

(2015) 07 PAT CK 0108
In the Patna High Court
Case No : First Appeal No. 73 of 1992

United India Insurance Co. Ltd.		APPELLANT
	Vs	
R.G. Cotton Industries and Others		RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 2(b)

Citation : (2015) 07 PAT CK 0108

Hon'ble Judges : Jitendra Mohan Sharma, J

Bench : Single Bench

Advocate : Ram Chandra Lal Das, for the Appellant; B.K. Shuhal, Prashant Kumar, Advocates and Gopal Tiwary, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Mohan Sharma, J—The instant appeal has been preferred against the ex-parte order dated 29.06.1991 passed in Money Suit No. 13 of 1989 in the matter of M/s. R.G. Cotton Industry and Ors.(plaintiffs) vs. M/s. Ajanta Transport & Ors. (Defendants). The defendant No. 4 is the appellant and plaintiffs and other defendants are the respondents here.

2. The aforesaid money suit was filed for decree of Rs. 2,59,104.31/- as detailed in schedule-A of the plaint.

3. The case of the plaintiffs, shortly stated, is that the plaintiff No. 1 is a registered partnership dealing in manufacturing business of Absorbent Cotton Wool and Surgical Dressing materials having its factory and office at village Chak Mohammad, Lateral Road, P.S.-Ahiyapur, District-Muzaffarpur and plaintiffs No. 2 and 3 are its partners. The defendant No. 1 is a private limited company having its registered office at P-16, New C.S.T. Road, Calcutta and carried on business of transportation of goods by road and is a common carrier having numerous branches all over the India including one at Patna. The defendant No. 2 is a partnership firm and defendant No. 3 is Managing Partner. The defendant No. 4

M/s. United India Insurance Company Limited is an Insurance Company having its registered office at 24, White Road, Madras-600014. The defendant No. 3 approached the plaintiff for supply of Absorbent Cotton Wool and placed order on 28.02.1986 for supply of 20,000 packets in 300 grams packing each in two lots without wrapper and polythene and instructed to send the goods through M/s. Ajanta Transport Company to be delivered at Tinsukia and it was agreed that security of Rs. 15,000/- would be deposited along with order and further sum of Rs. 15,000/- would be sent within 15 days before dispatch of the second lot. It was also agreed to send the documents through State Bank of India, Muzaffarpur to the State Bank of India, Dibrugarh. After valuing the goods at Rs. 1,90,736/-, defendant No. 3 signed the order after depositing bank draft of Rs. 15,000/- in favour of plaintiff. The plaintiff was expressing difficulty in sending the goods through the said transport but the defendant No. 3 insisted the plaintiff for the same and he assured that he would talk to the Branch Manager of the said transport company at Patna for lifting the goods from factory premises at Muzaffarpur of the plaintiff at an earliest on a reasonable freight charges. Thereafter, the Branch Manager of defendant No. 1 came to the factory premises on 04.03.1986 with a truck No. BHF-6591 for carrying the goods from Muzaffarpur to Tinsukia. As per the said order, 150 bales of Absorbent Cotton Wool were got loaded on the said truck and consignment Note No. ATCO/PTN/103/85-86 dated 14.03.1986 for carrying the said cotton wool from Muzaffarpur to Tinsukia was issued and the plaintiff was consigner as well as consignee of the aforesaid consignment and the goods were to be given by defendant No. 1 from its godown at Tinsukia. Again on 19.03.1986 Branch Manager of defendant No. 1 came to the factory premises of the plaintiff with truck No. BPA-7035 and got loaded 150 bales of cotton wool as per order dated 28.02.1986 and issued consignment note No. ATCO/PTN/111/85-86 dated 19.03.1986 and the plaintiff was the consigner as well as the consignee. The said goods were also to be delivered at the godown of defendant No. 1 at Tinsukia. In this way only 18,000/- packets received by the aforesaid two trucks and balance 2000 packets in 34 bales was sent through M/s. Transport Corporation of India Limited for the destination Tinsukia. Consignment Note Nos. ATCO/PTN/103/85-86 dated 14.03.1986 and ATCO/PTN/111/85-86 dated 19.03.1986 were duly insured with defendant No. 4 against all risk including nondelivery, theft, cheating etc. under policy No. 0330077/82/OP/00040/85 with Marine declaration form Nos. 313/85-86 dated 14.03.1986 for consignment note No. ACTO/PTN/103/85-86 dated 14.03.1986 and No. 331/85-86 dated 19.03.1986 for consignment note No. ATCO/PTN/111/86-86 dated 19.03.1986 and each policy covered risk to pay Rs. 86,260,36/-. The documents of both consignment were sent though State Bank of India, Muzaffarpur to the State Bank of India, Dibrugarh with instructions to make over the documents of aforesaid consignment to defendant 2nd party on full payment of bill amount. In the meantime the defendant 2nd party send further amount of Rs. 15,000/- as security to the plaintiff on 07.03.1986 through a telegraphic transfer as per the aforesaid agreement. Books of accounts in regular course of business are being

