
(1973) 10 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Second Appeal No. 154 of 1871

Union of India (UOI)

APPELLANT

Vs

Tekchand

RESPONDENT

Date of Decision : 15-10-1973

Acts Referred:

Constitution of India, 1950 — Article 16
Evidence Act, 1872 — Section 65

Citation : (1974) RLW 13 : (1973) 6 WLN 774

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

Bench : Single Bench

Final Decision : Allowed

Judgement

C.M. Lodha, J.—The plaintiff respondent filed the suit out of which this appeal arises in the Court of Munsiff (East), Ajmer on 1.4. 1966 praying inter alia that a decree for Rs. 1732.18 paise be granted in his favour against the appellant as the said amount had been illegally deducted from his pay on account of rent for the railway quarter occupied by him as Vigilance Inspector. It was alleged that he was entitled to occupy railway quarter free of rent and that in any case he had been unlawfully discriminated against as two other railway employees, namely, Shri B.N. Bhatnagar, and Shri S.L. Khanna placed in similar posts were allowed to occupy quarters free of rent. The plaintiff has further alleged that in any case the defendant was estopped from making deductions on account of having created a bonafide belief in the plaintiff's mind that he would not be charged any rent. The suit was resisted by the Railway. Seven issues were struck by the trial court on the pleadings of the parties.

2. After recording the evidence produced by the parties the Munsiff dismissed the suit and on appeal by the plaintiff the learned Civil Judge, Ajmer has decreed the suit for Rs. 1211/- only. Dissatisfied by the judgment and decree by the learned Civil Judge the defendant Union of India through the General Manager, Western Railway has filed this appeal.

3. It may be stated at the outset that the plaintiff's claim has been decreed on the sole ground that the benefit of rent free quarter having been extended by the Railway Board to Shri B.N Bhatnagar and Shri S.L. Khanna, the plaintiff is also entitled to the same, lest it would amount to unlawful discrimination and would be in violation of the principle of equality before law enshrined in Article 16 of the Constitution of India. In coming to this conclusion the learned Civil Judge has drawn an adverse inference against the defendant for nonproduction of a letter addressed by the Railway Board to Com. Ajmer whereby, it is alleged, that the concession of rent free quarter was allowed to the staff deputed for bribery and corruption organisation. This letter is alleged to have been addressed by the Railway Board with reference to the GOC'S letter No E.804/19/4/28 dated 25-6-1963. I may, here, observe straight away that neither the letter of the CCM nor the letter of the Railway Board referred to above have been produced by either of the parties. However, an adverse inference has been drawn by the learned Civil Judge against the Railway for nonproduction of this letter. Mention of this letter has been made at item No.4 in a notice by the plaintiff to the defendant dated 1-6-1968 by which the plaintiff but called upon the defendant to produce the documents mentioned therein before the Court on all the dates of hearing. This notice is at page 117 of the file of the original case. It is nowhere mentioned in this notice as to under what provision it has been given but reliance has been placed on Order 12, Rule 8 C P.C before me which reads as under:

Notice to produce documents shall be in Form No.12 in Appendix C with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

4. There is absolutely no evidence as to the contents of this letter. Even the plaintiff has not said a word about it and no cross-examination has been directed to any of the witnesses examined on behalf of the defendant regarding the contents of the letter. Reliance has been placed by the learned Civil Judge on para 6 of the written statement filed by the Railway, in another suit instituted by one Shri M.P. Jain, a copy of which has been put on this record and marked Ex 1. Para 6 of Ex. 1 reads as under:

6. Para 8 of the plaint is denied. The contentions raised and the arguments advanced are incorrect and untenable. The instances of B.N. Bhatnagar and S.L. Khanna are inaptly quoted. They are not parallel instances. Concession of Rent Free quarter was specially allowed by the Railway Board in case of staff deputed for Bribery and Corruption Organisation. Even if the instance be parallel, erroneous instances do not lay down or alter the plaintiff's conditions of service or any rule. No show cause notice is necessary in case of recovery of over payments or of outstanding dues.

