

Ram Narain vs The Dominion Of India, New Delhi And Anr. on 4 December, 1952

Equivalent citations: AIR1953ALL460, AIR 1953 ALLAHABAD 460

ORDER

Mukerji, J.

1. This is a plaintiff's application in revision arising out of a suit filed in the Court of Small Causes at Allahabad for the recovery of a sum of Rs. 285/13/6 as damages for the loss of seven packages of betel leaves which had been consigned from railway station Dan-ten to Allahabad. The consignment was despatched on 5-5-1947, and the plaintiff was the consignee of ten packages, which were the number of packages, that had been despatched to him from Danton. In the usual course the packages were expected at Allahabad but when delivery was sought of the consignment only three packages out of a total of ten were delivered. Delivery of these three packages was taken by a person called Beni Prasad who happens to be a party to this revision also, as opposite party No. 2.

It appears that Beni Prasad was a sort of an agent on behalf of the plaintiff to take delivery of his consignments. It appears further that Beni Prasad deeming himself competent to lay a claim for the non-delivery of the seven packages laid a claim against the railway for damages. The Railway compromised the claim with Beni Prasad for a sum of Rs. 154/, and a "pay order" was actually drawn up bearing the date 23-11-1947, in favour of Beni Prasad. Fortunately, the plaintiff came to know of this unauthorised activity of Beni Prasad and he wrote to the Railway to say that they had no business to make payment to Beni Prasad in respect of the loss of a part of the consignment which had been booked in the plaintiff's name. On receipt of the plaintiff's letter which was dated 5-12-1947, the Railway stopped making payment to Beni Prasad and the amount of the pay order which had been drawn up in his name, on 29-11-1947, was not given to Beni Prasad.

2. On 5-7-1947, the suit out of which this revision has arisen was instituted by the plaintiff against the Dominion of India, which under the Adaptation Order has to be read as the Union of India, for the recovery of the sum which I have already mentioned earlier.

3. On behalf of the Railway, several defences were raised. One such defence, which I must notice at the outset, was that Beni Prasad was a necessary party to the suit. On this objection, on behalf of the Railway, which defended the case in place of the Union of India, Beni Prasad was added as a defendant to the suit. The other defence, which I need notice, was that the claim was barred because notice under the provisions of Section 77, Railways Act, had not been served on the Railway Administration.

4. The Trial Judge gave effect to the plea that the suit could not succeed because notice under Section 77, Railways Act, had not been given. The suit was, therefore, dismissed by the learned Judge of Small Causes, Allahabad.

5. The plaintiff has come up in revision and it has been contended on his behalf by Mr. Kacker that the view of the learned Judge of the Court below in regard to Section 77, Railways Act, is no more good law in view of two recent Full Bench decisions, in -- 'Governor General in Council v. Mahabir Ram', reported in AIR 1952 All 891 (A) and -- 'Mutsaddi Lal v. Governor General in Council', AIR 1952 All 897 (B). In the first noted Full Bench, it has been held that where non-delivery of goods is due to loss of goods by the Railway Administration or due to their destruction or deterioration, then only notice under Section 77, Railways Act, is necessary, but where non-delivery of goods is due to any other reason, then no such notice is required. The Full Bench further held that where the claim is not based upon the loss of the goods by the Railway Administration, but upon non-delivery for other causes and the evidence does not establish that there was loss of the goods by the "Railway Administration, Section 77 does not apply and such a suit cannot fail for want of notice.

6. The second Full Bench to which I have referred, namely the Full Bench in 'Musaddi Lal's case', it was held that non-delivery of goods may be due to a variety of causes and where non-delivery is due to loss, destruction or deterioration of goods, there a notice under Section 77 is required, but where non-delivery is due to any other cause, namely conversion, detention, misconduct, mis-delivery, wrongful sale or such other capricious acts by the Railway, then a notice under Section 77 is not necessary.

7. In this case there is no finding that the non-delivery was due to loss, destruction or deterioration. As a matter of fact, the finding in the case is that non-delivery was due to the misconduct on the part of the Railway. On the authority of the two Full Bench decisions, therefore, this suit could not fail because notice under Section 77, Railways Act, had not been given within the time prescribed by the plaintiff.

8. There was another important defence taken, namely that the plaintiff had no right to sue in respect of this consignment; it was contended on behalf of the opposite party that the plaintiff having "endorsed" the railway receipt in favour of Beni Prasad could not any more claim anything in respect of the non-delivery of the consignment from the Railway Administration. Reliance was placed on the decision of -- 'Piarey Lal Gopi Nath v. East India Rly. Co.', reported in AIR 1924 All 574 (C), where a learned single Judge held that on an endorsement of the railway receipt the title to the goods passed to the endorsee.

9. In the present case, the finding of the learned trial Judge is that although delivery of the goods was taken by Beni Prasad yet there was no specific endorsement by the plaintiff who was the consignee of the goods covered by the Railway receipt in favour of Beni Prasad. That being the position, the mere fact that Beni Prasad obtained delivery from the Railway Administration would not destroy the plaintiff's right in respect of these consignments. It appears further that the! Railway Administration itself stayed its hands in respect of making payment by their "pay) order" of which I have made a reference earlier to Beni Prasad when the plaintiff wrote to them on 5th of December

countermanding payment to Beni Prasad. If there had been a valid endorsement by the plaintiff in favour of Beni Prasad, then, in my judgment, the Railway Administration would have faced the plaintiff with that legal position and would have told him that he had no right or title to interfere with any arrangement that was being made by the Railway Administration in respect of this consignment with Beni Prasad. In my judgment, therefore, there is no substance in this plea as well and it must be rejected.

10. In the result I allow this application in revision by setting aside the decision of the trial Court and decreeing the plaintiff's suit for the sum claimed. I may here state that the finding of the trial Judge is that the amount claimed represents the amount of damages sustained by the plaintiff. The plaintiff will have the costs of this suit throughout.