

(1992) 08 GUJ CK 0009
In the Gujarat High Court
Case No : F.A. No. 771 of 1977

Bhavnagar Chemical Works Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-08-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 34, 80, 96

Citation : (1993) 2 ACC 150 : (1993) ACJ 659 : (1993) 1 GLR 310

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : D.U. Shah, for the Appellant; R.M. Vin, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—In this appeal u/s 96 of the CPC ("Code" for short hereinafter), original plaintiff has questioned the legality and validity of the decree passed in Special Civil Suit No. 93 of 1975 by the Civil Judge (S.D.), at Bhavnagar, on 7.5.1977.

2. A few material facts leading to the rise of the present appeal may, shortly, be stated at this stage.

3. The appellant herein is the original plaintiff and the respondent herein is the original defendant. The parties are herein after referred to as "the plaintiff and "the defendant" for convenience sake.

4. The plaintiff is a limited company registered under the Indian Companies Act, having its registered office at Vartej, in Bhavnagar District. The plaintiff was the consignee in respect of a consignment of steam coal of grade I, weighing 111 tons, which was booked vide R.R. No. 244386 dated 1.12.1974. The plaintiff had booked the said consignment from Chirrimiri to Vartej, at Bhavnagar, in Gujarat State. The plaintiff company contended that it is the owner of the said consignment. The said consignment was transhipped into several metre gauge wagons to Sabarmati Railway Station. A part of the consignment was delivered

by the railway authority to the plaintiff. The plaintiff received delivery of only 20.8 tons of steam coal of grade I out of the suit consignment by a metre gauge wagon No. 12770. The plaintiff further contended that the railway authority had failed to effect the delivery of the remaining quantity of steam coal despite repeated intimations and requests made by the plaintiff company to the railway authority for the delivery of the remaining consignment. The plaintiff was informed by the railway authority that the remaining quantity of the suit consignment had been intercepted by the railway authority for its own purpose. It was the contention of the plaintiff that such interception made by the railway authority was unauthorised, illegal and unwarranted.

5. The plaintiff company thereafter served the railway authority with a notice u/s 80 of the Code and also u/s 78-B of the Indian Railways Act, 1890 ("Railways Act" for short) and claimed compensation of Rs. 22,550/- being the value of the goods undelivered as per the prevailing market rate of the steam coal of grade I in the month of December 1974. Since the railway authority failed to comply with the notice, the plaintiff company instituted Special Civil Suit No. 93 of 1975 against the original defendants.

6. The defendant appeared and, inter alia, contended in the written statements, at Exhs. 15 and 16, that the plaintiff company had no right to file the suit as it was not the owner of the suit consignment. It was denied that the action of the railway authority in intercepting the steam coal was in any way illegal or unwarranted. It was also disputed that the plaintiff had suffered loss of Rs. 22,550/- due to non-delivery of a part of the suit consignment. The railway authority also contended that the notices u/s 80 of the Code and u/s 78-B of the Railways Act were not legal and valid.

7. In view of the facts and circumstances of the case and pleadings of the parties, the issues were settled, at Exh. 17, by the trial court.

8. The plaintiff has relied on documentary and oral evidence. The railway authority did not lead any oral evidence.

9. On appreciation of the evidence on record, the trial court reached the conclusion that notice u/s 78-B was not legal and valid. Though the trial court found that the plaintiff company has proved damages to the extent of Rs. 12,978.87, it was held that the plaintiff is not entitled to the said amount as the notice u/s 78-B of the Railways Act was not legal and valid. Therefore, the suit of the plaintiff company came to be dismissed by the trial court. Hence this appeal at the instance of the original plaintiff company.

10. Following two questions emerge for consideration and adjudication at this juncture in this appeal:

(1) Whether the finding of the trial court that the notice u/s 78-B of the Railways Act is not legal and valid, is correct?

(2) If the said notice u/s 78-B of the Railways Act is legal and valid, or if not

required to be given, then what amount of compensation the plaintiff company is entitled to?

11. In order to appreciate the merits of this appeal, a few relevant, admitted facts emerging from the evidence on record may, shortly, be enumerated.

(i) There is no dispute about the fact that the plaintiff company is the consignee in respect of the suit consignment,

(ii) The suit consignment was in respect of 111 tons of steam coal of grade I.

(iii) The railway authority had intercepted a part of the suit consignment.

(iv) The plaintiff company was given delivery of only 20.8 tons of steam coal out of the suit consignment.

(v) Remaining 90.2 tons of steam coal out of the suit consignment had been intercepted and converted by the railway authority for its use.

(vi) Notice u/s 78-B of the Railways Act, which is dated 17.6.1975, was given and it was produced, at Exh. 35.

(vii) The suit consignment was booked on 1.12.1974, as per Exh. 31.

