(1972) 04 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal No. 1069 of 1965

Padam Parshad APPELLANT

Vs

The Punjab National Bank Ltd. RESPONDENT

Date of Decision : 03-04-1972

Acts Referred:

Citation : AIR 1974 P&H 22

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Judgement

1. This second appeal arises out of a suit brought by Padam Parshad against the Punjab National Bank Limited, Karnal, for the recovery of Rs. 284/-.

2. The plaintiff''s allegations were that he was a dealer in shoes and had sold 14 pairs worth Rs. 259.25 to Messrs. National Shoe Agency, Amritsar. The shoes were packed in a box and despatched through the Northern India Goods Transport Company on 12th December, 1960. The goods were consigned to self and on the same day, he entrusted the receipt to the defendant-bank with a Hundi for Rs. 259-25 which was drawn against Messrs. National Shoe Agency, Amritsar. The instructions given to the defendant were that the amount covered by the Hundi be collected from Messrs. National Shoe Agency, Amritsar, and the goods receipt then handed over to them. The goods did not reach the consignee and on enquiries it was found that somebody connected with the Bank either at Karnal or Amritsar had stolen the said receipt and taken delivery of the shoes. The loss to the plaintiff had, thus, occurred on account of the gross negligence of the Bank, and, therefore, it was liable to compensate him for the loss suffered by him.

3. The suit was contested by the Bank and it pleaded that the invoice was despatched from Karnal by ordinary post under postal certificate and it was lost in transit from Karnal to Amritsar. When the same was in the custody the postal authorities. The defendant was, therefore, not responsible for the loss. The matter was later on reported to the Police and was still under investigation.

Under the terms of the contract, the Bank was not responsible for such a loss. It was denied that the employees of the Bank had committed any negligence or had not acted like prudent men.

4. The suit was, in the first instance, decreed, but in appeal the judgment was set aside and the defendant was allowed to amend the written statement. The case was remanded for fresh decision and the parties were permitted to lead further evidence in connection with the additional issues framed. The trial Judge then dismissed the suit, holding that the defendant was not liable for the loss suffered by the plaintiff on account of the goods receipt having been lost. It was also held that the loss had not occurred due to any negligence of the Bank.

5. When the matter went in appeal before the learned Senior Subordinate Judge, Karnal, he affirmed the findings of the trial Court and dismissed the appeal. The plaintiff has come here in second appeal.

6. The terms of the contract between the parties are contained in Exhibit D-1. Condition No. 2 of the said agreement reads:

"You are authorised to send the bill and the accompanying documents and any other communication relating thereto from one place to another between your offices or the agents appointed under clause (1) above, by post. Neither you nor the agents will be responsible for any loss or delay arising from any mutilation or alteration of the bill or the accompanying documents or from the loss of miscarriage of the bill or any communication by post or any delay or error in any telegram exchanged between any of your offices or the agent."

7. One of the arguments raised by the learned counsel for appellant was that the documents, namely, the goods receipt and the Hundi were sent by the Bank admittedly by ordinary post under postal certificate, but it should have sent the same by registered post.

8. As would be clear from the language employed in Condition No. 2, quoted above, it was not settled between the parties that the documents had to be sent only by registered post and, therefore, strictly under the terms of the agreement, the Bank could send the said documents in the way it did.

9. It was then submitted that the documents of this nature should have been sent by registered post, because, even apart from the terms of the agreement, the Bank, which was the agent of the plaintiff, had to act like a prudent man, who would have ordinarily sent such like documents by registered post.

10. This agreement would not be available to the appellant, because in this particular case, the parties had to be bound by the terms of the agreement itself. It is not a case where there was no written agreement and the agent was supposed to act on his own. If, according to the agreement, the defendant was not required to sent the documents by the registered post, he was not duty bound to do so.

11. It was next argued that it had not been conclusively proved by the Bank that the documents were not received by the Amritsar branch and in that connection, learned counsel submitted that the Bank had not produced the receipt register of that place.

12. This matter was raised before the lower Appellate Court also and this is what was said by the learned Judge about it:

".......To discharge that onus the defendant had examined R.D.W. 1 Dwarka Dass. Clerk of the Punjab National Bank, Amritsar branch, who had stated on the basis of receipt registers that the relevant documents did not reach the Amritsar branch. The receipt register consists of three registers, two of which are B. C. (bills collection) registers, while the third one is D. D. (daily dairy) register. The learned counsel for the appellant argued that as admitted by that witness, he did not bring the register relating to ordinary letters and, therefore, it is possible that the documents in question might have been entered in that register relating to ordinary letters. This argument does not appear to be sound. The documents in question must have been entered in the B. C. (bills collection) register in which register the bills received for collection are entered. It must be presumed that ordinary course of business was followed by the bank in entering the relevant documents in the relevant registers."

13. No valid reason has been given by the counsel to show that this reasoning of the learned Judge was in any way incorrect.

14. Nothing else was urged before me.

15. The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs in this appeal.

16. Appeal dismissed.