

(1958) 09 PAT CK 0001
In the Patna High Court
Case No : A.F.O.D. No. 135 of 1953

State of Bihar

APPELLANT

Vs

Union of India(UOI)

RESPONDENT

Date of Decision : 22-09-1958

Acts Referred:

Contract Act, 1872 — Section 178
Railways Act, 1890 — Section 55, 56, 72
Sales of Goods Act, 1930 — Section 2(4), 23

Citation : AIR 1959 Patna 438

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Advocate : Ray Paras Nath, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Partly Allowed

Judgement

Raj Kishore Prasad, J.—This appeal by the State of Bihar, the plaintiff, is from the judgment dated the 18th December, 1952 of Mr. Kedarnath, Subordinate Judge, Dhanbad, who dismissed its suit because, in his opinion, it had failed to prove that the Additional Deputy Commissioner, Dhanbad, was the consignee of the non-delivered goods and, therefore, it was not entitled to any damages for nondelivery of the same.

2. On the 3rd September, 1943, 106 bags of gram, weighing 265 maunds, were booked from Bhelwa to Dhanbad under Invoice No. 4. Railway Receipt No. 214096, dated the 3rd September, 1943. The consignment arrived at Dhanbad on the 15th September, 1943, but as no one turned up to take delivery of the goods, they were auction sold on the 27th July, 1945, whereby Rs. 1728/- was realised.

3. On the 12th July, 1943, the Trade Adviser, Patna, instructed the Bihar Commercial Corporation, to despatch to the Additional District Magistrate, Dhanbad, the food-grain in question. Ext. 1(g) is the said letter written by the Trade Adviser, Patna, to the Additional District Magistrate, Dhanbad, in which he

instructed the Additional District Magistrate, Dhanbad, that he should not wait for the railway receipt, and, that as soon as the wagons were received, he should take delivery of the goods, and, that the railway receipt will be sent in due course.

4. On the 21st June, 1944, another letter (Ext. 4) was sent by the Trade Adviser, Government of Bihar, to the Additional Deputy Commissioner, Dhanbad, under which the statement of grains (Ext. 5), meant for him was sent, as by mistake another statement had been sent to him. From the statement (Ext. 5) referred to in Ext. 4, it will appear that under serial 112 the invoice number, the railway receipt number, the kind of grain and its quantity as also its value which are all, except the value, mentioned in paragraph 2 of the plaint, are all mentioned therein also.

5. On the 1st/20th August, 1945, a letter (Ext. 4/a) was sent by the Inspector of Supply Offices, Bihar, to the Additional Deputy Commissioner, Dhanbad, enclosing therewith a statement of grains (Ext. 5/a) despatched to him, and, he wanted a detailed report item by item about shortages in receipt and other discrepancies. From the statement (Ext. 5/a) referred to in the letter (Ext. 4/a), it will appear under item 112, the date, railway receipt number, quantity, its price and the sender's name are all mentioned therein as in Ext. 5.

6. Thereafter, on the 24th August, 1945, the officer-in-charge Trade Adviser's Accounts, Patna, wrote a letter (Ext. 1/e), to the Station Master, E. I. Railway, Dhanbad, enquiring the name of the person who took delivery of the consignment of gram referred to before. In this letter (Ext. i/e), all the details, which are mentioned in paragraph 2 of the plaint and in Exts. 5 and 5(a), are to be found. The Station Master, in reply to Ext. 1 (e), wrote a letter, the copy of which is Ext. 1(h)(2) that the consignment referred to, had been sold by public auction on the 27th July, 1945.

7. Other correspondences were also exchanged between the Officer-in-charge, Office of the Trade Adviser, Patna, and, the Railway Department which will be referred to at the appropriate place.

8. On the 29th September, 1945, the Officer Incharge, office of the Trade Adviser, Patna, wrote a letter (Ext. 1 (h)(6)) to the Chief Commercial Manager, Benares Cantonment, saying that the gram in question was consigned to the Additional District Magistrate, Dhanbad, but it appears from Ext. 1(e) that the consignment was sold, and, therefore, he should report the circumstances under which it was not delivered to the Additional District Magistrate, A reply to this letter was received by the Officer-in-charge, Trade Adviser's Account, Patna, as will appear from Ext. 1(h)(7) which is a copy of the letter dated the 7th November, 1945.

