

(1992) 07 MP CK 0027
In the Madhya Pradesh High Court
Case No : S.A. No. 247 of 1985

Union of India (UOI)

APPELLANT

Vs

Banshidhar Gopiram

RESPONDENT

Date of Decision : 26-07-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1890 — Section 78B

Citation : (1993) 38 MPLJ 430 : (1993) MPLJ 430

Hon'ble Judges : K.M. Agarwal, J

Bench : Single Bench

Advocate : S.P. Sinha, for the Appellant; Sanjay Seth, for the Respondent

Final Decision : Allowed

Judgement

K.M. Agarwal, J.

This second appeal by the defendant against the reversing Judgment and decree of the lower appellate Court was admitted for hearing on 30-4-1986 on the following two substantial questions of law :--

"(1) Whether the notices Ex. P-3 and Ex. P-4 sent by Ramdas are legal and valid notices?"

"(2) Whether on the facts and circumstances of the case, the reversing of the decree is proper?"

On 17-4-1975, 60 drums of Ground Nut oil were handed over at Salt Coutors on Southern Railway for being carried to Satna on the Central Railway vide invoice No. 2, Railway Receipt No. 213483 dated 17-4-1975. The Railway Receipt was endorsed in favour of the respondent, a partnership firm, which took delivery of the goods on 6-5-1975 at Satna. At the time of taking delivery, it was found that one drum was completely empty and five drums were leaking. As per shortage certificate (Ex. P-2), there was a shortage of 683 kg. of Ground Nut oil, valued at

Rs. 5,634.75 paise. After service of notice dated 14-5-1975 (Ex. P-3) for registering a claim for Rs. 6,105.50 paise and another notice dated 25-8-1975 (Ex. P-4), described to be a combined notice u/s 78-B of the Indian Railways Act, 1890 and u/s 80 of the CPC on the appellant, the respondent filed a suit for recovery of a sum of Rs. 6,155.50 paise. The suit was resisted by the appellant on various grounds and the trial Court was pleased to dismiss the suit. Being aggrieved, the respondent preferred an appeal which was allowed and the suit of the respondent was decreed for a sum of Rs. 5,684.75 paise. Being aggrieved, the appellant has preferred this second appeal.

Besides challenging the validity of the notice u/s 80, Civil Procedure Code, the learned counsel for the appellant also argued that the suit of the respondent was liable to be dismissed, as it failed to prove its ownership over the goods. It was submitted that there was no evidence on record to show that the respondent had paid any consideration or price of the goods described under Railway Receipt No. 213483 dated 17-4-1975. It was further argued that the consignor of goods has not complied with packing conditions Nos. 3 and 57. Old and used drums were used and proper dunnage was not done as mentioned in the Railway Receipt (Ex. D-1) and in the shortage certificate (Ex. P-2), and, therefore, the respondent was not entitled to any damages for the alleged shortage of oil at the time of delivery. Reliance was placed in *Beohar Rajendra Sinha and Others Vs. State of Madhya Pradesh and Others*, *State of M. P. v. Bhagwant Rao* 1971 MPLJ 515, *Firm Mannoolal v. Union of India* 1969 MPLJ 402 and *K.R. Sarda and Co. v. Union of India*, S. E. Rly. 1968 MPLJ 338.

The learned counsel for the respondent supported the impugned Judgment and decree of the lower appellate Court and placed reliance in *State of West Bengal Vs. Jiwanmall Babu and Another*, ; *Bisanchand Lalchand Vs. Union of India (UOI) and Another*, *Sawai Singhai Nirmalchand v. Union of India* 1961 MPLJ 681; *State of M. P. v. Ranbirsingh* 1978 MPWN Note 343 ; *Ghanshyam Dass and Others Vs. Dominion of India and Others*, and *Seth Laxmichand v. Union of India* 1966 MPLJ 796.

