
(2005) 08 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 4957 of 1990

Kishore Textiles

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways (Amendment) Act, 1961 — Section 72, 73, 74, 75, 76
Railways Act, 1890 — Section 72, 73, 74, 75, 76

Citation : (2006) 1 ALLMR 177 : (2006) 1 BomCR 443 : (2005) 107 BOMLR 35

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Nitin Mulye, for the Appellant;

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—This petition is directed against the judgment and order dated 22.06.1990 passed by the Bench of the Court of Small Causes at Bombay in Full Court Application No. 136/ 1987.

2. The petitioners had sent some cloth to a party at Bhagalpur. The cloth was terrycotton. That party i.e. M/s. Birag Traders Company rejected the cloth and returned the same to the petitioners. They handed over the said consignment to the railway administration at Bhagalpur for carrying and timely delivery to the petitioners at V.T. Bombay. The petitioners were shown as consignee.

3. The said consignment consists of 11 rolls of terrycotton cloth. Out of these, 7 rolls were short delivered at V.T. Bombay. The petitioners therefore, sued the railway administration for recovery of the loss suffered by them to the tune of Rs. 1516.20/-.

4. The learned Judge of the Small Causes Court at Bombay, dismissed the petitioners suit being regular suit No. 529/656 of 1981. The learned trial court held that the petitioners do not have a right to sue the respondent railways. The

trial court framed the following issues and answered them against the petitioners as follows :-

ISSUES FINDINGS 1. Do the plaintiffs prove that their firm is registered under the provisions of Partnership Act ? Yes. 2. Do the plaintiffs prove that they have right and title to sue the defendant ? No. 3. Whether the plaintiffs legally and validly served the notices u/s 78(b) of the Indian Railway Act and also u/s 80 of the Code of Civil Procedure before filing of the suit ? No. 4. Whether the defendants prove that they are not liable for the damages, if any sustained as per the provisions 77(b) of the Indian Railway Act ? No. 5. What order, relief and costs ? As per the final order.

5. Against the said findings, the petitioners preferred an Appeal before the Bench of the Court of the Small Causes at Bombay. Several contentions were raised. One of them was the petitioners right to sue the railways in their capacity as consignee. This has been held in favour of the petitioners by the appellate court. The appellate court also held that Section 78(b) of the Indian Railway Act was complied with and that notice issued by the petitioners is sufficiently complied with u/s 80 of the Code of Civil Procedure. The appellate court, however, dismissed the petitioners claim for non-compliance of Section 77B of the Indian Railways Act, 1890, which reads as follows:-

77B. Further provision with respect to the responsibility of a railway administration as a carrier of articles of special value. (1) Notwithstanding anything contained in the provisions of this chapter, when any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration to be carried by railway and the value of such articles in the parcel or package exceeds five hundred rupees, the railway administration shall not be responsible for the loss, destruction, damage or deterioration of the parcel or package, unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or the package for carriage by railway, and, if so required by the administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk.

(2) When any parcel or package of which the value has been declared under Sub-section (1) has been lost, destroyed or damaged or has deteriorated the compensation recoverable in respect of such loss, destruction, damage or deterioration shall not exceed the value so declared.

(3) A railway administration may make it a condition of carrying a parcel or package declared to contain any article mentioned in the Second Schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel or package actually contains the articles declared to be therein.

(4) The Central Government may, by notification in the Official Gazette, direct

that any article mentioned in the Second Schedule may, without being contained in any parcel or package, be delivered to a railway administration to be carried by railway and upon the issue of such notification, the provision of this section shall apply in relation to such article, as they apply in relation to any article mentioned in the Second Schedule and contained in any parcel or package.

6. According to the petitioners Section 77B has no application to this case. The facts necessary for considering whether Section 77B is applicable to the case in hand are that the consignment of terrycotton cloth was packed in a wooden case and entrusted to the railway administration at Bhagalpur. The section makes it mandatory to give a full and proper description of the consignment and the value thereof if the value of consignment exceeds Rs. 500/-. Admittedly, the value was not disclosed by the consignee on the goods at the time of its booking with the railways.

