
(1969) 06 CAL CK 0028

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 918 of 1959

Sohanlal Sampatlal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-06-1969

Acts Referred:

Citation : (1969) 06 CAL CK 0028

Hon'ble Judges : S.K. Chakravarti, J;P.K. Banerji, J

Bench : Division Bench

Advocate : Nani Coomar Chakravarti, for the Appellant;Ajoy Kumar Basu, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chakravarti, J.—This is an appeal by the Plaintiff whose suit for damages against the Union of India representing Railways was decreed by the learned Munsif, Howrah, but was dismissed on appeal by the learned Subordinate Judge, Howrah. On May 22, 1952, a consignment of 10 bales of cloth were made over to the Eastern Railway Administration at Wadi Bandar for carriage to Shalimar. When the goods arrived at Shalimar, it was found that one of the bales was in damaged condition. The Plaintiff took delivery of the other 9 bales and refused to take delivery of the damaged bale before the damage was assessed by a public surveyor. The Railway Administration refused it and there was correspondence between the parties and ultimately, as the Plaintiff did not take delivery of the bale, the Defendant sold the same in public auction on August 27, 1953, after asking for wharfage charges from the Plaintiff. According to the Defendant, there is no provision in any law whatsoever that the damage is to be assessed by the public surveyor before it could be taken delivery of by the party concerned. The bale in question was sold for Rs. 1,100 and after deducting the wharfage charges the Railway Administration offered a sum of Rs. 500 and 15 annas to the Plaintiff which he had refused. The Plaintiff had laid his claim at Rs. 1,920-2-6. The learned Munsif decreed the suit in full holding that the damage was caused by

the Railway Administration and the Plaintiff was justified in claiming assessment by a public surveyor.

2. On appeal, the learned Subordinate Judge held that there was no provision in any law under which the Plaintiff could claim assessment by a public surveyor and that the Plaintiff was entirely wrong in not taking delivery of the bale and as such, the Railway Administration was justified in selling it at a public auction. He, therefore, allowed the appeal and dismissed the suit.

3. In this appeal, the first point that is urged by Mr. Nani Coomer Chakravorti, appearing on behalf of the Appellant, is to the effect that the learned Subordinate Judge should have at least decreed the suit in part for a sum of Rs. 500-15-0 which was admittedly due from the Defendant to the Plaintiff. As we have already pointed out, even according to the Defendant, this sum was due to the Plaintiff. Therefore, the learned Subordinate Judge should have decreed the suit at least for this sum.

4. Mr. Chakravorti has further contended that the Railway Administration should not have charged for a sum of about Rs. 600 as wharfage charges, as they could have sold the bale within a month from the date of non-delivery and the Plaintiff, in the circumstances, would have to pay much lesser amount on account of wharfage charges.

5. Mr. Ajoy Kumar Basu, appearing on behalf of the Respondent, has brought to our notice the facts that the Railway Administration had been repeatedly urging the Plaintiff to take delivery of the goods and that there was a protracted correspondence between the parties in this respect and that when the Railway Administration was convinced that the Plaintiff was not willing to take delivery of the goods, that they had to sell out the same at a public auction under the rules. It does appear that the Railway Administration had been repeatedly asking the Plaintiff to take delivery of the goods and he did not take delivery of the same on the ground that the damages must be assessed by a public surveyor. There is no law that the damage in such a case has to be assessed by the public surveyor and the Plaintiff's stand in this respect is wrong from the very start. In the circumstances, if the Railway Administration did not sell the goods within a month from date, it is not to blame and the Plaintiff alone is responsible for the inordinate delay in this matter. The Railway Administration was, therefore, perfectly entitled to the wharfage charges as claimed and deducted.

6. The result, therefore, is that we allow this appeal and set aside the judgment and decree passed by the learned Subordinate Judge to this extent that the Plaintiff do get a decree for the sum of Rs. 500-15-0 but without any order for costs in this Court or in any of the Courts below. Time for the payment of the amount is three months from date.

7. There will be no order as to cost in this Court.

P.K. Banerji, J.

8. I agree.