12. In the facts and circumstances of the present case, the conclusion arrived at by the learned trial court Judge that the notice u/s 78-B of the Railways Act was not legal and valid, is, totally, erroneous. The trial court held that the notice u/s 78-B of the Railways Act was not given within the statutory period of six months. It is an admitted fact that the plaintiff company had not delivered the notice u/s 78-B of the Railways Act, as produced at Exh. 35, within the period of six months. The suit consignment was booked on 1.12.1974 and notice u/s 78-B of the Railways Act, produced at Exh. 35, is dated 17.6.1975. It is true, prima facie, that the notice produced at Exh. 35, was not delivered within the period of six months, as held by the learned trial court Judge. However, it appears that the learned trial court Judge failed to appreciate the proviso of the said provision of Section 78-B of the Railways Act. Even if the notice u/s 78-B of the Railways Act is not delivered within the period of six months, as contemplated u/s 78-B of the Railways Act, then in that case, if any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations by or on behalf of the person claiming compensation within the period of six months regarding the non-delivery or delay in delivery of the goods, shall, for the purpose of the said section, be deemed to be a claim for compensation. In other words, if the defendant railway authority is informed or notified or any claim is made in writing by the plaintiff company in respect of non-delivery or short delivery of the goods, it shall be deemed to be a notice for the purpose of Section 78-B of the Railways Act, as it is very explicit from the plain perusal of the proviso. Unfortunately, this aspect was not examined and appreciated by the trial court.

13. It would be, therefore, necessary to refer to the provisions of Section 78-B of

the Railways Act, which read as under:

78-B. Notification of claims to refunds of overcharges and to compensation for losses. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf?

(a) to the railway administration to which the animals or goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred, within six months from the date of the delivery of the animals or goods for carriage by railway:

Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this section, be deemed to be a claim to the refund or compensation.

14. As could be seen from the aforesaid proviso that any intimation or information or even inquiry made in writing by or on behalf of the person claiming compensation or refund on account of non-delivery or delay in delivery of goods with sufficient particulars to identify the consignment, shall for the purpose of this section be deemed to be a claim for compensation or refund, as the case may be. In this connection, it would be interesting to refer to the evidence of the plaintiff company, at Exh. 30. The plaintiff company has examined its. Director, M.G. Shah, at Exh. 30, who has categorically stated in para 2 of his deposition that the company had demanded delivery of the remaining goods of the suit consignment from the railway authority by writing a letter dated 20.1.1975, to the Divisional Commercial Superintendent, Western Railway, Bhavnagar, true office copy of which is produced on record. Similarly, the plaintiff company had written a letter dated 10.3.1975 to the Divisional Commercial Superintendent, Western Railway, Bhavnagar and a carbon copy of which is produced on record. The plaintiff company had also sent a telegram on 7.12.1974 to the Western Railway, Bombay, demanding the remaining goods of the suit consignment from the railway authority. It is also found from the evidence on record that a letter dated 10.12.1974 was written to the railway authority in this behalf. It is also noticed from the evidence on record that the plaintiff company had written a letter, on 19.12.1974, in respect of remaining undelivered goods of the suit consignment. Copies of the said correspondence exchanged between the parties are also produced on record. The aforesaid evidence has gone uncontroverted, which eloquently speaks that the plaintiff

company had, repeatedly, not only informed and inquired but also demanded, in writing, to the railway authority, within the period of six months regarding non-delivery of the remaining quantity of suit consignment. Therefore, for the purpose of the provisions of Section 78-B of the Railways Act, by virtue of the proviso, there was sufficient notice for compensation made by the plaintiff company within the period of six months to the railway authority in respect of remaining part of the undelivered quantity of suit consignment.

15. In view of the aforesaid circumstances, the conclusion of the learned trial court Judge that the notice u/s 78-B of the Railways Act, produced at Exh. 35, was not legal and valid, is not only erroneous but illegal also. By virtue of the deeming fiction in the proviso, there was a notice to the railway authority in respect of suit claim within the period of six months. Therefore, the finding of the trial court on this point is required to be quashed. Since this Court has found that there was legal and valid notice under the provisions of Section 78-B of the Railways Act in view of the proviso, the alternate contention made by the learned Counsel for the appellant/original plaintiff that the notice was not required to be given to the railway authority as it was a case of admitted conversion of the goods for the use of the railway, needs no further examination in this matter, at this stage.

16. Obviously, it would lead to the appreciation of the second point as formulated above as to what should be the amount of compensation for non-delivery of remaining quantity of suit consignment by the railway authority to the plaintiff company. There is sufficient evidence on record to prove the market price of the undelivered suit goods at the destination on or around 27.12.1974. It is true that a part of the suit consignment was delivered within 10 days from the date of consignment from Chirrimiri to Vartej, at Bhavnagar and 20.8 tons of steam coal of grade I were delivered by the defendant railway authority to the plaintiff company at the destination station in metre gauge wagon No. 12770 and the remaining 90.2 tons of suit consignment was intercepted and came to be converted by the railway authority for its use. Therefore, what amount of compensation the plaintiff company should be entitled to for non delivery of 90.2 tons of steam coal of grade I?

