

(1998) 02 PAT CK 0031

In the Patna High Court

Case No : Appeal from Original Decree No. 800 of 1979

Krishna Kumar Gidra

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1998) 2 BLJR 1392 : (1999) 3 CivCC 37 : (1998) 1 PLJR 634

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—This appeal arises out of the judgment and decree dated 24.7.1979 passed by the Additional Sub-Judge, Araria, in Money Suit No. 54 of 1976/3 of 1979.

2. The plaintiff is the appellant and the defendant is the respondent. The suit was filed for realization of a sum of Rs. 18,397.50 paise for compensation and damages.

3. In short, the case of the plaintiff was that six wagons containing middling coal weighing 334.50 tones were entrusted to the Railway in perfectly good order and in sound condition and booked under Railway Invoice No. 1, 2, 3, 4, 5 and 6 and Railway Receipts No. 647077 to, 647082 all dated 18.10.1973 at Swang siding a station on the line of Eastern Railway for carriage at Railway risk and to carry the said consignment from there to Jogbani, a station on the line of North-East Frontier Railway and for delivery of them at the destination to the consignee named in the Railway receipts in the same quantity, quality and bulk as was originally entrusted to the Railway. The consignee of the suit consignments Mithila Vypar Nigam validly endorsed the Railway receipts in favour of the plaintiff for valuable consideration and thereby the plaintiff became the owner of the goods for value. On approaching for delivery of these suit consignments by

the plaintiff through his representative, the defendant Railway administration failed to deliver it and the station official endorsed on the aforementioned receipts "NR" indicating non-receipt of the consignment, on account of which the plaintiff suffered loss to the extent indicated above. The further case of the plaintiff is that despite notices u/s 78-B of the Indian Railways Act and Section 80 C.P.C., the claim was not settled hence the suit was filed.

4. The defendant did not admit the ownership of the goods represented by the Railway receipts and that the plaintiff is the proprietor of the business carried under the name of "Krishna Kumar Girdha". The service of the aforementioned notices were also not admitted. The alleged breach of contract, negligence and wrongful conversion on the part of the defendant in dealing with the consignment in suit were also not admitted. The booking of the alleged goods was also not admitted and, as such, according to the defendant, the suit is liable to be dismissed with costs.

5. Issues were framed. The main Issues were Issues No. (iii.) and (iv), namely, as to whether the suit is hit by Section 78-B of the Indian Railways Act and Section 80 C.P.C. and that whether the plaintiff is entitled to recover a sum of Rs. 18,397.50 paise.

6. The trial Court held that the notices u/s 78-B of the Indian Railways Act were received by the defendant, but the plaintiff failed to prove the services, validity and sufficiency of the notices u/s 80 C.P.C. on the defendant and, accordingly, held that the suit is hit by Section 80 C.P.C. As regards Issue No. (iv), the trial Court held that the voucher produced by the plaintiff is not sufficient to prove the alleged payment nor any other paper or document has been filed nor any other witness has been examined on his behalf to establish the alleged payment of the price of the coal and. thus, the trial Court found that the plaintiff has failed to establish that he paid the price of the suit consignments to Mithila Vyapar Nigam and that he is the owner of the suit consignments. Accordingly, the trial Court held that the plaintiff is not entitled to recover the price of the suit consignments and finally dismissed the suit, on contest, with costs.

7. It was submitted by Mr. Agrawal, learned Counsel, appearing for the appellant that in the absence of denial about the booking of the coal, vide aforementioned Railway Receipts (Exts. 5 to 5/e) by the Railway which, undisputedly, had been produced by the plaintiff before the Railway authorities for delivery of goods and that no other person ever claimed the said goods, the trial Court was not legally justified in rejecting the claim of the plaintiff only on the ground that none of the endorsements made by the Mithila Vyapar Nigam in favour of the plaintiff over Railway Receipts (Ext. 5 to 5/a) has been proved and exhibited. It was further submitted by Mr. Agrawal that the trial Court also erred in rejecting the claim of the plaintiff on the ground that the plaintiff has failed to establish the alleged payment of the price of the suit consignments to Mithila Vyapar Nigam and that he is the owner of the suit consignments.