In this letter, it was stated by the Railway Department that his consignment in question was lying unclaimed and unconnected at Dhanbad from the 15th September, 1943, and, as no one turned up to effect delivery by surrendering

railway receipt and offering payment of railway dues, the same were correctly sold by public auction as unclaimed on the 27th July, 1945. There was further correspondence between the parties, and, ultimately after service of proper notices, the present suit was brought on the 28th February, 1952.

9. Mr. Ray Paras Nath, Government Pleader, for the appellant, argued on the basis of Exts. 4 and 4(a) and 5 and 5(a), which were taken as additional evidence in the present appeal, on the admission of the defendant-respondent, as also on the basis of Exts. 1(g), 1(e) and 1(h) that there was no doubt that the consignment was booked in favour of the Additional District Magistrate, Dhanbad, who, therefore, was the consignee and as such entitled to receive the consignment in question.

He further submitted that as the railway receipt was not received by the Additional District Magistrate, Dhanbad, and, as he did not get any notice of the arrival of the consignment from the Station Master, Dhanbad, he could not know of its arrival, and, as such, no steps were taken to take its delivery by executing an indemnity bond in the absence of the railway receipt, as provided in Section 57 of the Indian Railways Act. He further submitted that the railway had no power to sell the goods without a notice to the consignee, as required by Section 56(a) of the Railways Act and without publishing the same in the local papers, none of which, on the finding of the court below, had been done.

10. In reply, Mr. P. K. Bose, who appeared for the defendant-railway respondent, argued that u/s 57 if the railway receipt is not forthcoming, the Railway Administration may withhold delivery of the goods until the person entitled in its opinion to receive them has given an indemnity to the satisfaction of the Railway Administration against the claim of any person with respect to the goods in question. He, therefore, submitted that here in the absence of the railway receipt, the plaintiff was not entitled to a decree even from the Court, when it would not have been entitled to receive the goods from the railway u/s 57 of the Act.

In support of his contention, he relied on several decisions of the different Courts as well as of this Court to show that it is only the consignee, or the person to whom the railway receipt has been endorsed who can sue for non-delivery of goods where they have been delivered to the railway company for consignment. He particularly relied on the decision of Beevor, J., in *Sri Ram Krishna Mills, Ltd. Vs. Governor-General in Council*, which principle was affirmed by Meredith, J. in *Governor-General in Council Vs. Joynarain Ritolia*, and, further approved subsequently by two Division Benches of this Court in *Bholaram Sibdhan Firm, Chirkunda v. Union of India*, First Appeal No. 384 of 1948 decided by Rai and Kanhaiya Singh, JJ., on the 11th December, 1956; and, the *Union of India v. Nirendra Kumar Mazumdar*, First Appeal No. 438 of 1947 decided by Rai and Misra, JJ., on the 17th March, 1954, and, also relied upon by a learned Single Judge of this Court, R. K. Choudhary, J., in *Union of India v. Surajnarain Mahaseth*, Second Appeal No. 66 of 1950 decided on the 5th May, 1954.

He also relied on a decision of the Privy Council in *Ramdas Vithaldas Durbar v. Amerchand and Co.* ILR 40 Bom 630: AIR 1916 PC 7 which was followed in AIR 1934 246 (Privy Council) ; 61 Ind App 416 and on a decision of Bhagwati, J., as he then was, in AIR 1947 169 (Bom.) for the proposition that a railway receipt is an instrument of title.

11. The principles which can be extracted from the above decisions, and, which are now well established, may be summarised as below :

A railway receipt issued to the consignor of goods is a document of title to goods within the meaning of Section 2(4) of the Indian Sale of Goods Act, 1930, and, Section 178 of the Contract Act, there being no distinction between the two terms.

Generally, it is only the consignor, or the consignee, or, the endorsee of the consignment, who can maintain an action for damages for non-delivery of the consignment.