7. The only question is, therefore, whether the railway administration is responsible for the loss of consignment since the petitioners have not disclosed its value and contents in writing at the time of the delivery of the parcel or the package for carriage by railway. Mr. Mulye, the learned counsel for the petitioners submitted that 11 rolls of terrycotton cloth were packed in a wooden case and booked with the railways and therefore, it was not necessary for the petitioners to disclose its value on the case. Further, since the value of each roll was less than Rs. 500/- and it was not necessary to disclose the value of the goods. According to the learned counsel, it is each roll that constitutes an individual "parcel" or "package" as contemplated u/s 77B of the Act. The whole case is a "consignment". In other words, the submission of the learned counsel is that when an individual package, such as a roll of cloth is of a value less than Rs. 500/- Section 77B has no application. It is also submitted that therefore, the entire wooden case containing the rolls of cloth is not a parcel or package as contemplated by Section 7/B of the Act. The learned counsel relied on the following observations of the Division Bench of Patna High Court in para 16 in the case of Radha Kishan Nathani and Others Vs. Union of India (UOI) and Others, :-

(16) On a review of the above authorities, therefore, in my judgment it is plain that the true meaning, and correct interpretation, of the words "parcel or package" occurring in Section 75(1) of the Act is that the word "parcel" or "package" means the singular, and not the plural, and, it contemplates each individual "parcel" or package", and not the entire "consignment" or "luggage", consisting of several parcels or packages. But in order to form a "parcel" or "package" there should not only be one article, but two articles, and one should play the role of a container to the other. In its primary significance a "parcel" is a number of quantity of things put up together. A "package" or "parcel" is an entity by itself. The goods may be wrapped up in a single package or parcel, or they may be kept loose, in which case each article, with a container thereto, would be a different parcel or package.

In order, therefore, that Section 75(1) should apply, there should be a

declaration regarding the contents, and their value, both of each parcel or package separately, and not in respect of the entire "consignment" or "luggage", consisting of the different parcels or packages, booked under one luggage receipt u/s 74, collectively or in one lump. It is the parcel or package that is lost or destroyed which should have contained excepted goods of the value of more than Rs. 100, and in respect of which there should have been declaration of its contents and that value as required by Section 75(a) of the Act.

8. Section 75 (1) of the Railways Act 1890, referred to in the said judgment, is in pari materia with Section 77B as amended by Act 39 of 1961. Sections 72 to 78 of the Indian Railways Act, 1890 were substituted by Sections 72 to 78-B to the Indian Railways (Amendment) Act, 1961. Section 75 was replaced by Section 77-B, reproduced earlier.

9. I am of view that the said decision relied upon by the learned counsel does not help the petitioners in any way. The observations of the Patna High Court mean that the terms "parcel" or "package" contemplate an article packed in a container. These observations are made obviously since an article which is not in a container, cannot be described as a "package" or "parcel". In fact the division bench of the Patna High Court has observed that the goods may be wrapped up in a single package or parcel, or they may be kept loose, in which case each article, with a container thereto, would be a different parcel or package. It is clear that an article must be "packed" in some way, either by putting in a case or a wrapping of some form before it can be described as a "package" or a "parcel". Obviously in the present case, 11 rolls of terrycotton cloth were packed in a wooden case. This wooden case certainly constitute a package or parcel within the meaning of Section 77B of the Indian Railways Act and therefore, it was necessary for the petitioners to establish that the value of the goods were disposed to the Railways on the package. One of the obvious purpose of enacting Section 77B is to ensure that the railways are made conscious of the fact that they are carrying a parcel or package of a substantive value so that they exercise a high degree of care. This is not to say that the railways are entitled to be negligent where the package is of a lesser value.

10. In this view of the matter, I find no merit in the petition, which is hereby dismissed. Rule is discharged.