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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.231 of 1990
Date of Decision: 02.06.2016

Steel Authority of India
......Appellant

Vs

Union of India and another
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Vijay Sharma, Advocate
for the appellant.

Mr. G.S. Bal, Senior Advocate with
Mr. Sewa Singh, Advocate
for the respondent-UOI.

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1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

<u>RAJ MOHAN SINGH, J.</u>

[1]. Plaintiff-appellant is in second appeal against the judgment and decree dated 08.08.1989 passed by Additional District Judge, Jalandhar whereby judgment and decree dated 24.12.1988 passed by Sub-Judge, Ist Class, Jalandhar was set aside and the suit of the plaintiff was dismissed.

[2]. Brief facts as gathered from the record are that the plaintiff-appellant filed suit for recovery of Rs.29,000/- on the

ground that plaintiff being a Company incorporated under the Indian Companies Act, 1956 booked out consignment of pig iron weighing 54.600 metric tonnes of IM-4 quality in wagon No.CR-67900 vide RR No.65330 dated 17/18.02.1983 from Haldia port station to be delivered to the plaintiff at Suranussi station of Northern Railways under Invoice No.1. It was further alleged that the consignment was booked at the Railways' risk. Defendants failed to deliver the quantity of 54.600 metric tonnes in contents on 22.02.1983 when the wagon material was re-weighed on receipt of delivery under protest in the presence of M/s S.L. Passi & Co. independent Surveyors. Shortage of 16.480 Metric tonnes of pig iron was detected in the consignment and the Surveyor submitted his report in this regard. Plaintiff suffered loss to the tune of Rs.29,000/- being price of the short delivered goods including Rs.160/- as fee which was paid to the Surveyor. It was also alleged that the loss and damage occasioned to the plaintiff was on account of negligence of the railway administration and its employees. After issuing claim notice dated 28.04.1983 under Section 78-B of the Indian Railways Act and reminder thereto and also notice under Section 80 CPC on 14.02.1986, the suit for recovery of Rs.29,000/- including Rs.160/- as fee of the Surveyor along with interest @18% per annum came to be filed.

[3]. Defendants contested the suit. Besides challenging the maintainability of the suit through the persons so allegedly authorised, it was submitted by the defendants that the booking particulars as per RR No.65330 dated 17/18.02.1983 were admitted, but they took the stand that incriminating allegations were incorrect and those were against the entries made in the said RR. There was no admission of the load booked and in fact loaded in the wagon. The consignment was delivered to the plaintiff on 22.02.1983 under the signatures. No request for re-weighment was made by the plaintiff and it was denied that the plaintiff took the delivery under protest. Receipt of notices were also denied. The re-weighment being the unilateral aspect was also denied. The legality and validity of claim under Section 78-B of the Indian Railways Act was also challenged by the defendants, besides challenging legality and validity of notice under Section 80 CPC.

[4]. On completion of pleadings, the parties went to the trial on the following issues:-

> *"1. Whether the suit has been filed by a duly authorised person? OPP*
>
> *2. Whether the consignment was booked at railway risk? OPP*
>
> *3. Whether the delivery was made in short*

supply as alleged? OPP

4. *Whether the loss and damage was occasioned by the gross negligence and misconduct of the defendants and their servants as alleged?OPP*

5. *Whether the plaintiff filed a claim u/s 78-B of the Indian Railways Act with the defendants? OPP*

6. *Whether a valid notice under section 80 CPC was served by the plaintiff on the defendants? OPP*

7. *Whether the plaintiff is entitled to recover from the defendants? If so how much? OPP*

8. *Whether the plaintiff is entitled to claim interest? If so how much? OPP*

9. *Relief."*

[5]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[6]. Trial Court held issued No.1 in favour of the plaintiff. Issue Nos.2, 3 and 4 were collectively decided in favour of the plaintiff and against the defendants. Decision of issue No.5 also went in favour of the plaintiff. Plaintiff served a legal and valid notice under Section 80 CPC, therefore, issue No.6 was also decided in favour of the plaintiff. Under issue No.7 an amount of Rs.29,000/- on account of short delivery of the consignment

inlcluding Rs.160/- as Surveyor's fee was found recoverable from the defendants. Issue No.8 went against the plaintiff. Resultantly, the suit for recovery in a sum of Rs.29,000/- was decreed with costs against the defendants vide judgment and decree dated 24.12.1988 by the trial Court.

[7]. Feeling aggrieved against the judgment and decree dated 24.12.1988 passed by the trial Court, the defendant No.1 went in appeal. Lower Appellate Court accepted the appeal vide judgment and decree dated 08.08.1989 thereby dismissing the suit. That is how the present appeal came to be filed.

[8]. I have heard learned counsel for both the parties.