maintained by the plaintiff and all transactions with defendant 2nd party are duly posted therein. The defendant No. 3 had assured to receive the documents from the bank after making due payment. Considering undue delay in collection of the Bank Hundi, the plaintiff sent his staff Ashok Kumar Jha, on 23.05.1986, for making inquiry who after inquiry at Dibrugarh came to know that the documents were not received by the defendant 2nd party from the bank and the bank had returned back the documents. Sri Ashok Kumar Jha also contacted defendant No. 3 and informed him about the return of documents unpaid. The plaintiff received back all the documents of aforesaid three consignments, on 03.06.1986, and inquired from the Patna office of defendant No. 1. Thereafter, plaintiff No. 3 went to Tinsukia and Dibrugarh on 16.06.1986 and made detail inquiry and came to know that the defendant No. 1 has no office at Tinsukia and the goods made over to defendant No. 1 for carrying to Tinsukia were entrusted to one M/s. East India Assam (Transport organization) at Guwahati by defendant No. 1 but the goods sent were not in the godown of East India (Assam) Transport Organization at Tinsukia and the said transport did not disclose the whereabouts of the goods. The goods sent through TCI Ltd. was lying safely at Tinsukia godown of TCI Ltd. Thereafter, Vakalatan Notice was sent through Advocate Sri Akhileshwar Prasad Srivastava to defendant No. 1 to return back the goods or to pay the value but in spite of the said notice, the defendant 1st party failed to return the goods or to pay the value of the goods. In spite of several requests defendant No. 1 failed to do so and it appears that defendant 1st party and its Guwahati staffs in collusion with defendant 2nd party fraudulently misappropriated the goods of the plaintiff, then FIR was lodged before Ahiyapur Police Station, Muzaffarpur bearing Ahiyapur P.S. Case No. 204 dated 05.12.1986 wherein Managing Director and Branch Manager of Patna and Guwahati Branches of defendant 1st party obtained bail but the defendant No. 3 remained absconding and the case was pending under investigation. The plaintiff preferred claim before defendant No. 4 also for the loss of two consignments but the defendant No. 4 wrongly and illegally on flimsy and baseless grounds repudiated the claim of the plaintiff vide letter dated 08.08.1988 bearing No. 033300/marine/cargo/12034/88. The goods in question was validly insured with defendant No. 4 for Rs. 1,72,520/- and 72 paise and as per policy covers, the defendant No. 4 was legally bound to reimburse the plaintiffs claim for the loss of goods in question on account of fraudulent misappropriation or theft by defendant 1st and 2nd party and in this way, the plaintiff sustained loss of Rs. 2,59,104/- and 31 paise as detailed in schedule-A of the plaint. The plaintiff is legally entitled to claim interest by way of damages on the value of the consignments at the rate of 18 % per annum along with accidental charges, charges on account of correspondence and legal expenses as detailed in schedule-A of the plaint. The defendant No. 4 carries on business for gain at Muzaffarpur, so the plaintiff seeks leave of the court to institute the suit at Muzaffarpur and also to file one suit for different causes of action.

4. The defendant did not appear in spite of service of summons, notices and publication in newspaper, resulting the suit was heard ex-parte.

5. The plaintiff examined three witnesses in support of its case. PW 1 Ghanshyam Prasad Gupta is plaintiff No. 3. PW 2 is Kailash Prasad and PW 3 is Ashok Kumar Jha. Besides that documents have also been exhibited and on consideration of the case and evidences of the plaintiff, learned Sub-Judge decreed the suit ex-parte directing the plaintiff to recover the said decretal amount from defendant No. 4 as the goods were insured with defendant No. 4 which covered risk of damages and loss.

