

(2005) 08 BOM CK 0009
In the Bombay High Court
Case No : S.A. No. 416 of 1989

Union of India (UOI)

APPELLANT

Vs

Firm Keshavaji Vallabhdas

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 2005 Bom 418 : (2006) 1 ALLMR 194 : (2006) 1 BomCR 462

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : P.N. Chandurkar and P.R. Gandhi, for the Appellant; A.W. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—Invoking the jurisdiction of this Court u/s 100 of the Code of Civil Procedure, this appeal takes an exception to the judgment dated 29-6-1989 and decree passed by the 10th Additional District Judge, Nagpur, in Regular Civil Appeal No. 648 of 1984 whereby the appeal is allowed and the judgment dated 23-4-1984 and decree passed by the 7th Joint Civil Judge, Jr. Dn., in Regular Civil Suit No. 972 of 1982 dismissing the suit is set aside and directed the defendants to pay Rs. 8,201.60 to the plaintiff together with interest at the rate of 6% per annum on the amount of Rs. 8,126/- from the date of filing of the suit till realization.

2. Relevant facts can briefly be stated as under:

The Firm M/s Kisanlal Durgaprasad of Salem Market, Madras, dispatched consignment of 250 bags of Topica Starches on 27-3-1979 and the goods were delivered at the railway station for transportation after obtaining railway receipt No. 036278. The goods were transported by the railway wagon which reached Nagpur and the plaintiff took up open delivery of goods on 16-10-1979. The name of the consignee mentioned on the railway receipt was the said firm M/s.

Kisanlal Durgaprasad. The goods were damaged in transit and, therefore, the plaintiff who was working a Commission Agent had instituted a suit claiming damages. The defendants contended that the plaintiff firm was not entitled to sue for damages and the suit was liable to be dismissed. The trial Court on appreciation of evidence and considering the legal position dismissed the suit with costs. Being aggrieved by this Judgment and decree, the plaintiff carried appeal to the District: Court and the learned 10th Additional District Judge allowed the appeal with costs, as mentioned above. This Judgment of the appellate Court is challenged in this second appeal.

3. Mr. Chandurkar, learned senior counsel, for the appellant contended that the railway receipt was bearing the name of the Firm M/s Kisanlal Durgaprasad who himself was the consignor as well as the consignee and therefore he alone can sue the railway administration for claiming damages. He contended that the plaintiff was working as Commission Agent and therefore had no title to the goods and the suit itself is not maintainable. In support of these submissions he relied on the decision of Division Bench of this Court in Chhangamal Harpaldas v. Dominion of India AIR 1957 Bom. 267 and also on the decision of the Apex Court in Union of India (UOI) Vs. West Punjab Factories Ltd., .

4. The learned senior counsel further contended that the substantial question of law that requires consideration in this appeal is, whether the plaintiff in the capacity of Commission Agent was entitled to claim damages from the railway administration though he was not the consignee? and in the present case, the appellate Court has committed an error of law in granting decree in favour of the plaintiff by reversing the finding of the trial Court regarding dismissal of the suit. He contended that in such circumstances, the impugned judgment cannot, be sustained in law.

5. Mr. Joshi, learned Counsel, for respondent No. 1 contended that the title of the goods had passed on the plaintiff and it is he who had obtained the railway receipt after receiving the part of the consideration and it is he who had taken open delivery of the goods under consignment and, therefore, the appellate Court was perfectly justified in granting decree. He contended that the decisions on which reliance is placed by the learned senior counsel for the appellant have been considered by the Delhi High Court in the case of Union of India Vs. B. Prahlad and Co., and it was held that the Commission Agent had sufficient interest in the goods and was entitled to sue the railway for damages caused to the goods by delay in delivery. He, therefore, supports the impugned judgment and decree passed by the appellate Court and contended that no substantial question of law arises in this appeal and the same is liable to be dismissed.

6. This Court has given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. This appeal was admitted only on the point as to whether a Commission Agent can file claim for damages? In this context, the trial Court as well the appellate Court have referred one decision of this Court and the decisions of the Apex Court also and recorded the finding that the

Commission Agent can file a claim for damages. This Court may usefully refer those two decisions.

7. In *Chhangamal Harpaldas and Another Vs. Dominion of India and Another*, , cited *supra*, this Court has held in para 12 and 19 as under:

"Two propositions appear to be well settled. The right of action to recover compensation for loss or damage to the goods ordinarily vests in the consignor. Where the goods lost or damaged in transit are the subject matter of a contract of sale, the owner of the goods may in the absence of a contract to the contrary sue the railway administration. Therefore, a consignee who is in possession of a railway receipt duly endorsed by the consignor may maintain an action for compensation for loss of the goods covered thereby, but he can do so not because he is the consignee but because he is the owner of the goods. A consignor may sue for compensation for loss relying upon the breach of contract of consignment. An owner of goods covered by a Railway receipt may sue for compensation relying upon his title, and the loss of goods by misconduct of the railway administration. But a bare consignee, who is not a party to the contract of consignment, and who is not the owner of the goods, cannot maintain a suit for compensation for loss or damage to the goods. He has no cause of action *ex-contract* nor *ex-delicto*."

