

(1974) 02 GUJ CK 0013
In the Gujarat High Court

Arcoy Industries

APPELLANT

Vs

Union of India (UOI) (W. Rly.)

RESPONDENT

Date of Decision : 11-02-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 80
Railways Act, 1890 — Section 78 B
Railways Act, 1989 — Section 78B

Citation : (1975) 16 GLR 174

Hon'ble Judges : Mohanlal Ujamshi Shah, J

Bench : Single Bench

Judgement

M.U. Shah, J.—The Petitioner herein is the original plaintiff who had filed Civil Suit No. 1521 of 1957 in the Court of the City Civil Judge, Ahmedabad. The suit was filed on 31-8-1967. It was a suit for compensation and damages for non delivery of the suit consignment of 20 drums of Silicate Soda booked from Bombay Dadar to Kankaria under Invoice No. 358, Railway Receipt No. 42562 dated 17-3-1967. The suit was instituted after giving requisite notices to the Railway Administration opponent herein u/s 78 B of the Indian Railways Act and Section 80 of the Code of Civil Procedure. After the institution of the suit, the said consignment appeared to have reached its destination on or about 28-9-1967. Thereupon, the defendant Railway's Agent, approached the petitioner-plaintiff to take delivery of the said consignment. The plaintiff informed the said Agent that as the said consignment had reached destination after a long time and as the consignment remained exposed to heat, sun, light, rain atmospheric pressure etc., the commodity must have lost its effectiveness for manufacturing purposes and must have become useless and not fit for commercial use and that the solution must have weakened and must have lost its chemical properties and potentialities. Thereupon, the defendant's agent assured the plaintiff-applicant that the delivery of the said commodity could be given on re-weighment and subject to laboratory test. Relying on the said assurance, the plaintiff took delivery of the said consignment on or about

24-4-1968 on payment of freight and on re-weighment by the Railway and subject to laboratory test. On re-weighment by the Railway, the said consignment weighed 62 Q. 10 Kgs. against the booked weight 64 Q. 10 Kgs. and thus there was a shortage of 2 Q. 50 Kgs. as the drums were leaky. On laboratory test it was found that the commodity had lost its effectiveness, its chemical properties, its potentialities, and its strength and usefulness for manufacturing purpose and consequently it was a total loss and the plaintiff had lost its full price of the said commodity Rs. 3442-36 Ps. and the freight paid by the plaintiff to the defendant.

2. The aforesaid development had taken place subsequent to the institution of the suit and as the plaintiff had taken delivery of the said consignment after filing the suit, claiming compensation and damages on account of nondelivery of the said consignment, the plaintiff found it necessary to suitably amend the plaint by alleging damages to the said consignment in suit due to late delivery and total loss of its value. The plaintiff, therefore, filed an application in the said suit No. 1521/67 for permission to suitably amend the plaint in the aforesaid circumstances. The learned Principal Judge of the City Civil Court, Ahmedabad heard the application and took the view that the proposed amendment introduces a new cause of action and changes the character of the suit and therefore, it would have the effect of nullifying the provisions of Section 80 of the CPC and therefore, the amendment cannot be permitted. He, thus, came to dismiss the application for amendment.

3. Now., it is clear that the suit as originally instituted was one for compensation and damages for nondelivery of the suit consignment of 20 drums of Silicate Soda. The plaintiff did not receive the delivery and, therefore, served the requisite notice dated 10-6-1967 u/s 78 B of the Indian Railways Act and also served the statutory notice u/s 80 of C.P. Code, thereby claiming compensation of damages on account of nondelivery of the said consignment. On condition that the consignment be weighed and be subjected to laboratory test the plaintiff subsequently took the delivery. The plaintiff finds that there was a leakage which amounted to a non-delivery of 2 Q. -50 Kgs. of the consignment and further that the laboratory test reveals that the goods had lost its effectiveness and thus there was a total loss. The claim thus remain for the loss, for damages and for compensation. It is difficult to understand how the nature of the suit or the cause of action change in such a situation. In my opinion, the cause of action remains the same, notwithstanding the fact that the plaintiff had taken delivery of the consignment, as in this case the plaintiff had taken delivery subject to reweighment and subject to a condition that the goods be put to a laboratory tests. The application for the amendment to the plaint states that there was a total loss because the goods had lost all its effectiveness.

4. The nature of the suit thus remains the same namely one for compensation and damages for nondelivery. It is difficult to see how such a proposed amendment would be said to introduce a new cause or to change the character

of the suit or to introduce a fresh cause of action. It is clear that the notice u/s 78B of the Indian Railways Act and that one given u/s 80 of C.P. Code by the plaintiff before the institution of the suit will enure for the claim which the plaintiff now makes under the proposed amendment. It is well settled that the amendment should ordinarily be allowed unless it changes the cause of action and the nature of the suit or prejudicially effects the other party to the suit. In my opinion, this is a case in which the subject matter of the suit remains the same and so does the cause of action. The character of the suit is not changed. The result is that the amendment as proposed in the application Ex. 24 must be granted and I order accordingly. The plaintiff to suitably amend the plaint within 4 weeks of the record and proceedings reaching the trial Court. Rule made absolute with no order as to costs in the circumstances of the case.