
(2017) 01 SC CK 0142

In the Supreme Court Of India

Case No : Special Leave Petition (C) No. 7962 of 2006

Raymond Cement Works

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Railways Act, 1989 — Section 74

Citation : (2017) 01 SC CK 0142

Hon'ble Judges : Jagdish Singh Khehar CJ; Dr. D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Manan Kumar Mishra, Senior Advocate, Ms. Anjul Dwivedi, Surya Kant, Pratap Venugopal, Ms. Surekha Raman, Ms. Niharika, Aman Shukla, Ms. Kanika Kalaiyarasan, (For M/s. K. J. John and Co.), Advocates, for the Petitioner; R.S. Suri, Senior Advocate, Shanker Divate, N.K. Karhail, Raj Bahadur, D.S. Mahra, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

SLP(C)No.7962 of 2006

1. We have heard learned counsel for the rival parties.
2. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel. The High Court while adjudicating upon the matter recorded as under :

"The word `endorsee" has been defined in Section 2 of the Act, 1989, according to which endorsee means the person in whose favour an endorsement is made, and in case of successive endorsements, the person in whose favour the last endorsement is made. Thus, on the factual aspect, it is apparently clear that out of ten cases mentioned above in the matter of two, the endorsements were made by the appellant in favour of M/s. East India Steels, Lucknow while M/s. East India Steels, Lucknow was consignee in the remaining cases. On behalf of M/s East India Steels, Lucknow, the receipts were further endorsed in the name

of Sunil Kumar and Dilip Kumar and, therefore, they were the last endorsee and in my opinion, in view of Section 74 of the Act, 1989 the right and title over the goods covered by the consignment passed on to the above last endorsee. The two authorities relied upon by the learned counsel for the appellant are not applicable to the present case. There was no identical provision in Section 74 in Railways Act, 1890 and, therefore, the judgments cited on behalf of the appellant are not attracted to the facts of the case and the appellant cannot derive any benefit therefrom. The Railway Claims Tribunal rightly held that the appellant did not have little (sic) over the property and thus, it did not have right to sue for claim."

We are satisfied, that the aforesaid determination is fully justified on a collective reading of Sections 74, 2(12) and 2(13) of the Railways Act, 1989. For the reasons recorded, we find no merit in the instant petition, and the same is accordingly dismissed.

SLP(C) No. 8052 of 2006

3. The controversy in the instant petition is identical to the one adjudicated upon, and decided by this Court on 17.01.2017, in SLP(C)No.7962 of 2006 (Raymond Cement Works v. Union of India).

4. The instant petition is accordingly dismissed, in view of the order passed in SLP(C)No.7962 of 2006 (Raymond Cement Works v. Union of India).

5. As a sequel to the above, pending interlocutory applications also stand disposed of.

SLP(C)No.8071 of 2006

6. The controversy in the instant petition is identical to the one adjudicated upon, and decided by this Court on 17.01.2017, in SLP(C) No. 7962 of 2006 (Raymond Cement Works v. Union of India).

7. The instant petition is accordingly dismissed, in view of the order passed in SLP(C)No.7962 of 2006 (Raymond Cement Works v. Union of India).

8. As a sequel to the above, pending interlocutory application also stands disposed of.

CIVIL APPEAL No. 677/17@ SLP(C) No. 1521 of 2007

9. We have heard learned counsel for the rival parties.

10. Leave granted.

11. The controversy which arises for consideration, is as to whether the appellant before this Court , in its capacity as a consignee, continued to have the right to raise a claim before the Railway Claims Tribunal. The High Court, while adjudicating upon the controversy, had relied upon Section 74 of the Railways Act, 1989 (hereinafter referred to as `the Act'), in an earlier decision rendered

by the High Court in F.A.F.O. No. 123 of 1997, to arrive at the conclusion, that the appellant lost its right, to raise a claim, on account of the fact, that the appellant had made an endorsement.

12. It is essential to record, before proceeding with the matter any further, that this Court while disposing of SLP(C) No. 7962 of 2006 (Raymond Cement Works v. Union of India) on 17.01.2017, has upheld the decision rendered by the High Court in F.A.F.O. No. 123 of 1997.

13. Insofar as the present controversy is concerned, the question, that arises for consideration is, whether the issue raised by the appellant could have been adjudicated upon on the basis of the determination recorded by the High Court in F.A.F.O. No. 123 of 1997? We are of the view, that the factual position dealing with the salient facts being clearly distinguishable, the judgment rendered by the High Court in F.A.F.O. No. 123 of 1997, could not have been taken into consideration, for the disposal of the claim raised by the appellant. We say so on the strength of the interpretation of Section 74 of the Railways Act, 1989. Section 74 of the Act is extracted hereunder:

"74. Passing of property in the goods covered by railway receipt.- The property in the consignment covered by a railway receipt shall pass to the consignee or the endorsee, as the case may be, on the delivery of such railway receipt to him and he shall have all the rights and liabilities of the consignor."

A perusal of Section 74 of the Act reveals, that for passing of property in the goods, covered by a railway receipt, by way of endorsement, it is essential, that the endorsement should satisfy the ingredients thereof, as defined in Section 2(13) of the Act. Section 2(13) is reproduced hereunder:

"2(13). "endorsement" means the signing by the consignee or the endorsee after adding a direction on a railway receipt to pass the property in the goods mentioned in such receipt to a specified person."

A perusal of the definition of the term `endorsement", leaves no room for doubt, that an `endorsement", within the meaning of Section 74, means only such `endorsement" wherein and whereby a direction is recorded that the property in the goods mentioned in the receipt, would pass to the endorsee. Insofar as the `endorsement" made by the appellant in the present case is concerned, no such direction was contained in the `endorsement". It is therefore apparent, that the endorsement recorded in the present case (on the railway receipt) would be inconsequential, as far as, Section 74 of the Railways Act, 1989 is concerned. In view of the above, we are satisfied, that the claim raised by the appellant before the Railway Claims Tribunal could not be declined, on the strength of Section 74 of the Railways Act, 1989.

14. The High Court clearly erred in denying the appellant to raise a claim before the Railway Claims Tribunal. We therefore, hereby, set aside the order passed by the High Court, and remand the matter back to the High Court, for adjudication

of the controversy on its merits, and in consonance with law.

15. The appeal stands disposed of, in the above terms.