

(2006) 01 MP CK 0051
In the Madhya Pradesh High Court
Case No : First Appeal No. 238 of 1996

Nav Bharat Corporation

APPELLANT

Vs

Madhya Pradesh Electricity Board

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14, 20
Contract Act, 1872 — Section 191, 192, 73
Electricity (Supply) Act, 1948 — Section 12, 5
Limitation Act, 1963 — Article 55
Major Port Trusts Act, 1963 — Section 61, 62

Citation : (2006) ILR (MP) 600 : (2006) 2 JLJ 311 : (2006) 2 MPHT 72 : (2006) 2 MPLJ 306

Hon'ble Judges : Manjusha Namjoshi, J; K.K. Lahoti, J

Bench : Division Bench

Advocate : Ramji Vishwakarma, for the Appellant; R.S. Jaiswal and Shrivastava, for the Respondent

Judgement

Manjusha Namjoshi, J.

Aggrieved by the Judgment and Decree in Civil Suit No. 148-B/95 passed by IX Additional District Judge, Jabalpur, in the case of M.P. Electricity Board v. Nav Bharat Corporation, Bombay, the defendant appellant has preferred this appeal u/s 96 of the CPC.

It is not in dispute that appellant was duly authorized agent of the respondent to unload the goods imported by the plaintiff/respondent. The appellant was also authorized to send the goods to different places as directed by the plaintiff/respondent. It is also admitted that the appellant was to unload the goods at Port Bombay and other ports like Kandla, Calcutta, Madras and Cochin also.

The case of the plaintiff in substance is as under :

As per the directions of the plaintiff/non-applicant, the defendant/appellant out of 781.0706 MT of steel material imported through vessel Jiao Chung, 119 MT

material was not delivered by the defendant to the plaintiff due to his gross negligence and wilful misconduct. A part of it was wrongfully withheld and misappropriated by the defendants agent M/s Gopal and Kumar Pvt. Ltd., Calcutta and the other part of 47 bundles could not be delivered to the plaintiff due to the wilful negligence of the defendant. It was also pleaded that the said M/s Gopal and Kumar Pvt. Ltd. had left over 112 MT. Steel consignment of the plaintiff unclaimed in the port and held another 43 MT. steel in their godowns for non-payment of the dues. That the defendant did not give funds to clear the consignment by M/s Gopal and Kumar Pvt. Ltd. Out of 47 bundles of steel 40 were auctioned by the port authorities and seven bundles could not be auctioned. The plaintiff has given details of claim for damages as per Paragraph 27.

The defendant has denied the claim of the plaintiff and stated that it was plaintiff who was negligent in the matter and did not co-operated to clear the steel material from Calcutta Port. Since the defendant had no authority to unload steel from Calcutta port he had to appoint M/s Gopal and Kumar Pvt. Ltd. as their sub agent who neglected in unloading the goods. That the plaintiff has directly dealt with the sub agent, hence, there was an implied delegation, consent and implied authority to the sub agent to deal on behalf of the plaintiff. The defendant has further alleged that in violation of Sections 61-62 of the Major Port Trust Act the authorities without intimating to the defendant or/and the plaintiff sold few bundles by way of auction. Hence, the defendant has filed a Civil Suit in High Court of Calcutta after giving notice on 23rd September, 1985 which is yet pending. The defendant has denied the claim of the plaintiff.

The defendant has raised three additional grounds relating to territorial jurisdiction, limitation and authority of the person signing and verifying the plaint.

In appeal the judgment and decree of the Trial Court has been challenged on the ground that the Trial Court committed error of law and fact in decreeing the suit.

The questions arising in the case are decided under separate heads:

(A) whether the plaint is duly signed and verified ?