6. Defendant No. 4 being aggrieved and dissatisfied with the said ex-parte order preferred this appeal challenging the sustainability of the impugned order on the ground that the claim of the plaintiff was rightly repudiated after examining and verifying the facts as per the surveyor report as the claim of the plaintiff was not substantiated and higher authorities decided the claim of the plaintiff not maintainable. Contract of indemnity is confined to the sum assured, policy was to the extent of 1,72,520.72/- and no notice was served on Insurance Company and Muzaffarpur Branch was not made party. Publication was made in Assam Tribune and it was not proved that the goods were lost in transit and, as such, ex-parte decree is fit to be set aside.

7. On the other hand learned counsel for the respondent No. 1 to 3 controverted the aforesaid submissions and has submitted that on the record there is acknowledgment receipt bearing receiving signature and seal of defendant No. 4 but in spite of service of summons through registered envelope, the defendant No. 4 did not appear nor instructed its branch office at Muzaffarpur to appear and to submit reply. As the defendant No. 4 was made party and, as such, its Muzaffarpur Branch was not necessary party and as per Order 29 Rule 2(b) of the C.P.C. service on defendant No. 4 is valid and further it was duly published in the newspaper. Order of repudiation passed by the officer of defendant No. 4 was on flimsy and baseless grounds and the learned Sub-Judge has rightly decreed the suit as on the record there was nothing to show otherwise whereas the plaintiffs have proved their case. The learned counsel has shown acknowledgment receipt which is at page 53 of part "A" File of the court below. It has also been argued that from Ext. 7 which is policy issued by defendant No. 4, it reveals that insured amount was Rs. 10,00,000/- and, as such, the decree is fit to be confirmed. Further it has been argued that in execution of aforesaid ex-party decree, the defendant No. 4 has already paid the amount as per full satisfaction.

8. Having considered the arguments advanced by the learned counsel of both the parties and gone through the impugned order and record, it is manifest that the defendant No. 4 M/s. United India Insurance Company has received the registered envelope and has signed the acknowledgment receipt after giving its seal which is at page 53 of the Part "A" file of the court below and, as such, it is proved that the defendant No. 4 has received the summons sent under registered envelope and in spite of service of summons failed to appear in the suit. The plaintiffs have succeeded in proving the case as made out in the plaint

by oral evidence as well as by documentary evidences and further the Branch Office situated at Muzaffarpur of defendant No. 4 was not the necessary party as the defendant No. 4 has been made party. From Ex. 4, 4A and Ext. 7 it reveals that same were in the name of defendant No. 4 itself and the plaintiffs have rightly sued the defendant No. 4 with its registered office - 34, White Road, Madras, 600014 and its Branch Office at Muzaffarpur was not necessary party. PW 2 and PW 3 have proved Exts. 7, 8, 9, 5A and 5B respectively. PW 3 has also stated regarding sending of goods to defendant through Ajanta Transport and further that he went to Dibrugarh, Tinsukia and Guwahati when the price of the goods were not received and did not find any transport company named and styled as Ajanta Transport at Dibrugarh and learnt that papers have been returned. PW 1 has fully supported his case as made out in the plaint and has stated that his claim of Rs. 2,59,104.31/- is justified. He has also proved the supply order dated 28.02.1986 as Ext. 1, office invoice dated 03.04.1986 as Ext. 2. Bill dated 19.03.1986 and 28.03.1986 Ext. 2A, delivery challan dated 01.03.1986, 12.03.1986 and 26.03.1986 as Exts. 3, 3A and 3B, declaration dated 04.03.1986 and 19.03.1986 as Exts. 4 and 4A. Letter dated 01.04.1986 as Ext. 5, endorsement of S.S. Prasad on Ext. 5 as Ext. 6. The order of repudiation vide Ext. 8, being not a reasoned order, learned court below has rightly, disbelieved the same.

9. It is proved that surgical cotton as valued were supplied to defendant 1st party as per order, dated 28.02.1986, and the same were entrusted to Ajanta Transport for carrying it to Tinsukia and Dibrugarh and as per agreement, those goods were insured with defendant No. 4 but it appears that neither the price of the same nor the goods were returned to the plaintiff in spite of demands and legal notice sent and then the plaintiff filed the suit. From Exts 4, 4A and 7 it reveals that the goods were insured with defendant No. 4 which covered risk of carriage and damages and the plaintiffs have succeeded in proving that the said goods have been lost in the way and, as such, the defendant No. 4 was equally, jointly and severely liable for damages for the same and the plaintiffs are entitled to recover the damages from defendant No. 4.

10. Learned Sub-Judge after careful consideration of the case and evidences of the plaintiffs has rightly decreed the suit ex-parte without cost.