(1966) 04 MP CK 0007

In the Madhya Pradesh High Court

Case No : C. R. No 509 of 1965

Union of India APPELLANT

Vs

Nichaldas RESPONDENT

Date of Decision : 15-04-1966

Acts Referred:
Provincial Small Cause Courts Act, 1887 — Section 26

Citation : (1969) ILR (MP) 323 : (1969) JLJ 772 : (1969) MPLJ 696

Hon'ble Judges : R.J. Bhave, J

Bench : Single Bench

Advocate : N. L. Mukerjee, for the Appellant; V. S. Dabir, for the Respondent

Final Decision : Allowed

Judgement

R. J. Bhave, J.

One barrel of citronella oil-an essential oil, was booked from Shalimar Railway Station to Raipur. At the time of delivery of the barrel at Raipur it was found that the barrel was damaged and that some oil had leaked out. The plaintiff filed a suit for damages against the Union of India in the sum of Rs. 936, the price of 20 kilogram of oil alleged to have been leaked out. The plaintiff''s suit was decreed. This revision u/s 26 of the Provincial Small Cause Courts Act is directed against that decree.

The main defence of the Union of India is that uuder section 77-B of the Railways Act, 1890 the Union of India is protected and is not liable to pay any damages. Section 77-B reads as under:-

Further provision with respect to the responsibility of a railway administration as a carrier of articles of special value.

(1) Notwithstanding anything contained in the provisions of this Chapter, when any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration to be carried by railway and the

value of such articles in the parcel or package exceeds five hundred rupees, the railway administration shall not be responsible for the lose, destruction, damage or deterioration of the parcel or package unless the person Bending or delivering the parcel or package to the administration caused its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or the package for carriage by railway, and if so required by the administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk.

The relevant item in Second Schedule is item No. (q). It reads: "Musk, sandal-wood-oil and other essential oils used in the preparation of itr or other perfume".

The case of the Union of India is that the barrel in question contained citronella oil--an essential oil, which can be used as a base for manufacture of itr or other perfumes and can be used as a perfume also. The citronella oil is, therefore; included in the Second Schedule. As its price was admittedly more than Rs. 500 (the consignor''s declaration was that it was Rs. 5,000) the railway administration could not be held responsible for any loss unless the consignor paid or engaged to pay an additional percentage on value. It is, therefore, contended that if the article belonged to one of the categories prescribed under Schedule II and that if the consignor refused to pay the additional percentage if so required, the railway administration was absolved from its liability u/s 77-B and that this was the case here. Shri Dabir, learned counsel for the non-applicant, urged that both the conditions were not fulfilled in this case and that the trial Court had so held.

Shri Mukherjee, learned counsel for the Union of India, invited my attention to the declaration filled by the consignor on the printed form styled as ''Forwarding Note''. The front portion of the Forwarding Note is required to be filled in by the consignor and the reverse by the officials of the administration. The relevant portion of the declaration is extracted below:

From the declaration set out above, it is clear that the consignor had declaimed the value of the essential oil that it was more than Rs. 500 and the consignor did not engage to pay the additional percentage on value for the increased risk as required by the administration. In face of this declaration, Shri Mukherjee urged, that there was no occasion for the administration to make special endorsement to the effect that on being required to do so the consignor refused to pay or engage to pay additional percentage.- There is force in what Shri Mukherjee says. A perusal of the printed form of the Forwarding Note Ex. D-1 would show that the front portion of the Forwarding Note contains various kinds of declarations as also statements regarding the condition of packings and rate of booking etc. All this is required to be filled in by the consignor. These declarations and statements are with respect to various provisions contained in the Railways Act. The second declaration on the form is obviously with respect to section 77-B. That declaration as amended after scoring out certain portion in terms declares that the consignor is not willing to pay percentage charges on value for increased risk as required by the administration. The words in Italics are significant. When the consignor makes a declaration that he is not prepared to pay percentage charges as required by the administration, the question of further demand for the charges cannot arise. The declaration sufficiently satisfies the requirements of section 77-B. The printed form has been designedly prepared in the manner it has been to secure admission of the parties in consonance with the provisions of the Act. Once the declaration is given by the consignor he cannot be heard to say Unit the administration did not require him to pay the additional charges. Shri Dabir cited before me a decision of the Calcutta High Court in Secretary of Stale v. Budhu Nath Poddar I L R 19 Cal. 538 and urged on the authority of that case that unless a demand for percentage charges is made by the railway administration it cannot be absolved of the liability to pay the damages. In Calcutta ease it was found as a fact that the consignor booked a wooden box containing specie worth Rs. 4,291-14-3, and asked the booking-clerk as to what would be the charges for sending it safely. The booking-clerk demanded Ks. 9-1.-0. which amount was paid by the consignor. Neither any declaration about the value of the articles was secured from the consignor, nor any demand was made for increased charges to cover Insurance, In those circumstances it was held by the Calcutta High Court that in the absence of any demand for special charges, the railway company could not be absolved of its liability by reason of section 11 of the Railways Act (Act No. IV of 1879). The case is different here. In this case the consignor has himself given declaration both as to the value of the goods and as to his refusal to pay the percentage charges. Shri Dabir can seek no support, from the Calcutta case. The finding of the trial Court that no demand for percentage charges was made is based on a misapprehension and cannot be sustained.

Shri Dabir further urged that it was not proved by the railway administration that the words ''and engaged'' were scored out by the consignor. Jantirual (D. W. 1) examined on behalf of the administration has proved that the front portion of the Forwarding Note was already tilled in when it was "brought to him and nothing was added or scored out in his presence. The burden of proving that any alterations were made in the front portion of the Forwarding Note was on the plaintiff. That burden has not been discharged.

It was then urged that it was not proved by the railway administration that citronella oil can be used for the preparation of itr or other perfumes. On the contrary it is urged that it is itself a perfume, which is used in manufacture of soaps etc., and that citronella oil was not included in ltem(q) of the Second Schedule of the Railways Act. If an essential oil which can be used for preparation of itr or other perfumes is included in Item (q), it will be irrational to hold that an essential oil which itself can be used as a perfume is not included in the Item (q). In Item (q) the words "other essential oils" are preceded by the words "sandalwood-off" which is also an essential oil. It. therefore, follows that the other essential oils referred to in Entry (q) are of the same category as that of sandal wood-oil, that is to say, they must be the oils which have a fragrance of their own. This is made further clear when it is said that the oils are suck as are used in preparation of itr or other perfumes. It is thus clear that the other essential oils referred to in the Entry (q) must be the oils which have their own fragrance. The words ''''used in the preparation of itr or other perfume" function as an adjectival clause. Those words only indicate that such oils are capable of being used for preparing itr or other perfumes. The possibility of such oils being used without any further process as perfume ii not ruled out. On a proper construction of Entry (q) T am inclined to hold that all those essential oils which can be used as perfumes without any process are also included in the Entry. Apart, from this, there is nothing on record to show that the oil in question is used directly as perfume. The finding of the trial Court to that effect w without basis. That oil is used for swap industry is an admitted fact. It is used to give deserved fragrance to the soap manufactured. It can, therefore, be safely assumed that it can be used in preparation, of perfume as well. The finding of the trial Court that the oil in question la not included in the Second Schedule, cannot be sustained.

It is not disputed before me that if the matter is covered by section 77-B; no liability would be fastened on the railway administration for any loss or damage.

For the reasons given above, the revision ii allowed, the trial Court''s decree is set aside and the suit of the plaintiff is dismissed with costs. Counsel''s fee according to schedule or certificate, whichever be less.