The first point to be decided is whether the officer in charge had authority to sign the plaint and verify the pleadings or not. The plaintiff has pleaded that as per the provisions of Section 5 read with Section 12 of the Indian Electricity Supply Act, 1948 the officer in charge V.K. Shukla, Divisional Engineer was appointed to sign and verify the plaint and pleadings. This fact has not been specifically denied by the defendant in his written statement. What the defendant says is no authority in writing has been filed by the plaintiff. But that has not been challenged in the statement of Shri V.K. Shukla (P.W. 1). There is no reason to disbelieve the version of Shri V.K. Shukla that he had authority to do so. In *Sarjuprasad v. Badriprasad* AIR 1939 Nag. 242, All India Reporter Ltd. and *Another Vs. Ramchandra Dhondo Datar*, and in *Netram v. Bhagwan* AIR 1941 Nag. 159, it was held that the words "duly authorized" in the proviso to Order VI Rule 14 need not be restricted to mean authorised by proper written authority or

by power of attorney. It may be oral also". Therefore, it is held that the plaint has been duly signed and verified by the person authorised in this behalf.

6 (B) Whether the Civil Court at Jabalpur has territorial jurisdiction to hear the Civil Suit ?

The Head office of the plaintiff is at Jabalpur. Tenders were invited, opened and finalised at Jabalpur and order was placed at Jabalpur and sent to defendant to execute the work by dak at Bombay (Now Mumbai). Thus, the contract was completed at Jabalpur. The goods were to be unloaded at different parts in India and the material was to be supplied to different places as per the direction of the plaintiff. Therefore, the cause of action also accrued at Jabalpur for any dispute between the parties. Therefore, as per Section 20(c) of the CPC. The Civil Court at Jabalpur has territorial jurisdiction to hear the case.

6 (C) Whether the suit is within limitation ?

As per Para 26 of the plaint the cause of action for the suit first arose on 24-2-1983 when the defendant informed the plaintiff regarding the non-delivery of 75 bundles due to some alleged dispute between the defendant and Port Trust authorities. Thereafter plaintiff and defendant had tried to resolve the dispute with the port authorities and ultimately defendant had to serve a notice on the port authorities on 23rd September, 1985 and instituted suit in Calcutta High Court. Thus, the defendant had not straight way defined the claims of the plaintiff for compensation. He was trying to mitigate the dispute and wanted to settle the matter at rest.

As per Article 55 of the Limitation Act Suit for compensation for the breach of any contract may be maintained within 3 years when the contract is broken. The suit was filed on 19-2-1986. It is also to be remembered that the word "compensation" in Article 55 of the Limitation Act has the same meaning as assigned in Section 73 of the Contract Act. The word "compensation" means monetary compensation which has become due on account of breach of contract. Thus, the compensation in any other way than by payment of money is not compensation for the purposes of Article 55 of the Limitation Act. In Mohammad Hussain Vs. Firm Andani Co., it was held that the word "compensation" under this Article (Article 55) is wide enough to include a claim for damages as well as refund of money paid as advance in pursuance of the contract. Hence, looking to the nature of the case, Article 55 of the Limitation Act will apply. Accordingly, the suit is within limitation.

6 (D) Does M/s Copal and Kumar Pvt. Ltd. had any authority to act as sub agent for the plaintiff ?

There was a contract between plaintiff and the defendant and the defendant was not at all impliedly or expressly authorised to appoint someone as sub-agent for plaintiff. As per Paragraph No. 4 of the plaint the defendant was also obliged to collect steel material from Calcutta port also. It was immaterial for the parties

that whether the defendant had any license or authority to work independently at Calcutta Port. Defendant had pleaded that since he had no authority or any license to work at Calcutta Port he had to take the services of M/s Gopal and Kumar Pvt. Ltd. Thus, it was defendant who of his own accord took the services of the said company on hire. Plaintiff was never consulted in this respect by the defendant nor plaintiff has consented to do so. Merely hiring services of the said Company by the defendant does not amount to mean authorising the company to work as sub agent. There is nothing on record to show that the said company acted as Sub agent for and on behalf of the plaintiff through the defendant. The sub agent should be clothed with precisely the same rights and incur precisely the same obligation and are bound to the same duties, in regard to his immediate employer, as if he was the sole and real principal. His position is much superior than that of a servant in the matter of discretion to be taken as and when needed. This is the sum and substance of Section 191 of the Contract Act which defines the term "sub-agent". What is needed u/s 192 of the Contract Act is the appointment of sub agent should be by approval of the Principal.