17. It is true that the plaintiff, has not produced any direct and relevant evidence to show as to what was the market rate of the steam coal of grade I prevailing on or about 11.12.1974, when a part of the suit consignment had been delivered at the destination station by the defendant railway authority. Had there been some evidence of that date, it would have been the best evidence but in absence thereof it cannot be said that the court cannot look into the market rate which was prevailing at the near future date. There is clear evidence on record that the plaintiff company purchased the steam coal at the rate of Rs. 260/- per ton on 27.12.1974 and 30.12.1974. However, the plaintiff has claimed damages only at the rate of Rs. 250/- per ton but the trial court has not allowed the damages at the rate of Rs. 250/- per ton only because the plaintiff company failed to lead the

evidence as to what was the prevailing market rate of steam coal of grade I, at Bhavnagar, on 11.12.1974. With due respect to the learned trial court Judge, this conclusion is also erroneous.

18. It is found from the evidence of M.G. Shah, Director of the plaintiff company, that the prevailing market rate of steam coal, on or about 7.12.1974, at the destination station was Rs. 250/- per ton. The plaintiff company also proved that it had purchased steam coal at the rate of more than Rs. 250/- per ton. The plaintiff company had to purchase the steam coal, on 27.12.1974, from Bengal Coal & Coke Agency, Bhavnagar, at the rate of Rs. 265/- per ton. On 30.12.1974 the plaintiff company had to purchase steam coal from Khodiyar Coal Depot, at the rate of Rs. 265/- per ton and similarly the plaintiff company had also purchased steam coal from Magshaw Corporation, on 30.12.1974, at the rate of Rs. 265/- per ton. Thus, it is amply clear from the evidence on record that the prevailing market rate of steam coal of grade I was around Rs. 265/- per ton. The evidence of the plaintiff company is also supported by the evidence of Bharat Patel, Exh. 42 and also Rameshchandra Harivallabh Patel, Exh. 48, who has also produced entries from the accounts books. There is no reason to disbelieve the evidence of those witnesses. It is very clear that the plaintiff company had to purchase steam coal in the last week of December 1974 on account of failure on the part of the railway authority to deliver a part of the suit consignment.

19. Though there is evidence on record to show that the prevalent market rate in the last week of December 1974 in respect of steam coal at the destination station Bhavnagar was around Rs. 265/- per ton, the plaintiff company restricted its claim to Rs. 250/- per ton. There is not any clear and cogent reason assigned in the impugned judgment by the learned trial court Judge as to why the said rate of Rs. 250/- per ton, as claimed by the plaintiff company, should not be accepted. The trial court assessed the compensation at Rs. 12,978.87 relying on the "beejak" price (invoice value) of the suit goods not delivered to the plaintiff company by the defendant railway authority. Exh. 73 is the writing given by the advocates of both the parties showing the value of the suit goods as per "beejak" price (invoice value). Damages cannot be assessed only on the basis of the price mentioned in "beejak" (invoice). Beejak price does not include various items of expenditure, like freight charges, transportation charges, labour charges, godown charges, etc. Therefore, the value stipulated in the "beejak" (invoice) would not, precisely, reflect the amount of damages suffered by the consignee or the plaintiff company. Therefore, the learned trial court Judge has committed a serious error in basing his assessment of compensation only on the basis of value of the suit goods mentioned in "beejak" (invoice).

20. There is sufficient evidence on record to show that the plaintiff company would be entitled to at least an amount of Rs. 250/- per ton in respect of 90.2 tons of steam coal, which, admittedly, the railway authority converted for its use. Hence the plaintiff would be entitled to damages for non delivery of 90.2 tons of steam coal of grade I at the rate of Rs. 250/- per ton, which would come to Rs.

22,550/-. The plaintiff company has also claimed Rs. 1,800/- being the amount of interest at the rate of 12 per cent from the date of the consignment till the date of filing of the suit, on the amount of Rs. 22,550/-. This amount is also reasonable in the circumstances of the case and the plaintiff company is entitled to this amount. Obviously, the plaintiff company is also entitled to future interest at the rate of 12 per cent per annum on the amount of Rs. 22,550/- from the date of the suit, i.e., 23.10.1975, till the date of decree, that is, today (26.8.1992). The plaintiff company is also entitled to the interest at the rate of 6 per cent per annum from the date of the decree, i.e., from today (26.8.1992) till the date of payment by the defendant railway authority, in view of the provisions of Section 34 of the Code.

21. In view of the evidence on record and the legal propositions discussed hereinbefore, the impugned judgment and decree are hereby quashed and the suit of the plaintiff is ordered to be decreed. The plaintiff company shall be entitled to an amount of Rs. 22,550/- by way of the suit claim along with an amount of Rs. 1,800/- being interest on the aforesaid amount of the suit claim, from the date of the consignment till the date of filing of the suit, with running interest at the rate of 12 per cent per annum on the suit claim amount of Rs. 22,550/- from the date of the filing of the suit till today (26.8.1992). The defendant railway authority shall also pay interest at the rate of 6 per cent per annum from today (26.8.1992), that is, from the date of decree, till date of payment. Thus, the suit is decreed with costs and this appeal shall also stand allowed with costs.