

(1967) 10 DEL CK 0026

In the Delhi High Court

Case No : Regular Second Appeal No. 76D of 1960

Singh brothers and Another

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 10-10-1967

Acts Referred:

Citation : (1967) 10 DEL CK 0026

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Advocate : B.G. Singh, R.L. Aggarwal and S.N. Kumar, for the Appellant;

Judgement

S.K. Kapur, J.

(1) Under three railway receipts dated March 22, 1955, April 12, 1955 and May 30, 1955, the Plaintiff consigned arms and ammunition to

Messrs Arms & Ammunitions Stores, Town Hall, Bareilly (Defendant No. 2). For securing the price of the goods, the plaintiff sent the railway

receipts along with hundies to the Punjab National Bank Limited, Bareilly to be retained against payment. The consignee instead of getting the railway

receipts against payment from the bank, obtained consignments from the railway against indemnity bonds. The price of the goods in the

circumstances not having been paid, the plaintiff filed suit for the recovery of Rs. 4, 983. 70 against the Union of India Arms and Ammunition

Stores and Bakhshi Trilochan Singh, proprietor of the second defendant firm. This amount represents the balance of the price of goods (part

payment of the price having been made by the second defendant) and interest. The three indemnity bonds are Exhibit D-5 dated March 3, 1955,

Exhibit D-6 dated April 15, 1955 and Exhibit D 7 dated June 8, 1955. In Exhibit D

5. no reason has been given for non-production of the railway

receipt while in the other two bonds it is stated that the railway receipt had not been received. It was not disputed at the bar that the goods could

be consigned only in the name of the consignee who held the necessary license for purchase thereof. The trial Court passed an ex parte decree on

November 28, 1958 against Defendants 2 and 3 but dismissed the suit against the Union of India (first defendant). By judgement dated March 24,

1963), the learned Additional District Judge dismissed the plaintiff's appeal. The lower appellate Court decided in favor of the Union of India on

the ground that the goods were delivered to the consignee, the right full owner, and therefore no responsibility fell on the Union of India for non-

payment of the price by Defendants 2 and 3. On the pleadings of the parties, the following nine issues had been framed; 1. Whether the plaintiff

firm is a registered firm and Shri Harbans Singh its registered partner? 2 Whether the railway authorities were bound to make the delivery only on

production of relevant railway receipt by the consignee? If so, its effect? 3 Whether the defendant No. 2 obtained the goods in suit by fraud? 4. To

what amount, if any, is the plaintiff entitled and from whom? 5. Whether the suit is in time? 6. Whether the notice u/s 80 C. P. C. is valid? 7.

Whether the notice u/s 77 of the Railways Act was not necessary? 8. What is the effect of the plaintiff's having received a sum of Rs 4 400 from

defendants Nos. 2 and 3 regarding the liabilities of Defendant No. 1 ? 9 Relief. It may be recalled that in the plaint, the plaintiff had alleged that

railway authorities failed to discharge their contractual obligation to deliver the goods against railway receipts; that the railway officials delivered the

goods in breach of rule 45 (7) of the General Rules of Goods Tariff and that the railway officials colluded with the consignee and did not insist upon

a compliance with the rules, so the Railway is also liable on the basis of fraud." The plaintiff does not however, appear to have claimed any issue

regarding the liability of the Railway on the grounds of fraud or negligence and the issue was confined only to the question whether the Railway

authorities were bound to make the delivery only on production of relevant railway receipt by the consignee. The answer to the issue depends on

the interpretation of section 57 which reads:

Where any animals, goods or sale-proceeds in the possession of railway

administration are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods or sale-proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods or sale proceeds"".

A few cases dealing with the liability under the Railway Act in these circumstances may now be noticed. In *M & S.M. Railway Co. Ltd. v. Hariloss*

Banmali Doss the goods in question were consigned by one G to his own order to the Madras Harbour Station of the defendant Railway. G had

pledged the railway receipts to the Bank of Madras, and the Bank of Madras were the persons entitled to delivery of the goods. It was intended

that one S should pay the bank, get the railway receipts assigned to him and take delivery of the goods. S managed to get delivery of the goods

from the railway company without the production of the railway receipts and before he had paid the bank. Two or three days later S paid the

bank and obtained the railway receipts. S however did not return the railway receipts to the railway company but on the other hand obtained an

advance from the plaintiff against the said railway receipts representing that the goods were still in the course of transit. It was held:-

Now, if that be so with regard to a bill of lading, it is equally so with regard to a railway receipt. The contract of the railway is to carry goods and

to deliver them to the consignee. Ordinarily, it would be bound to deliver at its peril to the person entitled at the end of the transit. But section 57,

Railways Act protects the railway, and empowers it to refuse delivery except upon the production of the railway receipt. The terms of the railway

receipt show that the railway does not hold itself out as delivering goods only on production of the railway receipt. It only reserves liberty to refuse,

in its discretion to deliver the goods, unless the railway receipt is produced, or unless, if the receipt is not produced, an indemnity is given. There is

no reason for saying that the railway holds itself out to the mercantile community as never parting with goods except upon the production of the

railway receipt. The railway is not in my opinion, under any duty to the public or to any body else to insist upon the return of the railway receipt.

