
(1989) 08 GAU CK 0015
In the Gauhati High Court
Case No : F.A. No. 32 of 1980

National Insurance Co. Ltd. and Another APPELLANT
Vs
Union of India (UOI) RESPONDENT

Date of Decision : 02-08-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 80

Citation : (1990) 1 ACC 137 : (1990) ACJ 825

Hon'ble Judges : S.K. Homchoudhuri, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : S.S. Sharma, for the Appellant; P.P. Duara, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—A nationalised insurance company is fighting a wing of the Government, the Railways, to realise its dues about which there is no dispute. It is an admitted position that out of 1680 pieces of brass tubes costing about Rs. 5,68,000/-, 178 pieces of brass tubes were not delivered to the consignee who is the Assam State Electricity Board, plaintiff No. 2. The short delivery being an admitted position, the Railways have taken recourse to the technicalities to defeat the just claim of the insurer, plaintiff No. 1, which had to pay the price of the goods short delivered to the Electricity Board pursuant to an agreement entered into between them. As it is technicalities on which ground the plaintiffs have lost at the hands of the trial court, Mr. Sharma has, at the threshold, brought to our notice certain observations made in Hindustan Sugar Mills Vs. State of Rajasthan and Others, wherein the Apex Court stated that the Central Government should honour its legal obligation arising out of contract and not drive the citizen concerned to file a suit for recovery of the amount. In a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen, and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand. According to us, fairness and justice demand in the

present case that the suit filed by the insurer ought to have been decreed and the plaintiff No. 1 should not have lost on the twin grounds of it having no right to sue and the suit having been barred by limitation.

2. As, however, the plaintiff has lost on the above grounds, let us see whether the judgment and decree assailed can be sustained or not. A perusal of the impugned judgment shows that issue No. 2 which is relatable to the question whether the plaintiff has the right to sue and also cause of action, the learned trial court has stated that a joint claim was made by the two plaintiffs; but as plaintiff No. 2 had no longer any claim against the Railways as it has been paid the due amount by plaintiff No. 1, the question examined was whether plaintiff No. 1 can be said to have the right to sue. In this connection, it has been observed that the point to be examined is whether plaintiff No. 1 had acquired any valid title over the suit consignment. A perusal of Exh. 4 shows that out of the total amount of Rs. 5,68,083.83, 50 per cent of the same has been paid by way of advance. This would show that the plaintiffs had brought on record some materials to show that title in the goods had passed--may not be wholly, but definitely partly. The part-payment would show that the title in the goods no longer remained wholly in the consignor but had partly vested in the consignee. In view of this the decision cited by Mr. Duara, namely, *Union of India v. West Punjab Factories Ltd.* 1965 ACJ 602 (SC), has no application inasmuch as it has been stated in this decision that whether title to goods has passed from the consignor to the consignee depends on the facts of each case. It is agreed that the mere fact of somebody having been shown as consignee is not enough to conclude that the consignee had become the owner of the goods but then the payment of 50 per cent would definitely show that some steps had been taken by the consignee to get title of the goods passed in it. As the goods were ultimately delivered to the consignee, we are of the view that a right did accrue in the consignee to file the present suit. As the consignee had received the amount in question from plaintiff No. 1, we are satisfied that plaintiff No. 1 along with plaintiff No. 2 had inherited in them a right to sue. We would, therefore, hold that issue No. 2 was wrongly decided against the plaintiffs.

3. The next issue is issue No. 4 which is relatable to the question of limitation. Here the dispute between the parties is whether the delivery of goods had taken place on 28.12.1972 or on 23.3.1973. As the suit was filed on 18.5.1976 it was beyond the period of 3 years visualised by Article 10 of the Limitation Act, 1963 (new) if the cause of action had accrued on 28.12.1972. The suit would, however, be within time if the starting point of the limitation has to be taken as 23.3.1973, because 60 days' time would also be added to it which is required for giving notice u/s 80 of the Code of Civil Procedure. In this connection, Mr. Sharma has first drawn our attention to averments made in para 3 of the plaint wherein it was specifically stated that on 23rd March, 1973, at the time of taking delivery of the goods out of the consignment 178 pieces of brass tubes were delivered short in quantity and damaged in quality. This averment made in para 3 of the plaint has not been denied by the Railways in their written statement.

Because of this it is submitted by Mr. Sharma that if attention is confined to the pleadings alone this would show that the defendants had admitted the case of the plaintiff that the delivery of the goods had taken place on 23.3.1973. In this connection, our attention has been invited to Rules 2,3,4 and 5 of Order 8 of the Code of Civil Procedure. Mr. Duara, however, contends that though the case of the plaintiffs in the plaint was that the goods were delivered on 23.3.1973, PW 1 admitted in his cross-examination that 28.12.1972 was the date of delivery and it was on that date that the witness of the plaintiffs had put his signature on the Delivery Book. It is, therefore, contended that we should accept 28.12.1972 as the delivery date. In this connection, reference has also been made by the learned counsel to a Bench decision of this court in *Shree Shyam Stores v. Union of India* AIR 1971 gau 59 , which has held that the date of delivery should be taken to be one which was put in the Delivery Book. Learned counsel for the Railways further brings to our notice Exh. Ka which is dated 28.12.1972 in which it was stated that while taking delivery of materials some shortages were found of which mention has been made in the aforesaid exhibit. It is, therefore, contended that as knowledge about short delivery had been derived on 28.12.1972, the date of starting point of limitation should be taken from this date. Reference has been made in this connection to *Maduari K. Rengiah Chettiar and Co., Madurai Vs. Union of India*, also.

4. As against the above submission of Mr. Duara, Mr. Sharma has brought to our notice a document on record which was sought to be exhibited in the case, which permission was denied. It is a document emanating from the Station Master of Namrup at which point delivery was taken which reads as below:

Certified that the goods under RR 1/ 158371 dated 21.11.1972 has been delivered to the consignee, the Ex. Engineer ASEB/ NTPS on 23.3.1973 and there was a shortage of 178 pcs of tubes out of 872 pcs.

5. The above being the materials on record, we are of the view that 23rd March, 1973, should be taken to be the date of delivery; and if the limitation is counted from this date, it is an admitted position that the suit which was filed on 18.5.1976 was within the period of limitation.

6. In the aforesaid view of the matter, we are not persuaded to agree with the learned trial court in recording its finding on issue Nos. 2 and 4 against the plaintiff because of which the suit was dismissed. In our view, the suit merited to be decreed and we order accordingly. We also award interest at the rate of 6 per cent per annum from the date of filing of the suit till realisation.

7. In the result the appeal is allowed and the suit is decreed with costs throughout.