There is no reference to the letter of the Railway Board in this paragraph at all. At this stage it may also be pointed out that there is nothing on the record to

show that the plaintiff" was holding a post equivalent to those of Shri Bhatnagar and Shri Khanna. It is true that adverse inference may be drawn against a party for its failure to produce the documents in its possession, but there must be some evidence on the point which a party wants to prove, though it may be open to that party to lend support to that evidence by asking the court to draw an adverse inference against the party who being in possession of the document does not produce it. In case of non-compliance of the notice to produce the documents it may be permissible for the party giving notice to adduce secondary evidence of the contents of the same u/s 65(a) of the Evidence Act. But incomplete absence of such evidence, nothing can be presumed as to the contents of the document. In the circumstances, therefore, the learned Civil judge was not justified in presuming that the Railway Board had allowed concession of rent free quarter to the staff deputed for bribery and corruption organisation and further that the plaintiff should be considered as having been deputed for bribery and corruption organisation. The finding recorded the trial court on the basis of adverse presumption alone cannot be sustained in law.

5. There is yet another aspect of the case which must not be lost sight of. The question is whether the plaintiff was entitled to a rent free quarter ? The assertion of the defendant is that in the first place the cases of Shri Bhatnagar and Shri Khanna stand on a different footing and the plaintiff would not be governed by the same considerations as were applicable to Bhatnagar and Khanna. Then it has been pleaded that unless the plaintiff is entitled to the benefit of rent free quarter, merely because certain benefits had been wrongly allowed to Bhatnagar and Khanna, that would by itself be no ground for allowing the same to the plaintiff. This position appears to be correct as in my opinion, two wrongs cannot make one right. The important question is whether the plaintiff is entitled to get the benefit of a free quarter. Unfortunately for the plaintiff even though Issue No. 1 was struck on this point, it was not pressed before the trial court and no argument was advanced before the first appellate court that the statement contained in the judgment of the trial court to that effect was wrong. The learned Civil Judge has also observed that the learned trial court decided Issue No. 1 against the plaintiff as not pressed. It further appears from the judgment of the trial court that no argument was advanced on behalf of the plaintiff with respect to Issue No. 1 before it. However, taking Issue No. 1 as one of mixed question of fact and law, I called upon the learned Counsel for the respondent to show me even at this stage whether according to any rules framed by the Railway or any stand order, circular or notification the plaintiff as Vigilance Inspector was entitled to a rent free quarter? However, the learned Counsel expressed his inability to point out any such rule, circular or notification. He merely relied on the letter referred to in the Notice dated 1-6-1968 to which I have already addressed myself and have come to the conclusion that the contents of that letter having not been proved, reliance on that letter is on consequence. In this view of the matter, I fail to understand how relief can be granted to the plaintiff on the basis of the alleged and supposed discrimination

between him on the one hand and Bhatnagar and Khanna on the other.

6. Then there is another issue as to the plea of estoppel. This is Issue No. 3 The trial court has mentioned in its judgment that this issue was not pressed on behalf of the plaintiff Before the first appellate court also no reliance seems to have been placed on this issue in the course of arguments. Even in the Grounds of Appeal filed by the plaintiff in the first appellate court no such point was taken that the observation made by the trial court that Issue No. 3 was not pressed is erroneous. In this view of the matter the plea of estoppel must be deemed to have been given up by the plaintiff. However, I examined this plea on merits also but find no substance met. There is nothing on the record to show that the defendant by any declaration, act or omission intentionally caused or permitted the plaintiff to believe and to act upon such belief that the latter was entitled to occupy a railway quarter free of rent. The ingredients of the plea of estoppel are not at all satisfied in the present case. On the other hand letters Ex. A. 35 and Ex. A. 36 go to show that that the plaintiff was himself desirous of occupying a railway quarter. There is absolutely nothing on the record to show that the defendant ever induced the plaintiff to occupy the railway quarter by representing that he would not be charged any rent. The plea regarding estoppel is devoid of substance.

7. Lastly it was argued by the learned Counsel for the respondent that the recovery made by the defendant from the plaintiff's salary was barred. This submission is to be stated only to be rejected In the first place there was no such plea taken in any of the two courts below, nor any issue was struck regarding it. But apart from that, the argument is apparently one of despair. The amount has already been recovered and the provision pointed out to me in support of this submission namely para 1705 of the Indian Railway General Code Volume I has no application to the facts and circumstances of this case. It is not a case of any erroneous payment to the Railway which the Railway seeks to recover. The recovery has already been made.

8. Looked at from any point of view the decree granted by the learned Civil Judge cannot be justified and must be vacated.

9. Accordingly, I allow this appeal, set aside the judgment and decree by the learned Civil Judge and dismiss the plaintiff's suit. But in the circumstances of the case I make no order as to costs.

10. Learned Counsel for the plaintiff-respondent prays for leave to appeal to Division Bench. The prayer is disallowed.