But, even when there is an endorsement in blank in favour of a person, then also such a blank endorsee for value can maintain an action for damages for non-delivery of the goods. Endorsement in blank means writing one's name merely on the back of a railway receipt without specifying any restrictions as to payee, manner of payment, etc. which details may be filled in by the holder thereof in that, when the consignor endorsed in blank and handed over the railway receipt to him, the consignor thereby authorised the holder thereof to fill up the blank in whatever manner he liked; and, therefore, an endorsement in blank was as good and effective as full and complete endorsement; where, therefore, the railway receipt is handed over on payment of the price of the goods, clearly there is an absolute transfer both of the goods and of the right to take delivery under the contract.

No doubt, generally an endorsement of a railway receipt creates rights, if any, between the endorser and the endorsee inter se, and it creates no rights between the endorsee and the railway which had issued the railway receipt to the consignor, and the only remedy of the endorsee is against the endorser; but, when the property in the goods consigned has passed to the consignee, as the consignee u/s 23, Sale of Goods Act, at the time of the consignment, the consignee who is the principal in the transaction, would be deemed to be the person who had entered into the contract of carriage with the railway company through his agent, the consignor, and, would be the proper party to sue the railway for loss of the goods.

It would, however, nonetheless be open to the consignor to make a special contract with the railway company whereby the railway would, though the property in the goods had passed to the consignee at the time of the consignment, remain liable to the consignor.

12. In the present appeal, however, the only question is: Was the Additional

District Magistrate, Dhanbad, the consignee of the non-delivered goods?

13. Admittedly, in this case, the railway receipt is not forthcoming. Mr. Bose, in support of the judgment under appeal, relied strongly on the absence of the railway receipt and on the observation of the court below that "there is not an iota of evidence on behalf of the plaintiff to show that it was a consignee or an endorsee of the consignment in question".

14. But, in my opinion, now on the basis of Exts. 5 and 5(a), coupled with Exts. 1(g), 1(e) and 1(h) (1) to (7), all of which have been dealt with earlier, I have no hesitation in holding that the! consignment was booked to the Additional District Magistrate, Dhanbad, and that he was the consignee thereof, and, as such, the State of Bihar was entitle) to sue for damages for non-delivery of the goods to him.

15. It is true the defendant-railway can rely on the protection given by sections 55 and 56 of the Railways Act, but such a protection can be sought only if it is established that the provisions of Sections 55 and 56 of the Railways Act have been complied with, and not otherwise, AIR 1938 12 (Privy Council) .

16. In the instant case, on the evidence of D. W.1, who was the Claims Inspector of the Eastern Raiiwav, I am constrained to say, as I will shew presently, that the conduct of the Railway Administration is condemnable and most unbecoming of such an important Government Administration.

17. D. W. 1 was the only witness examined on behalf of the defendant-railway. He stated that he was asked to search for the papers in connection with "this case, but he could not find out any paper save sundry papers of Dhanbad station, |n his cross-examination, however, he made very significant statement. He stated:

"I am Claims Inspector from two years. All the papers of 1943 are destroyed in 1946. The practice is to destroy papers after 3 years. Papers are retained and not destroyed when a dispute is pending.""

In the present case, the auction sale was held on 27-7-1945, and, the first letter which was sent to the Station Master, Dhanbad, was on 24-8-1945 (Ext. 1 (e) and Ext. 1 (h) (1)). From these letters, therefore, it is clear that the Railway Administration got knowledge of the claim of the plaintiff as early as 24-8-1945, only within a month from the public auction on the 27th July, 1945. On the evidence of D. W. 1, therefore, the papers relating to this dispute should have been retained and not destroyed, because, as admitted by him, when a dispute is pending, papers are retained, and not destroyed.

When it was the practice of the Railway Administration to destroy papers after three years, there is no explanation as to why the papers relating to this dispute were not retained, rather destroyed before three years. These telling facts speak for themselves. They are enough to support the contention of the learned Government Pleader that these documents were suppressed on the pretext that

they were destroyed, because the public auction was not at all held in the manner prescribed by Sections 55 and 56 of the Railways Act.

