

(1977) 01 MP CK 0019

In the Madhya Pradesh High Court

Case No : Civil Revision No. 139 of 1972

Union of India (UOI) and Another

APPELLANT

Vs

Gangaram Bhagwandas

RESPONDENT

Date of Decision : 06-01-1977

Acts Referred:

Contract Act, 1872 — Section 63

Citation : AIR 1977 MP 215 : (1977) JLJ 763 : (1977) 22 MPLJ 318 : (1977) MPLJ 318

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Advocate : B.D. Gupta, for the Appellant; Ranjit Jain, for the Respondent

Final Decision : Dismissed

Judgement

C.M. Lodha, J.

This is a revision by the defendant Union of India through the General Managers, Central Railway and Western Railway from the judgment and decree dated December 13, 1971 by the Second Additional District Judge, Gwalior exercising the powers of a Small Court whereby the plaintiff non-petitioner's suit was decreed for Rs. 163.33 P.

The plaintiff's case is that nine bundles of tobacco were booked from Pedla Railway Station on 20-3-1969 for delivery to the plaintiff at Gwalior Railway Station. But all the 9 bundles of tobacco were found damaged when they were unloaded at Gwalior Railway Station. The plaintiff's allegation is that the tobacco was discoloured and had become wot on account of rains and moisture with the result that it became unfit for human consumption. It was pleaded that tobacco had been damaged on account of negligence and misconduct of the defendant Railway and its employees. Consequently, after serving notice u/s 80, C.P.C. and Section 78 of the Railways Act the plaintiff filed the present suit for damages assessed at Rs. 504.58 P. The defendant denied the plaintiff's claim and pleaded

that the goods had not been damaged due to negligence and/or misconduct on the part of the Railway and its employees, it was also pleaded that the claim of the plaintiff had been settled fully and finally by payment of Rs. 283.06 P. The plaintiff examined Shri Onkar Prasad in support of his case whereas the defendant did not produce any evidence. The lower court held that the tobacco was damaged due to the negligence and misconduct on the part of the defendant Railway. Consequently, after giving credit for Rs. 283.05 P. paid by the defendant, it passed a decree for Rs. 163.33 P.

The learned counsel for the petitioner has urged, in the first instance, that, vide certificate Ex. P-1 the defendant had remitted a cheque for Rupees 283.05 P. in full and final settlement of the plaintiff's claim and, therefore, the plaintiff was not entitled to get any more amount. In support of his contention the learned counsel has relied upon *Kapur Chand Godha Vs. Mir Nawab Himayatalikhan Azamjah*, .

It may be observed that the suit was filed on 6-1-1970 and during the pendency of the suit a cheque for Rupees 283.05 P. was sent under the covering printed letter dated 6-3-1970 (Ex. P-6). It is, no doubt, mentioned in the printed letter that the amount of Rs. 283.05 P. was being sent in full and final settlement of the claim. It is also true that the plaintiff encashed the cheque. P.W. 1 Onkar Prasad has stated that the letter Ex. P-6 and the cheque had been received by him after the institution of the suit and that the cheque had been encashed. He has further stated that even after receipt of Ex. P-6 he never came to know that the cheque had been sent in full and final payment of the claim. Whether this statement of the plaintiff is correct or not, there is no denying the fact, that the plaintiff did not accept it in full satisfaction. Admittedly he has not passed a receipt in full satisfaction. The cheque was encashed but no receipt was sent. On the contrary, even after receiving the cheque the plaintiff prosecuted the suit for the balance of the amount. The defendant has led no evidence to show that the intention of the plaintiff was to accept the cheque in full and final satisfaction of the claim,

In *Basdeo Ram Sarup Vs. Dilsukhrai Sewak Ram*, it was held that the mere fact that the plaintiff retained the cheque and ultimately encashed it, cannot be a conclusive proof in law that the amount was agreed to be accepted on the condition offered. In (1889) 22 QBD 610 it was observed:--

"If a person sends a sum of money on the terms that it is to be taken, if at all, in satisfaction of a larger claim and if the money is kept, it is a question of fact as to the terms upon which it is so kept. Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent If accord is a question of agreement, there must be either two minds agreeing or one of the two persons acting in such a way as to induce the other to think that the money is taken in satisfaction of the claim and to cause him to act upon that view. In either case it is a question of fact."

The question was thus primarily one of fact and since the defendant did not

choose to lead any evidence on the point nor are there such circumstances brought on the record to lead to the conclusion that the cheque was accepted in discharge of the whole debt, I am unable to come to the conclusion that the acceptance of the cheque amounted to satisfaction of the whole claim.

In *Shyamnagar Tin Factory Private Ltd. Vs. Snow White Food Product Co. Ltd.*, where a debtor sent a letter to the creditor with a cheque for an amount smaller than what was due stating in the letter that the cheque was sent in full and final settlement of account and the creditor accepted the cheque, it was held, that the sending of the cheque for a smaller amount along with a letter to the effect that it was in full settlement does not amount to a discharge of the entire debt, nor does it amount to payment or tender of the amount on any condition that acceptance of that amount is in full and complete discharge of the entire debt.

I am, therefore, of the opinion that the defendant has failed to prove that there was a case of accord and satisfaction. As already observed above, mere acceptance and encashment of the cheque does not raise a conclusive presumption that the amount was accepted in discharge of the whole debt.

At this stage I may point out that the facts in *Kapur Chand Godha Vs. Mir Nawab Himayatalikhan Azamjah*, relied upon by the learned counsel for the petitioner are distinguishable inasmuch as in that case the plaintiff after some initial protest agreed to accept the sum sent to him in full satisfaction of his claim and duly discharged the promissory note on endorsement of full satisfaction and received the payment. In these circumstances when the plaintiff brought the suit for recovery of the balance amount, their Lordships held, that the case was completely covered by Section 63 of the Contract Act and the plaintiff having accepted payment in full satisfaction of their claim, were not entitled to sue the defendant for the balance.

The other contention raised by the learned counsel for the petitioner is that there is no proof on the record that the tobacco was damaged on account of the negligence and misconduct on the part of the Railway and its employees. P.W. 1 Onkar Prasad has stated that the tobacco got wet on account of Railway (meaning thereby Railway's negligence). He has further stated that the goods were damaged on account of negligence and misconduct on the part of the Railway employees. In support of this, he has also referred to the certificate Ex. P-1 issued by the Railway, which reads as under:--

"Out of 9 bundles tobacco received, 4 bundles wet by rain and contents damaged-discoloured and lacked."

It is significant that the witness was not at all cross-examined on this point, nor any evidence was produced by the Railway, in rebuttal. In this state of evidence it would not be unreasonable to presume negligence or misconduct on the part of the Railway if the tobacco got wet and damaged. The loss or damage may, in the circumstances of the present case, be treated *prima facie* evidence of negligence particularly when the Railway administration has led no evidence to prove the

existence of circumstances which would exonerate them from the liability. The question involved is one of fact and if on the basis of the plaintiff's evidence and the circumstances of the case, the lower court held that the goods were damaged due to negligence and misconduct on the part of the Railway, and its employees, it cannot be said that the lower court committed any error of law.

As a result of the foregoing discussion, I do not see force in this revision and hereby dismiss it. But in view of the fact that the learned counsel for the non-petitioner initially put in his appearance but thereafter left the Court to attend another case and did not argue the matter at all, I make no order as to costs.