

(2006) 02 PAT CK 0081

In the Patna High Court

Case No : M.As. No's. 251, 252, 253, 254 and 255 of 2001

Prakash Chand Sancheti

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11

Citation : (2006) 2 PLJR 371

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Advocate : Bajrangi Lal, Krishna Murari and Birendra Kumar, for the Appellant; Devendra Kumar Sinha and Shabbir Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Visa, J.—All these five appeals in which parties and question for adjudication arising out of similar facts are same, have been heard together with the consent of parties for final disposal at the time when they were listed under the heading for hearing under Order 41 Rule 11 of CPC (In short "CPC") and are being disposed of by this common order. The case of appellant in M.A. No. 251 of 2001 is that the appellant is proprietor of Maruti "Enterprises and it received short delivery of 413 bags of iodised salt which were booked under R.R. No. 408203 dated 22.3.1996 ex-Bvtd to Katihar. Because shortage was caused due to the negligence of railway administration, appellant put a claim of Rs. 41,300/- from respondent but he received a sum of Rs. 22,177/-. Appellant, by sending notice demanded payment of balance amount but when he did not get the balance, he made the claim before the Railway Claims Tribunal, Patna Bench but his application was dismissed. The facts of other appeals are also similar with only difference that in M. A. No. 252 of 2001, the number of short delivery of iodised salt is 356 bags and appellant received a sum of Rs. 15,393/-against his claim of Rs. 35,600/- in M.A. No. 253 of 2001, the number of short delivery of iodised salt was 219 bags and the appellant received a sum of Rs. 13,166/-against his

claim of Rs. 21,900/- in M.A. No. 254 of 2001, the number of short delivery of iodised salt was 223 bags and appellant had received a sum of Rs. 12,202/- against his claim for a sum of Rs. 22,300/- and in M.A. No. 255 of 2001, the number of shortage of bags of iodised salt is 228 bags and appellant received a sum of Rs. 10,213/- against his claim of Rs. 22,800/-. Since in all appeals, the claim application of appellant filed before Railway Claims Tribunal, Patna Bench were dismissed, therefore, appellant has preferred the appeals under consideration.

2. The case of respondent is that against the claim of appellant, a sum of Rs. 22,177/- in the case of M.A. No. 251 of 2001, a sum of Rs. 15,393/- in the case of M.A. No. 252 of 2001, a sum of Rs. 13,166/- in the case of M.A. No. 253 of 2001, a sum of Rs. 12,202/- in the case of M.A. No. 254 of 2001 and a sum of Rs. 10,213 in the case of M.A. No. 255 of 2001 was offered to the appellant by different pay orders and cheques of different dates with specific conditions that in case the offer was not acceptable, pay orders/cheques be not encashed and be returned to respondent and acceptance of offered amount will mean that the appellant has accepted the offer in full and final settlement of the claim. Case of respondent is that since the appellant has encashed the cheques in all the aforesaid appeals for the amounts which were offered to him for full and final satisfaction of claim, the question of making further claim by the appellant in the same matters does not arise.

3. The learned counsel appearing on behalf of appellant has admitted that offer of different amounts, as mentioned above, was made by the respondent to the appellant through different pay orders/cheques. He has further admitted that the appellant encashed the cheques sent by respondent but according to him since the cheques were not for the entire amount of claim and offer was for lesser amount, therefore, appellant, after receipt of pay orders/ cheques for lesser amount, sent notice to respondent for paying the balance amount within a period of ten days from the date of receipt of notice failing which claim application will be filed before Railway Claims Tribunal, Patna for the balance amount and when he did not get any reply, he had no option but to encash the cheques and file claim applications. The learned counsel of appellant has submitted that the Claims Tribunal failed to appreciate this fact. In reply, learned counsel of respondent has argued that offer to appellant was made with specific condition that if the offer was not acceptable to the appellant, he will intimate the office of respondent and will not encash the cheques and acceptance of amount will automatically amount to acceptance of offer in full and final satisfaction of the claim of appellant and he will be estopped from claiming any relief on this subject. The learned counsel of appellant although in the memos of appeals has stated that he had not received any letter containing conditions as stated above alongwith the cheques offered to him by respondent but during argument, the learned counsel of appellant has admitted that such letter was received. Not only this, by producing a copy of such letter which was issued to the firm of appellant in another case which is not under consideration, he has submitted that the

letter is in printed form which is generally issued in such type of matters to different parties after filling the blank columns in the form meant for names of parties, amount of claim, amount offered etc. This specimen of letter shows that columns 5 and 6 are to the effect that if offer is not acceptable to the party, the party is required to intimate this fact to the office of respondeat and it will not encash the cash orders of the cheques and acceptance of amount offered by the pay order will automatically amount to acceptance of the offer in full and final satisfaction of claim of party without reserve and party will be estopped from claiming any relief on the subject. The learned counsel appearing on behalf of appellant, relying upon a decision of a Division Bench of this Court in the case of Union of India vs. Dwarkadas Radhakrishna, reported in 1958 BLJR 504, has argued that if plaintiff accepts lesser amount in full payment under protest, suit for balance amount is maintainable. The facts of the aforesaid case, relied upon by the learned counsel of appellant, were quite different. In that case, plaintiff accepted lesser amount under protest and wrote a letter to defendant that lesser amount had been accepted by the plaintiff's firm under protest and the receipt of this letter was acknowledged by the defendant. In that view of the matter, it was held that there is no question of any estoppel and plaintiff's suit cannot be said to be not maintainable on that account. In the present case, a certain amount was offered to appellant against his claim with a condition that if the amount was not acceptable to plaintiff in that case, he was required to intimate this fact to the office of respondent and not to encash the cheque and acceptance of amount will automatically amount to acceptance of offer in full and final satisfaction of his claim without reserve and he will be estopped from claiming any further relief on that subject. The appellant encashed the cheques and received the amount which was offered to him by respondent in spite of condition put by respondent that in case he accepts the amount, it will automatically amount to acceptance of amount in full and final satisfaction. The impugned order shows that the respondent relief upon a judgment dated 19.5.2000 of Gauhati High Court in MA(F) No. 180 of 1996 and the Tribunal has quoted para-8 of the aforesaid judgment in its order from which it appears that the facts of the case were similar to the facts of the present cases and it was held that the offer of railways was either to be accepted or not accepted and in case of acceptance, cheques would be retained and encashed and in case of non-acceptance, the cheques were to be returned forthwith to railway office and encashment of cheque would be a conduct on the part of claimant leading to the inference that encashment of cheque was in full and final settlement of claim. Another judgment relief upon by learned counsel of appellant is reported in Amar Nath Chand Prakash Vs. Bharat Heavy Electricals Limited, which is also on the point that acceptance under protest of payment is not in discharge of contract because appellant, receiving the payment under protest was clearly making a reservation, also does not help the appellant. In the present case, if the offer was not acceptable to the appellant, he would not have encashed the cheques and would have returned it to respondent as per the condition put in the pay orders by which cheques were offered to him. The encashment of cheques by

appellant will definitely amount acceptance of offer in full and final satisfaction of his claim according to further condition which was also incorporated in the pay orders. I, therefore, find no merit in the appeals which are, accordingly, dismissed.