

(1993) 03 OHC CK 0022
In the Orissa High Court
Case No : First Appeal No. 46 of 1978

Jayashree Chemicals Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-03-1993

Acts Referred:

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

Citation : (1993) 2 OLR 28

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : G. Rath, R.K. Rath, N.C. Panigrahi and G.S. Sarangi, for the Appellant; B. Pal, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Plaintiff is appellant against dismissal of suit for realisation of amount paid to the defendant.

2. Plaintiff is a manufacturer of caustic soda. Its products are transported through Railway by tank wagons for which freight is paid at the time of delivery of goods for carriage. Plaintiff was paying amounts as were being charged by the Railway Authorities. While so paying for the consignments, it found that more amount is being charged. Therefore it issued notice to the defendant and filed the suit for recovery of the amount which had been paid in excess alleging that fraud has been committed on the plaintiff. Its case is that freight is to be paid on the weight of carriage. Each tank wagon has stencil mark for carriage which would indicate the average weight a tank wagon is to carry. Freights ought to have been charged on the basis of stencil mark. In spite of it charge was collected for two quintals more in each wagon. This is excess charge which was detected by the plaintiff much later and immediately claim has been made.

3. Case of defendant is that there is no valid notice, the suit barred by limitation and on merit also the charges are Justified.

4. Plaintiff examined two witnesses and proved documents marked Exts. 1 to 31. Defendant has examined two witnesses and proved documents marked Exts. A to J. On consideration of these materials, trial Court has dismissed the suit both on merit as well as on the ground of limitation and issue of notice.

5. Although learned counsel for appellant challenges the judgment on all aspects, I heard learned counsels for both the parties on the question of satisfaction of precondition for refund first.

6. Mr. B. Pal, learned counsel for the respondent strongly relies on Section 78B of the Indian Railways Act, 1890 for the purpose Of defeating claim of plaintiff. Relevant portion of Section 78-B is extracted here- 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 delivery of the animals or goods for carriage by railways :

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 purpose of this section, be deemed to be a claim in the refund or compensation."

7. This provision makes it clear that for being entitled to refund, plaintiff is first to prefer a claim in writing within six months from the date of delivery of the goods for carriage by railway to the railway administration goods were delivered for carriage. Claim has not been preferred within the time stipulated. In the present case, the claim notices were served on 6-5-1971 in respect of amounts paid much prior to six months from that date. Therefore, the mandatory provision u/s 78-B has not been complied with by the plaintiff.

8. Learned counsel for the appellant submitted that the plaintiff is not making a claim of refund of over charge and accordingly, provisions of Section 78-B would not be attracted. As has rightly been indicated by the trial Court, in the notice u/ s 80, CP C itself plaintiff has referred to the charges as "extra freight collected from and beyond the marked capacity". In Exts. 3, 4 and 5 also it is stated that

the claim is in respect of payment of excess railway freight on account of excess end wrongful capacity stipulated on tank wagons. Excess charge is nothing other than over-charge. The meaning of over-charge has been clearly stated in the a decision of Gujarat High Court reported in Union of India Vs. Mansukhlal Jethalal, relied upon by trial Court. I am inclined to hold that on the facts and circumstances in this case, the refund relates to over- charges paid by the plaintiff for carriage of the goods. Therefore, plaintiff ought to have made a claim in writing to the defendant within six months from the date of delivery of the goods for carriage. The same not having been satisfied, suit for refund is not maintainable.

9. The next question is also of importance. It is related to notice u/s 80, CPC. Copy of the notice has been filed both by the plaintiff as well as by defendant as Ext. 6 and Ext. D. Persual of the notice indicates that it is not specific. Besides, notice ought to have been sent to the General Manager, S.R. Railway who is in charge of the Railway administration It has been sent to the Chief Commercial Superintendent of the S. R. Railway. There is so evidence that notice has been sarved on General Manager, Railways. Therefore, trial Court held that service of notice on Chief Commercial Superintendent is not a valid service of notice. In the circumstances of this case, I am inclined to hold that the finding is correct. Suit is also bad on account of absence of valid notice either u/s 80, CPC or u/s 78-B as discussed earlier.

10. In result, appeal is dismissed with costs.