[9]. The entire controversy rested upon the exact load for which RR No.65330 dated 17/18.02.1983 in respect of pig iron weighing 54600 metric tonnes of IM-4 quality in wagon No.CR-67900 was loaded in the train. The aforesaid RR was duly exhibited as Ex.D-1 on record. Invoice was exhibited as Ex.P-25. Perusal of RR No.65330 showed that in the column of actual weight, entries were blank. Though pig iron was shown loaded in the wagon, but its quantity in terms of actual weight was not recorded in the aforesaid RR. At the end of this RR the entries were made that *“DVM to weigh and advice destination for loading. No witness by company staff.”* An amount of

Rs.1,42,157/- was shown as freight charges @ Rs.43.38 per quintal. Charged weight in terms of quintal was shown to be 327.7. The column regarding actual weight was conspicuously blank. The entries in other columns were duly made, but the entries in the column of actual weight was shown blank with the endorsement at the end of the RR that DVM was to weigh and advice destination for loading and it was not witnessed by the Company staff. This blank entry in the column of actual weight give rise to so many speculations and apparently would give rise to intended pilferage by the persons none else the Company itself, who booked the consignment and intentionally did not furnish the actual weight to be loaded in the wagon.

[10]. The consignment invoice as issued by the plaintiff vide Ex.P-25 was an unilateral transaction. The document Ex.D-1 i.e. RR was the backbone of the case which virtually clinched the issue between the parties. If the interpretation attached to the document Ex.D-1 is appreciated in the light of other attending circumstances, it would give rise only to the conclusion that the Department of Railways was not at fault. When the goods were in sealed wagon in a packed condition, then, even though they were booked at the Railway's risk. The consignee was bound to prove the actual weight of goods entrusted to the Railways for the purposes of transaction. Shortage detected subsequently

was to be co-related with the weight of goods supplied to the Railways. The onus to prove the weight of goods was initially upon the plaintiff to demonstrate viz-a-viz. the documents that the alleged weight was supplied to the Railways and delivered weight was short. The initial onus in terms of interpretation attached to the RR No.65330 was not discharged by the plaintiff. The aforesaid RR do not contain any weight of the goods booked in the wagon, rather specific endorsement was made at the end that the goods shall be weighed at another station on route.

[11]. The report of Surveyor Ex.P-4 was tendered into evidence subject to objection by the defendants. Plaintiff was bound to prove this document which was direct evidence. The report of the Surveyor was prepared on 20.03.1983 i.e. after inordinate delay of about one month. Original report was not tendered. The Surveyor was not even cited as a witness to prove this document. The report was not proved as per mode prescribed under the Evidence Act. The report was rightly ruled out of consideration by the lower Appellate Court. The invoice (Ex.P-25), even if, contained that the plaintiff had paid price of 54.660 M. tonnes of pig iron, this document was an unilateral document to admit the contents in favour of the plaintiff itself as it was not signed by the Railways/defendants as a token of

bilateral obligation, if any. Having hit by Section 21 of the Indian Evidence Act, no benefit could be extracted by the plaintiff out of this document. Moreover the entrustment of the exact weigh was *sine qua non* for the entire transaction so far as the liability of the defendants was concerned.

[12]. Apparently the goods had reached the destination at Suranussi station of Northern Railways on 22.02.1983 as was evident as per Ex.P-3 vide which it was pointed out to the defendants regarding shortage/pilferage in the wagon. The delivery was taken through the Surveyor M/s S.L. Passi and Co. The report Ex.P-4 was prepared by the Surveyor only on 20.03.1983 as against the delivery which was taken on 22.02.1983. No explanation had come forth as to why the report was delayed by the Surveyor. Evidently, the report (Ex.P-4) was prepared for the purposes of lodging claim against the defendants. Moreover the report of the Surveyor was not proved as per the requirement of law. Ex.P-4 remained a photostat copy of the original report. No reason had been assigned as to why the original report was not produced, nor permission was obtained from the trial court for leading secondary evidence. Above all, the Surveyor was not cited as witness, nor examined. The alleged report of Surveyor remained unproved and was rightly rejected by the lower Appellate Court.

[13]. The appeal was rightly treated to be well within limitation after necessary deduction of time spent for obtaining certified copy of the judgment before the lower Appellate Court.

[14]. No substantial question of law has been formulated by the appellant. In view of Full Bench judgment of this Court in ***Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I,*** framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[15]. Having considered the issue in detail, this Court finds that no indulgence can be granted in this Regular Second Appeal. The impugned judgment and decree dated 08.08.1989 passed by the Additional District Judge, Jalandhar cannot be faulted with and the same is found to be based on correct

appreciation of facts and evidence on record. Resultanlty this appeal is totally bereft of merits and the same is accordingly dismissed.

June 02, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**