
(1931) 01 AHC CK 0017
In the Allahabad High Court

Secy. of State

APPELLANT

Vs

F. Harnarain Chand Bilangaj

RESPONDENT

Date of Decision : 20-01-1931

Acts Referred:

Citation : AIR 1931 All 337

Hon'ble Judges : Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sen, J.—This is an application for revision of the order of the learned Judge of the Court of Small Causes at Agra, dated 31st May 1930, allowing the plaintiff's claim against the defendant-applicant for Rs. 170.

2. Two waggons of coal were despatched from Musanda by a Colliery Company to a firm at Agra carrying on business under the name and style of Krishna Ice-Factory. The railway receipt was endorsed by the consignee in favour of Har Narain Bengal Chand, who are the plaintiffs in the action. The plaintiffs' claim against the Railway Company was founded upon tort. They alleged that the Railway Company did not deliver the goods to the consignee and unlawfully sold the goods to a third party without any statutory powers.

3. The goods were consigned from Musanda on or about 6th March 1929 and reached Agra on 13th March. No notice of the arrival of the goods was sent by the Railway Company to the consignee. One of the questions in controversy in the case is as to whether the Railway Company was bound under the statute to give notice of the arrival of the goods immediately on the date of its arrival. The goods appeared to have been unloaded by the consignee, but they were not removed from the railway premises. This however is a point on which the finding of the learned Judge is by no means very clear. On 16th March 1929, the Railway Company asked the Krishna Ice Factory to remove the goods and to pay certain charges. A protracted correspondence followed. The Krishna Ice Factory did not

pay either the railway freight or the wharfage claimed. The result of it was that the Railway Company sold the goods at auction on 29th June 1929 for Rs. 320. The present suit was instituted against the Railway Company for recovery of the value of the goods so sold and Rs. 6 for the costs of the notices of correspondences etc. The learned Judge of the Court of Small Causes has decreed the claim. It is contended that the learned Judge has misconceived the nature of the powers possessed by the Railway Company and has misapplied them to the case in hand. Reliance has been strongly placed upon Section 55 (2), Railways Act (9 of 1890) which runs thus:

When any animals or goods have been detained under Sub-section (1), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least 15 days notice of the intended auction, published in one or more of the local newspapers, or where there are no such newspapers, in such a manner as the Governor-General in council may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

4. The Railway Company prior to putting up the goods for sale ought to have published a notification in terms of this provision in one or more of the local newspapers. For some reason or other which has not been explained, the notification was not published in any one of the newspapers of Agra. It was published in the "Bengali" of Calcutta and in the "Vartman" of Cawnpore. Clearly therefore there was no compliance with the terms of this section. The Railway Company, not having fulfilled one of the conditions no sale of the goods could validly take place. The claim of the plaintiffs against the Railway Company was therefore well founded. Mr. Uma Shankar Bajpai for the Railway Company contends that "local newspaper" means any newspaper which is read at Agra. It is not improbable that the two newspapers in which the notification was published are read at Agra, but there is no evidence forthcoming in the case. But I am not prepared to accept the interpretation put by Mr. Bajpai. By "local newspaper" I understand a newspaper which is issued from the locality. The result is that this application fails. It is accordingly dismissed with costs.