The next case on section 57 is *Sait Madan Gopal Trading v. Upadhyaya*

Kameswara Rao In this case the first defendant Sent a consignment by rail from East Godavery to Jalna. The railway receipt was made out to the consignor himself but it was intended that third defendant, a merchant of Jalna, should receive the goods A hundi was drawn against second defendant, a merchant in Bombay to the debit of the third defendant's account to provide for payment. Within two days of dispatch, i. e , October 8, 1930, the first defendant assigned the hundi and the railway receipt to the plaintiff. The first defendant sent a telegram to Jalna Railway Station to deliver the goods to the third defendant and the direction was complied with although the third defendant had not produced the railway receipt. The hundi was dishonoured and the plaintiff brought a suit against Defendants 1 to 3 and the railway company to recover the cost of goods. It was held that the goods were not delivered to the rightful owner and to deliver them on the basis of an unconfirmed telegram and without apparently the slightest explanation for non-production of the railway receipt was a clear breach of duty.

(5) In Chirnari Gopalam v. Union of India"" the consignor got a railway receipt made out in his own name, but the goods were intended for a firm in Midnapore The defendants who wanted ready money, received from the plaintiffs the value of the goods and endorsed the railway receipt in their favor as well as a hundi on Midnapore firm. The plaintiffs borrowed money from Andhra Bank for the purpose of paying the defendants and endorsed the railway receipt as well as the hundi to the said bank who in their turn sent the railway receipt and the hundi duly endorsed to the Imperial Bank of India Midnapore. The Midnapore Bank as well as the Andhra Bank informed to Station Master that the goods should be delivered only against the railway receipt to be produced by the Imperial Bank. In holding the railway administration liable the High Court observed:

As a rule, Therefore, the administration should insist upon the production of the receipt before it parts with the goods to which it relates, the railway receipt maybe endorsed by the consignor or his endorsee to any other person; when so endorsed it is a direction from the bailor to the bailee to deliver the goods to such other person and it is the duty of the bailee to obey the instructions of the bailorUnder section 166 of the

Contract Act, where the bailor has no title to the goods, the bailee is protected from the consequences of wrong delivery if he acts in good faith in

delivering them back to or in accordance with the instructions of the bailor. When, to the knowledge of both the parties, the instructions are

contained in a document, which is besides, (according to well settled mercantile usage, not to mention the definition of "document of title to goods

u/s 2(4) of the Indian Sale of Goods Act and that of "mercantile document of title to goods" in the explanation to section 137 of the Transfer of

Property Act,) a document-of-title, that is to say, a document capable on endorsement of passing the title to the goods to which it relates, then,

the instructions of the bailor can only be sought in the document and the bailee is bound to ask for that document, although where it is not

forthcoming, he may act in his discretion but still at his risk. Otherwise, the Railway authorities can hardly be stated to be acting in good faith. They

will be absolutely protected if they refuse to deliver except on being reasonably satisfied that the document is lost or destroyed; when however they

deliver the goods in the absence of the receipt to a person who, in their opinion, is entitled thereto, they cannot have immunity from the claim of the

lawful owner. That is indeed the reason why they take on indemnity against such a claim".

(6) In my opinion, the scope of section 57 of the Indian Railways Act is no more than that it authorises the Railway administration in certain

circumstances to withhold delivery of goods until "the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the

railway administration, against the claims of any other person ...". If the Railway administration negligently delivers the goods to a person other than

the rightful owner, it may be liable for breach of duty under the general law. So far as section 57 goes, the Railway administration is only expected

to see that it delivers the goods to the person entitled in its opinion to receive them. This section does not impose any liability on the Railway by its

own force. The liability will have to be determined under the general law for breach of duty or negligence.) The decisions in the cases of *Sait*

Madan Gopal Trading Company and *Chinnari Gopalam* were founded on negligence by the Railway administration in delivering the goods. If in

every case where the Railway administration deliver goods even to a rightful owner against indemnity bond they were to be held responsible for

negligence the functioning of the Railways will become impossible. The administration when delivering goods to the person entitled there to cannot be expected to enter in to an elaborate enquiry and investigate the circumstances touching on the non-production of the Railway receipt. One can think of various complications that may completely paralysed the Railway administration. Cre of such complication may be the postal delay in the delivery of Railway receipt to the consignee in case of perishable goods. Storage accommodation available and limited resources of the administration for enquiring into the movements of Railway receipts are also circumstance which cannot be lost sight of. The decisions that turn on the proved negligence of the Railway administration can, Therefore, be of no avail to the appellant What are the facts of this case? The goods were consigned to the second defendant. The copy of the Railway receipt in the hands of the Railway administration would show on its face that the second defendant is entitled to receive the goods. The formation of opinion that the goods are to be delivered to the second defendant would Therefore be completely justified. The contract between the consignor and the administration was to carry the goods and to deliver them to the consignee and that it exactly what the Railway administration did. It is too much to expect that the Railway administration should have made a detailed enquiry about the position of document of title to find out whether the property in goods had been diverted by reason of certain endorsements on the Railway receipts. The plaintiff took to steps to inform the Railway administration that the goods should be delivered only against the Railway receipt. In these circumstances the Railway administration was perfectly within its rights to deliver the goods to the: consignee In spite of some allegations of collusion and fraud between the consignee and the Railway administration, the plaintiff claimed no issue in this behalf. As I have said earlier there was no obligation in the circumstances on the Railway administration to deliver the goods only on the production of Railway receipt. It must in the circumstances be held that the plaintiffs, suit was rightly dismissed against the Union of India.

(7) The appeal, Therefore, fails and is dismissed but with no order as to costs.