8. In the case of *Union of India (UOI) Vs. West Punjab Factories Ltd.*, , cited *supra*, it has been held as under:

"From the mere fact that a railway receipt is a document of title to goods covered by it, it does not follow, where the consignor and consignee are different, that the consignee is necessarily the owner of goods and the consignor can never be the owner of the goods. The mere fact that the consignee is different from the consignor does not necessarily pass title to the goods from the consignor to the consignee, and the question whether title to the goods has passed to the consignee has to be decided on other evidence. Ordinarily, it is the consignor who can sue if there is damage to the consignment, because the contract of carriage is between the consignor and the railway administration. Where, however, the property in the goods carried has passed from the consignor to consignee, the latter may be able to sue. Whether title to goods has passed from the consignor to the consignee depends on the facts of each case."

9. The question as to who has the right to sue the claim, the consignor or the consignee was also considered by the Delhi High Court in the case of *Union of India Vs. B. Prahlad and Co.*, . The Delhi High court answered the said question and held that the general rule is that the owner of the goods is the proper person to sue as he is the person with whom the contract of carriage is made. Ordinarily the consignee is presumed to be the owner of the goods though such a presumption is rebuttable. The general principle that the owner is the proper person to sue may be varied by special agreement between the consignor and the consignee (e.g. Where the risk was to remain with the former), or between

the consignor and the carrier. If the consignor has delivered the goods to the Railway as agent of the consignee, the consignee is the person to sue even though the property in the goods has not passed to the consignee. A commission Agent or a "pucca adatla" cannot institute a suit against the railway administration unless he is able to show that the goods represented by the railway receipt had been transferred to him or any interest therein had been created in his favour and, therefore, the Commission Agent who has sufficient interest in the goods was entitled to sue railway administration for damages caused to the goods by delay in delivery. The Delhi High Court while answering the aforesaid question also considered the decision of this Court as well as that of the Apex Court and held in unequivocal terms that the Commission Agent who has sufficient interest in the goods is entitled to sue the railway for the damages caused by delay in delivery. This Court is in respectful agreement with the view taken by the Delhi High Court and in the present case the plaintiff who is the Commission Agent had sufficient interest in the goods dispatched by the said firm M/s Kisanlal Durgaprasad. It is the plaintiff alone who had obtained the railway receipt by making payment in the bank and it is he who had taken open delivery of the goods from the railway administration.

10. In the present case, the appellate court has rightly observed in para 10 of the judgment that the railway receipt (Exh. 41) shows that the consignment was made by Kisanlal Durgaprasad from Salem Market. In the column of consignee "self" is written. Therefore, this receipt shows that the plaintiffs were not named as consignee. However, it is proved from evidence that the said Kisanlal Durgaprasad sent the railway receipt along with the Hundi for the amount of Rs. 33,300/- drawn against the plaintiffs from through the Bank of India, Nagpur. The said Bank forwarded the advice (Exh. 27) to the plaintiff as the evidence shows that the plaintiffs, thereafter paid Rs. 33,300/- in the said bank whereupon the bank issued a bill to the consignment. Upon getting that railway receipt, the plaintiffs obtained open delivery from the railway servant. These facts are sufficiently proved from the evidence. In his deposition the plaintiffs witness Uddaoji has stated that he deposited the amount in the Bank of India as per its advice (Exh. 27) and obtained the railway receipt. Therefore, the fact that the plaintiffs paid Rs. 33,300/- in the Bank of India in order to obtain the railway receipt for the consignment will have to be taken as proved. This fact shows that the plaintiffs were not merely Commission agent but they had paid certain amount of the price of the goods. The commission agent has a right to commission on sale. The plaintiffs were able to give complete discharge. They had a right to sell the goods to third person. Thus the plaintiffs firm has considerable interest in the proceeds of the sale. The plaintiffs have paid Rs. 33,300/- to the principal through the Bank of India by way of advice. In the light of this evidence, it appears to me that the plaintiffs have no interest in the goods and their case will be covered by the exception carved out in the afore quoted observations of the Supreme Court. The plaintiff therefore has a right to sue for damages.

11. In view of the above, there is no reason for this Court to take a different view of the matter and the findings recorded by the appellate Court are based on the evidence, which has been reappreciated considering the settled legal position. The legal position that emerges from the decision of Delhi High Court is that if the title to the goods passes on to the Commission Agent or if the commission Agent has interest in the goods then he can certainly sue the railway administration for damages on account of delay in delivery. In the present case, therefore, it is obvious that though plaintiffs name was not shown as consignee in the railway receipt it did not follow that he is not entitled to sue the railway administration for recovery of the damages cause especially when the railway receipt was obtained by depositing an amount of Rs. 33,300/- in Bank of India which was ultimately made over to the said firm M/s. Kisanlal Durgaprasad. In this situation it is difficult to accept the contention of the learned senior counsel appearing on behalf of the railway that the suit filed by the plaintiff is not maintainable, as the plaintiff himself was not a consignee.

12. In the result, this Court is of the considered opinion that no substantial question of law is involved in this appeal and the same is liable to be dismissed. The appeal is accordingly dismissed with no order as to costs.