj Fkh] ftls "kkfey djus ls nkok pyus ;ksX; ugh gS\\

6- vk;k nkok tuvj eSustj ds uke ls yk, tkus ds dkj.k pyus ;ksX; ugh gS\\

7- nknjlh\\

9. Out of the above issues, issues No. 1, 2, 4 and 6 were decided in favour of the plaintiff-appellant whereas issues No. 3 and 5 were decided against the plaintiff-appellant. I have carefully considered the adjudication made by the trial Court with regard to issues No. 3 and 5.

10. Before the trial Court, admittedly, the suit was filed against the Union of India through the General Manager, Western Railways of India, Church Gate, Western Railway, Bombay. It is also admitted position of the case that the goods was booked at Amethi railway station (District Sultanpur) which was admittedly within the jurisdiction of Northern Railway. It is also admitted that the goods was to reach Dungarpur as per the agreement but the same did not reach Dungarpur; meaning thereby, Northern Railway in whose jurisdiction Amethi Railway station fell was not impleaded as party and, straight away, suit was filed against the Union of India through the General Manager, Western Railway. Therefore, even if the amended Section 80 of the India Railway Act may be considered the suit can be filed against the station where the commodity is to be delivered but it is nowhere provided u/s 80 that at the time of filing suit there is no necessity to implead the railway administration of the railway station from where the commodity was booked. Here, in this case, neither any authority of the Amethi Railway Station was impleaded as party nor the Northern Railway in whose jurisdiction Amethi station fell was impleaded. Likewise, no authority of Dungarpur Railway Station was made party. In this view of the matter, even if

issues No. 1, 2, 4 and 6 were decided in favour of the plaintiff, in fact, the suit cannot be decreed in favour of the plaintiff when proper party was not impleaded in the suit and, accordingly, issues No. 3 and 5 were rightly decided by the trial Court, so also, in these facts and circumstances, no liability can be fixed upon the respondent Union of India through General Manager, Western Railway. The learned trial Court after considering all aspects of the matter has rightly arrived at the finding that Section 80 of the Indian Railways Act does not provide that the railway station from where the goods was booked shall not be impleaded as party. It is not disputed before this Court that Amethi railway station from where the commodity was booked was not under the control of Western Railway. Therefore, the finding of the learned trial Court with regard to sending consolidated notice to respondent General Manager, Western Railway instead of Northern Railway does not require any interference because the finding given by the trial Court with regard to not impleading proper party is based upon cogent reason. In the aforesaid facts and circumstances, the finding of the trial Court on issues No. 3 and 5 is affirmed. No case is made out for interference.

Hence, this appeal is accordingly dismissed.