After considering the rival contentions, I am of the view that the Railway Receipt (Ex. D-1) was proved to have been endorsed in favour of the respondent by the consignor of the goods or its duly authorised agent and, therefore, in the light of a decision of this Court in *Laxmichand v. Union of India* 1966 MPLJ 796, the contention that the respondent failed to prove itself to be the owner of the goods deserves to be rejected. Similarly the contention deserves to be rejected that because of non-compliance of Packing Conditions Nos. 3 and 57, the suit was liable to be dismissed. In the Forwarding Note (Ex. D-2) there is nothing to indicate that any of the packing conditions were not complied with by the consignor of the goods. The words "Drums old and used" mentioned in the Railway Receipt" (Ex. D-1) were inserted by the servant of the Railway, who was not examined and, therefore, no conclusion can be drawn on the basis of the endorsement that the packing conditions were not complied with. Forwarding

Note is obtained by the Railways from the consignor of the goods. There is no explanation why the consignor was not asked to mention the defective condition of packing before accepting the goods for transport. In all the cases relied on by the learned counsel for the appellant, Forwarding Note contained a note to the effect that packing conditions in particular regard were not complied with and, therefore, they cannot be of any help to the Railways. So also the mention of the fact that no dunnage was used between the drums and the wagon body in the Damage and Shortage Assessment Certificate (Ex. P-2) issued by the Railway Administration is not sufficient for rejecting the claim of the respondent on that ground.

Now coming to the question of validity of notice u/s 80, Civil Procedure Code, I find that notice dated 25-8-1975 (Ex. P-4) served on the appellant by the agent of the respondent only made a mention about despatch of 60 drums of G. N. Oil from Salt Coutors to Satna under Invoice No. 2, Railway Receipt No. 213483, dated 17-4-1975. It did not disclose the name of the consignor or consignee of the goods. It was also silent as to the place at which or the date on which delivery of the goods was made to the respondent. Issuance of Damage or Shortage Certificate was also not disclosed. It only mentioned about the respondent's claim for certain amount on account of "shortage and damage of G. N. Oil". The earlier notice dated 14-5-1975 (Ex. P-3) for registering the respondent's claim also contained no particulars about consignor, consignee, place or date of delivery of goods or the fact about issuance of Shortage Certificate by the Railway Administration. According to me, the respondent being the endorsee of the Railway Receipt was bound to disclose as to who was the consignor or consignee of the goods and how it claimed ownership over the goods despatched under the said Railway Receipt. Further, mere despatch of goods by Railways is not sufficient to give any cause of action for a claim against the Railways. The plaintiff has to show that in between the dates of despatch and delivery, there was loss to the goods entrusted for carriage. This material fact affording cause of action to the respondent was not alleged in the notice and, therefore, it must be held that the notice was not valid in law. The various cases relied on by the learned counsel for the respondent in this regard are all distinguishable on facts. In Calcutta case, there was disparity in dates of cause of action mentioned in the notice and in that mentioned in the plaint. Here no question of disparity arises as there was absolutely no mention in the notice about any date of delivery affording cause of action for the claim raised in the suit. The three cases of this Court deal with cases where all particulars were mentioned in the notice under old Section 77 of the Railways Act (now Section 78-B), but such particulars not mentioned in the notice u/s 80, Civil Procedure Code; where notice was waived by implication; and where notice sufficiently and substantially stated the cause of action, but the date of cause of action was incorrectly mentioned. None of these cases is of any held to the respondent, because in the earlier notice (Ex. P-3) for registering the claim, particulars missing in the notice u/s 80, CPC were not given; because in its written

statement, the appellant had questioned the validity of the notice u/s 80, CPC and had not waived its right to receive such a notice; and further because no date of a cause of action was mentioned in the notice and there was total absence of sufficient and substantial allegations about cause of action for the claim in suit. The decision of the Supreme Court in Ghanshyam Dass (supra) is also distinguishable in the same manner.

It was argued by the learned counsel for the respondent that the appellant had not taken the point in the Courts below or in this appeal about the notice being bad on the ground of non-disclosure of the aforesaid facts and, therefore, it was estopped from taking the point for the first time and that too at the time of arguments of this second appeal. However, this contention deserves to be rejected. The question being purely a question of law and sufficiently covered by the questions framed by the Court at the time of admission of this appeal, can be allowed to be urged and examined in the light of the aforesaid facts. Accordingly I am of the view that for want of a valid notice u/s 80, Civil Procedure Code, the suit of the respondent is liable to be dismissed.

For the foregoing reasons, this second appeal succeeds and it is hereby allowed. The impugned Judgment and the decree of the lower appellate Court are set aside and those of the trial Court are restored. In the facts and circumstances of the case, the parties are directed to bear their costs throughout as incurred.