In the present case, it was defendant who appointed the said Company to work on its behalf in Calcutta Port as it had no authority to work there independently. Thus, for its convenience the defendant hired the services of the said Company. The plaintiff was not in knowledge of the fact that the defendant had agreed to pay commission or remuneration for services to be rendered by the Company. It was sure that the plaintiff had not to bear any expenditure on the said company. Merely because on one occasion the plaintiff wrote letter and made communication with the said Company, does not mean that the plaintiff accepted he said company as its agent or sub agent. Since that Company was working for and on behalf of the defendant in case of need, if the plaintiff has made any communication with it, this does not mean that plaintiff is estopped from denying any relation with the said Company. There was no act, omission or conduct of the plaintiff which could have given rise to presume that the said company was agent or sub agent of the plaintiff. Thus, the plaintiff is in no way responsible for the acts, omissions and misconduct of the said Company.

6 (E) Was defendant negligent in not taking delivery of the goods at Calcutta Port ?

The plaintiff had given full authority to the defendant to take delivery of goods at any Port concerned. As per agreement described in Para 4 of the plaint, the defendant had to take delivery at Calcutta Port also. The defendant did not disclose that he had no license to work at Calcutta Port. For his convenience he appointed Gopal & Kumar Pvt. Ltd. to take delivery of the goods.

P.W. 1 V.K. Shukla has in his Court statement given the details of the deliveries taken and not taken by the defendant which clearly show that the defendant and his so called agent or servant Gopal and Kumar Pvt. Ltd. Were negligent in not taking delivery of goods and allowing some material to be auctioned by the Port authorities. Thus, it was defendant who did not keep watch and supervision on

the work performed by the said Company that is, Gopal and Kumar Pvt. Ltd. Laxmikant (D.W. 1) has in his statement admitted that it was the duty of the agent to get the delivery of goods at a particular port and is cleared in a reasonable time. The defence of the defendant was the goods were to be arrived at Bombay Port but subsequently they were diverted to Calcutta Port. The defendant in his written statement admits that port authorities have right to divert the goods to be unloaded from one port to another as and when needed. Since he had no license to work at Calcutta Port he solicited the services of Gopal and Kumar Pvt. Ltd. for taking delivery. The defendant pleads that the port authority after unloading the goods were stocked at some place different from place where such goods are to be stored. The port authorities could not locate the place and ultimately the said stock was auctioned by the authorities. However, the defendant says in his pleadings Paragraph 17 that for illegal auction of goods by port authorities he has filed a Civil Suit in Calcutta High Court. But this has nothing to do with the plaintiff as plaintiff is not party to the case and for lack of vigilance of the defendant and his so called agent Gopal and Kumar Pvt. Ltd., the plaintiff can not be held liable for any loss or damages caused by them.

6 (F) Is rate of interest awarded by Trial Court is excessive ?

The Trial Court has awarded 15% interest on compensation claimed and also awarded future interest at the same rate. The rate of interest appears to be on higher side. It also appears to be penal. The reasonable rate of interest in normal course should not be more than 9 (nine) percent per annum. To that extent the decree of the Trial Court required modification. The plaintiff has claimed Rs. 9,17,420.42 as damages as per Para 27 of the plaint. Therefore, the plaintiff is entitled to have interest at the rate of 9 (nine) per cent per annum from 24-2-1983 to 23-1-1986. And since it was a commercial transaction plaintiff is also entitled to interest at the same rate from the date of institution of the suit that is from 19th February, 1986 till the recovery of the amount of compensation as claimed.

6 (G) Operative order of the Court.

With this modification of the judgment and decree of the Trial Court the appeal of the appellant/defendant is partly allowed. The appellant shall bear his own costs of the appeal and that of the respondent also. Counsel's fee as per Schedule or as certified and whichever is less.