8. With respect to Issue No. (iii) dealing with the alleged non-service of notice u/s 80 C.P.C., learned Counsel for the plaintiff-appellant submitted that in view of the finding of the trial Court that the notices u/s 78-B of the Indian Railways Act were received by the defendant, the suit could not be dismissed for want of service of notice u/s 80 C.P.C. It was further submitted by the learned Counsel for the appellant that in any view of the matter, the trial Court has committed serious error in holding that the plaintiff has hopelessly failed to prove the services, validity and sufficiency of the notices u/s 80 C.P.C. Ext. 3 clearly shows that the notices u/s 80 C.P.C. with respect to R.R. in question were received by the railway authority on 15th April, 1976 and Ext. 3/a, which is acknowledgment due, also shows about service of said notices through registered post.

9. I find substance in the submission of Mr. Agrawal that the notice u/s 80 C.P.C. was served with respect to the railway receipts in question. Mr. Ojha, learned Counsel appearing for the Railways has not been able to dispute the said submission as it evident from Exts. 3 and 3/a. He, however ventured to submit that the plaintiff failed to file the office copy of the said notice and that a time petition for filing of the office copy was rejected by the Court below as he failed to file it on 8.1.1979 when the issues were settled and even after the matter was adjourned on various grounds till 19.7.1979. In the said circumstances, according to Mr. Ojha, the trial Court has rightly held that the plaintiff failed to prove the service of notice and the suit is hit by Section 80 C.P.C.

10. I am unable to accept the said submission of Mr. Ojha. As I have already noticed above, bare perusal of the receipts (Ext. 3) and the acknowledgment due (Ext. 3/a) shows that the Railway Receipts (Exts. 5 to 5/e) were received by the railway authorities in the office of the Eastern Railway as well as North-East Frontier Railway which, in my opinion, was sufficient to prove the service of notice u/s 80 C.P.C. in the present matter. Learned Counsel for the respondents has failed to point out from any evidence led by the defendant that Exts. 3 and 3/a were not the notices u/s 80 C.P.C. with respect to the claim of the plaintiff in the suit. As such I hold that the plaintiff has proved the services, validity and sufficiency of the notices u/s 80 C.P.C. and the suit is, thus, not hit by Section 80 C.P.C. It has thus wrongly been held by the learned trial Court that the suit is hit by Section 80 C.P.C.

11. With respect to Issue No. (iv), Mr. Ojha, in reply to the submission of the learned Counsel for the plaintiff appellant, submitted that the most vital thing which was required to be proved by the plaintiff was about the ownership of the goods which he could get only on proving that the alleged payments were made by him to Mithila Vyapar Nigam which he completely failed to prove, as has rightly been held by the learned trial Court.

12. I am unable to accept the said submission of Mr. Ojha. Admittedly, there was no other claimant of the said goods nor there was any complaint received by the defendant about the loss of the Railway receipts (Exts. 5 to 5/e). The endorsements were made by Mithila Vyapar Nigam on the back of Exts. 5 to 5/e

to deliver the goods to the plaintiff. It has rightly been pointed out by the learned Counsel appearing for the appellant that Exts. 5 to 5/e mention the name of consignee as Mithila Vyapar Nigam. The details about the goods to be delivered at Jogbani are also mentioned. There is an endorsement made by the Manager, Mithila Vyapar Nigam on the back of the receipts (Exts. 5 to 5/e) under the rubber stamp in favour of the plaintiff. The endorsement made on the first page of the receipts shows that the Railway authorities never raised any objection with respect to the ownership of the goods which vested in the plaintiff after the endorsement made by the Nigam. On the contrary, I find that twice the Railway authorities either mentioned "NR" (i.e. not received) or "N/A" (i.e. not available). It is not the case of the defendant that they ever received any information about the loss of the said receipts from the Nigam nor is their case that the said receipts were not genuine. Moreover, the plaintiff produced the voucher (Ext. 4) to show that the payments were made to the Nigam, Under such circumstances, in my opinion, the learned trial Court was not justified in holding that the plaintiff is not entitled to recover the price of the suit consignments and deciding the issue No. (iv) against the plaintiff.

13. Accordingly, the impugned judgment and decree passed by the trial Court is set aside and the suit is decreed in favour of the plaintiff.

14. In the result, the appeal is allowed a but without costs.