18. P. W. 1, who was examined by the plaintiff, stated: "The consignment in question was sent by the officer incharge Trade Adviser's Office, Patna. The consignee was the A. D. C. We never got the railway receipt. Railway sent no information to us about the arrival of such a consignment, We got no notice of the auction. There are local newspapers. During 1943 to 1945, there were the following local newspapers: The Newsketch and the Coal Field Times. The auction matter was not published in these papers."

19. This evidence of P. W. 1 is uncontroverted, because the statements made on oath by P. W. 1 were not denied by the only witness for the defendant (D. W. 1). In these circumstances, I hold, in agreement with the court below, that the consignment was not legally and validly sold at public auction after a notice to the consignee as required by Section 56 (1) of the Act and after publication of the auction sale in the local newspapers, as required by Section 55 (2) of the Act. The Railway Company, therefore, did not sell the gram in the manner prescribed by the above mentioned sections, and, therefore, the defendant cannot rely on the protection given by the Act.

20. It was contended by Mr. Bose that no notice as required by Section 56 (1) of the Act could be given in the present case, as the consignee was not known. Mr. Bose submitted that only the railway receipt could have shown who the consignee was, but, in the absence of the papers of the Railway Department I am not prepared to accept his contention that only the railway receipt would have shown the name of the consignee, and not other papers which were in possession of the Railway Department.

If the Railway would have produced the papers material to the present dispute, it could have been then said that as all the papers produced by the Railway do not show the name of the consignee and the railway receipt has not been produced, therefore, it was bona fide for the Railway Department to sell the goods at public auction in the absence of any knowledge about the name of the consignee to whom the notice could be sent as required by Section 56 (1) of the Act. But I am not prepared to accept this argument as valid.

On the evidence of P. W. 1, which was not denied by the only witness for the defendant (D. W. 1), as also on the basis of Exts. 5 and 5 (a) and 1 (g), 1 (e) and 1 (h) (1) to (7), there is no doubt that the consignee was the Additional District Magistrate, Dhanbad, and, therefore, a notice u/s 56 (1) of the Act should have been served upon him.

21. On the above findings, therefore, the plaintiff is entitled to a decree. The question however, remains for what amount a decree should be passed in favour of the plaintiff. From the plaint, it will appear that the plaintiff claimed Rs. 4,306/4/- as the price of the 106 bags of gram, but it would appear from Exts. 5 and 5 (a) that the value and price paid, mentioned therein, is Rs. 3,546/3/-, and,

therefore, the plaintiff, in my opinion, is not entitled to claim a higher amount as the price of the gram in question.

From the price of the gram, the plaintiff has deducted Rs. 117/- as the railway freight, and, therefore, deducting this figure from Rs. 3,546/3/-, the balance would be Rs. 3429/3/- for which alone the plaintiff is entitled to a decree in this suit. The plaintiff cannot be allowed interest in the absence of any contract or usage. In these circumstances, the claim for interest must be disallowed. No interest pendente lite is also allowed.

22. Mr. Bose submitted that he was entitled to the wharfage of Rs. 9,728/- as mentioned in the additional and further statement under Order 8, Rules 6 and 9 of the Code of Civil Procedure, filed by the railway in the court below. In other words, the implication of the argument of Mr. Bose is that not only the plaintiff's suit should be dismissed, but a decree should be passed in favour of the defendant, although it has not asked for it nor paid any court-fee thereon.

If the defendant had made any cross-claim or claimed any set-off and paid the requisite court-fee thereon, then this plea could have been considered if it could legally be allowed. Further, when the conduct of the railway is not of an honest litigant, and, when it did not comply with the requirement of law in giving a notice to the consignee as required by Section 56 (1) of the Act, it cannot claim any wharfage from the plaintiff, or any deduction on that account from the plaintiff's-claim.

23. For these reasons, I would allow the appeal in part, set aside the judgment and decree of the court below, and, decree the plaintiff's suit in part. The plaintiff will be entitled to a decree for Rs. 3429/3/- only against the defendant-railway. The appellant will also be entitled to its costs of this Court and also of the court below in proportion to its success. The plaintiff will also get future interest at 6 per cent, per annum on the decretal amount from the date of the decree of this Court to the date of realisation.