
(1975) 03 PAT CK 0013
In the Patna High Court
Case No : Civil Revision No. 1201 of 1973

Rohtas Industries Ltd.

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-03-1975

Acts Referred:

Railways Act, 1890 — Section 80

Citation : AIR 1975 Patna 225

Hon'ble Judges : Sushil Kumar Jha, J

Bench : Single Bench

Advocate : Radha Raman and A.B. Ojha, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

Sushil Kumar Jha, J.—This application u/s 25 of the Provincial Small Causes Courts Act, has been filed by the plaintiff. Messrs Rohtas Industries Limited, against the order of the Small Causes Court Judge, Sasaram, in S. C. C. Suit No, 193/ 230 of 1970.

2. The petitioner had instituted the suit for recovery of a sum of Rs. 451.79 on the following allegation. A consignment of gypsum, contained in two wagons, was despatched from Jamsar to be carried to Dalmianagar. The railway receipt was duly endorsed by the consignor to the plaintiff-petitioner. The title to the goods, therefore, passed from the consignor to the consignee and the petitioner claimed to have become the owner of the consignment. It was further alleged that in spite of the demands made and the notices given to the defendant opposite party, no delivery was made. Such a nondelivery had been occasioned on account of the wilful negligence and misconduct on the part of the railway administration. The plaintiff as owner of the consignment, being the endorsee of the railway receipt and owner of the Bijak, has suffered the loss of the amount in regard to which the suit had been filed. It was further asserted the notices had been duly served u/s 78-B of the Railways Act and Section 80 of the Code of Civil

Procedure.

3. The Union of India, through the General Manager, Eastern Railway, put in a defence to the effect that the suit was not maintainable, the petitioner having no cause of action. The main defence was that the title to the goods in question had not passed on to the petitioner as a consignee or even as an endorsee of the railway receipt, the title to the goods in question had not passed to the plaintiff, whereby any right to sue could have accrued to it. It was also asserted that the non-delivery complained of was adjusted on the 15th August 1967, when delivery of wagon No. E. R. 83112 was given to the petitioner. The railway administration had not been guilty of any wilful negligence or misconduct, and that no notice had been served in accordance with law. as required by Section 78-B of the Indian Railways Act and Section 80 of the Code of Civil Procedure.

4. Quite a number of issues had been framed by the learned S. C. C. Judge, but it is not necessary to go into the details of each and every issue. Suffice it to say that all the issues, except one, were decided in favour of the plaintiff-petitioner. but the petitioner's suit was dismissed only on the ground that since no payment had been made by the consignee-petitioner, the mere endorsement of the railway receipt in its favour and Biiak will not confer upon it the title to the goods which will remain with the consignor. On this ground alone, the petitioner was non-suited.

5. The learned S. C. C. Judge, in deciding the main issue against the petitioner, placed reliance upon a Single Judge decision of the Bombay High Court in the case of Union of India Vs. Ramprasad Mulchand Agarwal, which, in its turn was based upon a decision of the Supreme Court in the case of Union of India (UOI) Vs. West Punjab Factories Ltd., .

6. Mr. Radha Raman. learned Counsel appearing for the petitioner, has urged that the Bombay decision, on which the Court below has relied, cannot be said to be a good law in view of a Bench decision of this Court in the case of Union of India v. Lachman Das Agrawal 1966 BLJR 619. Learned Counsel contended that the principle, effect and purport of the Supreme Court decision in the case of West Punjab Factories Limited (Supra) had been discussed by the Bench deciding the case of Lachman Das Agrawal. In that view of the matter, the learned Counsel for the petitioner submitted that the Bombay decision, referred to above, based on a wrong construction of what their Lordships of the Supreme Court had said in the above mentioned case, cannot be accepted as a good law, and that so far as this Court is concerned, it must be taken to be the settled law that mere endorsement of a railway receipt in favour of the consignee and the Biiak should be held to be sufficient to pass on the title to the goods from the consignor to the consignee.

7. Mr. P. K. Bose, learned Counsel for the opposite party, on the contrary, contended that there was no divergence of opinion in the two decisions one of this Court and the other of the Bombay High Court, referred to above. Learned

Counsel contended that both the decisions had proceeded upon the correct construction of the decision of the Supreme Court. I find much substance in the contention of Mr. Bose.

8. In the case of Union of India (UOI) Vs. West Punjab Factories Ltd., their Lordships laid down three propositions--firstly, that ordinarily it is the consignor who can sue, if there is a damage to the consignment, because the contract of carriage is between the consignor and the railway administration: secondly, where, however, the property and the goods carried have passed from the consignor to the consignee, the latter may be able to sue; and, thirdly, whether title to goods has passed from the consignor to the consignee depends on the facts of each case. These are the principles, which have been noticed in the Bench decision of this Court, referred to above. These are again the principles, on which the above mentioned Bombay decision is based. The principles are the same, it merely remains to apply these principles to the facts of the particular case.

9. In the case of Lachman Das Agrawal 1966 BLJR 619 (Supra), this Court held that since the railway receipt had been retired through a Bank and the demand draft was on the record, then the factum of such payment by the consignee along with the possession of the railway receipt and the Bill of Lading went to show that the title to the goods in question had passed to the purchaser before the loss had occurred. In the Bombay case the factum of payment of the price for the goods in question had not been established. So also in the present case it has not been established. It is worthwhile to notice, as has been observed by the learned S. C. C. Judge, that there is not a word either in the plaint or in the evidence that the petitioner had paid the price of the goods in question. This statement of fact could not be controverted by learned Counsel for the petitioner. In this state of affairs, I do not see any illegality in the finding of the learned S. C. C. Judge, namely, that in the absence of pleading and proof with regard to the payment of the price of the goods in question, it could not be said that title to the goods had passed on to the petitioner. There is thus no infirmity in the order of the Court below.

10. In the result, this application fails and is dismissed. In the circumstances of the case, however, I shall make no order as to costs.