

Punjab-Haryana High Court

The Union Of India (Uoi) vs The Punjab State Co-Op. Supply And ... on 8 September, 2004

Equivalent citations: III (2005) BC 516, (2005) 140 PLR 140

Author: V Jain

Bench: V Jain

JUDGMENT V.M. Jain, J.

1. This Regular First Appeal has been filed by one of the defendants namely, Union of India, against the judgment and decree dated 29.8.1979 passed by the Trial Court decreeing the suit of the plaintiff for recovery of Rs. 1,52,000/- with proportionate costs along with interest from the date of decree till realisation (declining the request for pendente lite interest).

2. Plaintiff respondent No. 1 Federation had filed a suit for mandatory injunction and in the alternative for the recovery of Rs. 5,47,558.60 against the defendants including defendant No. 1 Union of India. It was alleged that 6 wagons containing 7500 bags of fertilisers were booked from Bombay to Nawanshahar under different railway receipts and invoices and these arrived at Nawanshahar Doaba on 23.5.1968. It was alleged that after unloading the goods on 23.5.1968 it was found that 5620 bags of DAP fertilisers were torn/damaged, short in weight and the contents were wet. It was alleged that the plaintiff Federation took actual delivery of the bags of fertilisers, which were found in good condition and left the remaining 5620 bags in the custody of the Railway authorities and made representations to the higher authorities. It was alleged that the Divisional Superintendent Railways agreed to deliver all the goods on valuation but the delivery as such was not given to the plaintiff due to lapses on the part of defendant Nos. 2 and 4. It was alleged that finally the request of the plaintiffs for delivery of the bags of fertilisers on weightment and assessment of damages basis was turned down by defendant No. 2 under Section 77(3) of the Railways Act, whereupon the plaintiff served notice and thereafter, filed a suit for mandatory injunction for delivery of 5620 bags of fertilisers free of wharfage and on weightment and assessment of damages basis. It was alleged that ad interim injunction was granted in the suit and later on, the suit was dismissed in default under Order 9 Rule 8 read with Order 17 Rule 1 C.P.C. It was alleged that an application was moved by the plaintiff for the restoration of the suit and the suit was restored on 26.2.1974. It was alleged that during the intervening period, the defendants sold the said 5620 bags of fertilisers by auction and after the restoration of the suit defendants took an objection that the suit had become infructuous as the goods had already been sold. The said application was contested by the plaintiffs. The Trial Court held that the suit had become infructuous as the goods had already been sold and that no compensation could be awarded to the plaintiff because the plaintiff had already filed a suit for the value of the goods separately. It was alleged that the plaintiff filed an appeal and the appeal was accepted by the learned District Judge and the suit was remanded to Trial Court for disposal according to law holding that even it decree for mandatory injunction could not be granted to the plaintiff, its case for damages could be considered. It was alleged that the defendants challenged the said order of the Additional District Judge by way of appeal in this Court but the same was dismissed by this Court since it was agreed between the parties that the plaintiff will move a formal application in the Trial Court claiming the amount of damages in the alternative. It was alleged that thereafter (after remand of the case to the Trial Court) an application for amendment of the plaint was moved in the Trial Court and the same was

allowed, whereupon the plaintiff Federation filed amended plaint in which besides claiming the relief of mandatory injunction, the plaintiff also claimed a sum of Rs. 5,47,558.60 as an alternate relief along with interest etc. It was alleged in the amended plaint that during the pendency of the suit, the defendants had illegally, wrongly and without jurisdiction deprived the plaintiff of the entire stock and the same was sold by auction and nothing was paid to the plaintiff out of the auction money.

3. In the written statement to the amended plaint, various preliminary objections were taken, including the plea regarding suit being barred under Order 2 Rule 2 C.P.C. and the principle of resjudicata and that the suit was also barred by limitation and for want of notice under Sections 80 C.P.C. and 78B of Indian Railways Act. The fact regarding booking and arrival of the goods was admitted but it was alleged that the goods were booked at owner's risk and that the wagons arrived at the destination with seals intact. It was alleged that wharfage incurred was more than the money fetched by the auction and as such nothing was payable to the plaintiff and that the plaintiff had no right to demand delivery of the fertilisers bags without payment of wharfage and on weighment and assessment of damages basis.

4. Various issues were framed. Both the sides led evidence. After hearing both sides and perusing the record, the learned Trial Court decreed the suit of the plaintiff Federation for recovery of Rs. 1,52,000/- with proportionate cost but interest @ 6% per annum only from the date of decree till realisation against defendant No. 1 Union of India only. Aggrieved against the same, defendant No. 1 Union of India filed the present appeal in this Court.

5. No-one came present on behalf of respondent No. 1 during the course of arguments.

6. I have heard the learned counsel for the appellant-Union of India and have gone through the record carefully.

7. The learned counsel appearing for the defendant appellant, while challenging the finding of, the Trial Court on issue No. 7 submitted before me that by virtue of provisions of Sections 55 and 56 of the Railways Act, the defendant appellant was entitled to adjust the amount received by way of auction towards the amount recoverable from the plaintiff. However, I find no force in this submission of the learned counsel for the defendant appellant. Admittedly, no counter claim was filed by the defendants in the suit filed by the plaintiff Federation. Furthermore, no specific issue was claimed by the defendants in this regard. Furthermore, it was found by the Trial Court that 15 days notice as required under Section 55 of the Railways Act was not published in one or more local newspapers of the intended auction before the Fertilisers were auctioned by the Railways Authorities. It was found by the Trial Court that there was a cutting Exhibit D7, pasted on a white sheet of paper produced on the file. It was found that the date and the name of the newspaper was written with pen on the white sheet of paper on which the newspaper cutting was pasted. It was found that in the absence of any evidence in this regard, no authenticity could be attached to the said cutting, especially when newspaper itself could have been produced to show that the said notice was published in the newspaper 15 days prior to the date of auction. However, nothing of the kind was done for the reasons best known to the defendants. Thus, it could not be said that the fertilizer

bags were auctioned after following the procedure prescribed under Section 55 of the Railways Act. In my opinion, the learned Trial Court was perfectly justified in coming to this conclusion since admittedly the newspaper in which the alleged notice was published had not been produced and only the cutting was produced without any authenticity about the name of the newspaper and the date on which it was published.

8. Furthermore, from a perusal of Section 55 of the Railways Act, it would be clear that lien of the Railways on the auction money had been made subject to accrual of liability in respect of charges payable to the Railways and demand by the Railways for such payment from the consigner or consignee. In the present case, it was submitted by DW-1 Manohar Lal Sharma, Goods Clerk that no such demand for payment of demurrage etc. was ever made by the Railways Authorities from the consignee. In this view of the matter, in my opinion, the learned Trial Court was perfectly justified in holding that auction was held by the defendants without any authority of law and as such the said auction was invalid and that the amount realised by the defendants in the said auction was required to be refunded to the plaintiff. This is especially so when DW1 Manohar Lal and admitted that no notice about the auction was ever served upon the plaintiff nor any copy of the publication allegedly made in the newspaper was ever sent to the plaintiff. He also admitted that they had not intimated the consignee that the wharfage had accumulated to Rs. 7,29,715.30.

9. In view of the detailed discussion above, I uphold the finding of the Trial Court on issue No. 7.

10. No other point has been urged before me in this Appeal.

11. For the reasons recorded above, finding no merit in this appeal, the same is hereby dismissed.