(1927) 01 AHC CK 0008

In the Allahabad High Court

Secretary of State APPELLANT

Vs

Manak Chand and Sons RESPONDENT

Date of Decision : 19-01-1927

Acts Referred:

Citation : AIR 1927 All 393

Hon'ble Judges : Lindsay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Lindsay, J.—This is an application u/s 25 of the Small Cause Courts Act. The application is made by the Secretary of State for India through the Agents, East Indian Railway and Great Indian Peninsula Railway. The opposite party is a firm, Manak Chand & Sons, carrying on business at Agra.

2. It is not the practice of this Court to interfere in cases under the Small Cause Courts Act with findings of fact, but in the present case I am satisfied after a perusal of the record and hearing counsel that the judgment here is absolutely perverse and ought not to be maintained. It would be a gross injustice to the applicant here to allow this judgment to stand. The facts are very simple. A Bombay firm sent a large parcel of goods to this firm of Manak Chand & Sons, and apparently, when the parcel arrived at Agra it was found that it had been tampered with. The plaintiff firm, as they were entitled to do, applied to the Railway for open delivery, and it is common ground that the parcel consigned to this plaintiff firm was opened on the Railway premises in the presence of the Head Goods Clerk, Balwant Singh. It was found at the time the contents of the parcel were examined that two items of goods had been extracted, namely, 10 yards of tweed at Rs. 9 a yard and 12 yards of white cashmere at Rs. 10 a yard.

3. It is to be remembered that at the time this open delivery was made the plaintiff firm brought the invoice of the goods to the Railway premises. Balwant Singh, the Head Goods Clerk, states in his evidence that an invoice in English

was produced before him of which he made a copy. This copy is on the record and has been sworn by Balwant Singh to be an exact copy of the invoice which the plaintiff''s agent produced to him. It was found on an examination of this invoice that the consignment of goods which was sent to this firm of Manak Chand at Agra contained a large number of silk articles. From the invoice which is on the record I find that the following articles were mentioned in it:

Rs. a. Rs. 2 pieces of silk at 48 0 each value ... 96 2 silk reels at 15 0 each " ... 30 2 " " 12 8 " " ... 25 ? doz. handkerchiefs 58 0 a doz. " ... 29 ? " " 60 0 " " ... 30 1 piece of silk ... ... 55 1 " " ... ... 52 1 " " ... ... 58 4. On this invoice, therefore, it is clear that this parcel sent to the plaintiff firm contained silk goods of the value of over Rs. 100. When the present claim was brought against the Railway for compensation for the loss of the two items described above, the Secretary of State pleaded Section 75 of the Railways Act and refused to allow compensation. Section 75 of the Act lays down that:

when any articles mentioned in the second schedule (including silk articles) are contained in any parcel or package delivered to a Railway Administration for carriage by Railway, and the value of such articles...exceeds Rs. 100, the Railway Administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared...at the time of the delivery of the parcel or package for carriage by Railway.

5. I have already mentioned that the Head Goods Clerk was examined and deposed to having made the copy of the invoice with his own hand. Not a single word was put to this Head Clerk in cross-examination for the purpose of showing that the invoice as put in by him was erroneous in any respect. On the other hand, a servant of the plaintiffs, went into the witness-box and produced, what is called, an invoice in Hindi. This it was said had been prepared by a Munib who was dead. The plaintiffs'' witness stated in examination-in-chief that the consignment of goods sent to Agra contained no silk. He modified this in cross-examination by saying that there were silk goods in the consignment, but that they were imitation.

6. It further appears that a commission was issued to Bombay for the examination of the firm which had sent the goods to these people at Agra. The record of the answers which were given to the interrogatories proves to my mind conclusively that the statements made by the Bombay firm were altogether false and were made with the object of assisting the plaintiff firm at Agra in prosecuting a false claim. It is not to be believed for one moment that this Bombay firm could not produce their books or a list of their invoice. They admit that they deal in silk and that silk goods were despatched by them from time to time to the plaintiff firm. They tried to make out that they could not produce their books of account as they had been sent to a Court at Indore, and their answer, therefore, was that they were unable to say whether or not this particular consignment which was sent to the plaintiffs contained silk goods. I

have no hesitation in saying that these answers were absolutely dishonest and ought not to be believed for one moment. They were cross examined apparently by the plaintiff firm for the purpose of showing that the silk articles supplied were China or Japan silk articles. It may be the case that the silk articles mentioned in the invoice were China or Japan silk but China or Japan silk is not necessarily artificial silk, which is the case the plaintiffs were trying to put up.

7. The Judge of the Small Cause Court in his judgment says that the burden of proof in this case lay on the defendant, as it undoubtedly did, but he is altogether wrong in saying that the defendant did not prove his case. It is inconceivable to me that the Judge should have arrived at a finding of this kind without discussing at all the question of the invoice which has been put in by the Head Goods Clerk. There is not a word in the judgment about this invoice. The Judge does not say that he disbelieves the Head Goods Clerk, and, as I have pointed out already, the Goods Clerk was never cross-examined regarding one single item. On the evidence as produced in the Court, below, this judgment of the Small Cause Court is a perverse judgment which I have no hesitation in setting aside. The claim made by the plaintiffs was a fraudulent claim and ought to have been dismissed. I allow this application, therefore, set aside the decree of the Court below and direct that the plaintiffs'' claim do stand dismissed with costs. Costs in this Court will include fees on the higher scale.

