

(1932) 03 CAL CK 0008
In the Calcutta High Court

B.N. Ry. Co. Ltd.

APPELLANT

Vs

Ravan Desai and Co.

RESPONDENT

Date of Decision : 01-03-1932

Acts Referred:

Railways Act, 1890 — Section 55

Citation : AIR 1932 Cal 877

Hon'ble Judges : Pearson, J; Mallik, J

Bench : Full Bench

Judgement

Pearson, J.—This appeal arises out of a suit against the B. N. Ry. Co., in connexion with a consignment of certain goods from Gondia to Shalimar in respect of which the plaintiffs' firm claimed a sum of money as damages for nondelivery of the goods against the Railway Company. The suit was decreed both by the first Court and by the lower appellate Court. The Railway Company are now the appellants before us.

2. A certain amount of confusion has been created in this case owing to the not altogether consistent attitude taken by the Bail-way Company in their defence. But the matter becomes clear enough when we look at the claim made by the plaintiffs' firm as made out in the plaint and in the evidence and the findings thereon arrived at by the Courts below. The goods were consigned from a station called Gondia under a railway receipt in which the weight of the consignment was shown as 107 maunds upon which weight the freight was to be paid. The goods arrived at Shalimar about 10th or 12th February 1927, and the allegation of the plaintiffs' firm is that on the 15th their man went to Shalimar and was "informed that the weight of the consignment as found on re-weighment at Shalimar was 140 maunds. That weight also appears on the face of the railway receipt. Thereupon the course taken by. the plaintiffs' firm was to request the Ry. Co's, servants to have a fresh re-weighment of the consignment in their presence on which, they said, they were prepared to pay the freight before the removal of the goods. But the Railway Company refused to do this and said that they must

either pay the freight on 140 maunds or go away. On this point material issues were framed as follows:

3. Was delivery of the consignment in suit applied for by the plaintiffs at Shalimar? Did the Railway Officials at Shalimar refuse to give delivery of the consignment unless freight on 140 maunds was paid for the same? Did the plaintiffs ask re-weighment of the consignment in their presence and offer to take delivery on payment of freight ascertained on such re-weighment? and Did the Railway Company (defendant) refuse the plaintiffs' demand for re-weighment; and the above offer of payment? If so, were they justified in doing so? Now it is necessary to remember that under the contract of carriage contained in the railway receipt, the Railway Administration reserve to themselves the right of re-weighment and re-calculation of charges at the place of destination and in such case the right of collecting before the goods are delivered any amount that might have been omitted or under-charged. The plaintiffs firm, in the present case, are bound by that part of the contract, The Railway Company had beyond all question the right of re-weighing the consignment which they did. The first Court in dealing with the matter finds upon the evidence that the plaintiffs had demanded a re-weighment of the consignment in their presence and offered to pay the freight which might be charged upon such re-weighment if the freight charged in the railway receipt be not accepted. The Railway Officials did not agree to this and the contention before the trial Judge was that the Railway Company were not bound to allow such re-weighment and were justified in their refusal. On the argument before the trial Judge he states that:

It was admitted by the learned advocate for the plaintiffs that under ordinary circumstances a consignee cannot insist on re-weighment before taking delivery but he contended that the plaintiffs' demand was justified in the exceptional circumstances in the case.

and the learned trial Judge in conclusion says that he thinks that the consignee might reasonably ask for a re-weighment in his presence. He therefore found that the conduct and action of the Railway Officials were not justified in refusing to give delivery of the goods or to re-weigh them. The learned Additional District Judge in appeal says:

The principal question involved is the plain, question of fact whether "the consignment was re-weighed at Shalimar. The learned Subordinate Judge had found it was and I should be reluctant to reverse his decision on a plain question of fact if there is substantial evidence on which he could so find. Such evidence there undoubtedly is.

4. The learned District Judge then goes on to say that it was argued that the defendant company had a right to re-weigh and that the plaintiffs had no right to refuse to take delivery unless the goods were re-weighed in their presence. He further goes on to say that they, that is to say, the plaintiffs,

did not demand re-weighment but merely that the company's right to re-weighment which was stipulated for on the back of the receipt should be exercised in their presence.

5. That is the reason why the learned District Judge has upheld the judgment of the trial Court. I may here say that it is difficult to see the difference between a refusal to comply with a request of the plaintiffs' firm for re-weighment in their presence which the plaintiffs' firm claimed as a matter of right and a refusal to exercise the company's right of re-weighment for a second time at the request of the plaintiffs' firm which the latter claimed as a matter of right. Either the plaintiffs' firm were entitled to ask for a fresh re-weighment or they were not. It was said in the argument before us that although no authority was forthcoming such a request for re-weighment on the part of the plaintiffs in a case such as the present one was eminently reasonable, and as far as I can see, quite possibly would be the course which might well be adopted between two reasonable persons. The question here is not that; but whether there was any legal liability upon the defendant company to comply with the demand of that kind made by the plaintiffs' firm. There are cases of this Court which have held that a refusal to allow re-weighment is not a refusal to give delivery. In this connexion the following cases may be referred to: *Ramjash Agarwalla v. India General Navigation and Ry. Co.* [1907] 41 I. C. 387 *Joga Nath Marwari v. E.I. Ry. Co.* [1918] 45 I. C. 933 and *Janaki Das v. Bengal-Nagpur By. Co.* [1912] 13 I.C. 509.

6. Having regard to the fact that under the contract the Railway Company were entitled to re-weigh and having regard to the finding that they did re-weigh, it is clear to me that they were entitled to demand what they said was due upon re-weighment and u/s 55, Railways "Act they were entitled therefore to demand that delivery should be taken by the plaintiffs' firm on payment of the actual freight without further re-weighment. If the delivery was taken by the plaintiffs' firm they could always have the goods weighed themselves for their own satisfaction and in the event of over-charge they were entitled to reclaim that from the company. The result is that in the present case the plaintiffs' firm was seeking to attach to their taking delivery a condition which they were not entitled to impose. The breach therefore is on the side of the plaintiffs' firm. In the circumstances the judgments and decrees of the Courts below must be set aside and the suit dismissed with costs in all Courts.

Mallik, J.

7. I agree.