

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

FAO No.1364 of 1996.

Date of Decision: 24.05.2016.

Punjab Small Industries & Export Corporation Limited

....Appellant.

VERSUS

The Union of India, through the General Manager, Northern Railway,
Baroda House, New Delhi and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Anil Malhotra, Advocate for the appellant.

Mr. Karminder Singh, Standing Counsel for respondents-
Union of India.

SNEH PRASHAR, J.

Assailing the judgment dated 25.01.1996 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, “the Tribunal”) by virtue of which the application filed by the appellant claiming a sum of Rs.6373.49/- alongwith interest and costs was dismissed, the appellant filed the instant appeal.

Precisely, the facts are that 57.910 M.T. of pig iron was booked by the appellant on 21/22.07.1992 against RR No.998870 ex-Vishakhapatnam to Suranassi (Punjab). The consignment was loaded in Wagon No.SE 55565 by Rashtriya Ispat Nigam Limited Vishakhapatnam Steel Project. The loading was duly witnessed by the railway staff and

reaching the destination station i.e. Suranassi was found to be in a pilfered condition. It also took abnormal time in transit against the normal transit period of eight days. The appellant demanded reweighment of the consignment which was conceded to by the railway administration.

On reweighment, a shortage of 2.355 M.T. of pig iron was noticed. A shortage certificate was issued by the railway staff on 27.08.1992. The appellant lodged a claim of Rs.12,270.49. Since no payment was made by the respondent-railway administration, the appellant served a notice under Section 106 of the Railways Act, 1989 (for short, "the Act"). In response to the notice, the railways sent a cheque of Rs.5897/- towards settlement of the entire claim vide letter dated 08.02.1995. The appellant sent reply on 03.04.1995 raising objection to the lesser amount sent by the railways against the claim of Rs.12,270.49 lodged by it and demanded the balance amount of Rs.6373.49 alongwith interest. As the payment was not made, a claim application was filed before learned Tribunal.

The claim application was contested by the respondent-railways. The facts relating to booking of consignment as well as issuance of shortage certificate as on reweighment the consignment was found to be short, were admitted by the respondent-railways. However, the respondent alleged that against the claim lodged by the appellant, a conditional offer of a sum of Rs.5897/- was sent towards full and final settlement of the entire claim. The appellant without any protest or objection accepted the cheque and got the same encashed. In such circumstances, the appellant was estopped from filing the claim application. The allegation that the loss

administration or its employees was denied.

On the pleadings of the parties, issues were framed. Both the parties were given time to produce their evidence. Considering the ocular and documentary evidence led by the parties and the submissions made on their behalf, learned Tribunal, dismissed the application vide judgment dated 25.01.1996.

Feeling aggrieved, the appellant-claimant preferred the instant appeal.

The submissions made by Mr. Anil Malhotra, learned counsel for appellant and Mr. Karminder Singh, learned standing counsel for respondents-Union of India have been heard and record perused.

As argued by learned counsel for the parties, the facts of the case are not in dispute. The short and vital contentious issue which needs determination is whether encashment of the cheque of Rs.5897/- by the appellant sent vide letter dated 08.02.1995 by the respondent-railways amounted to acceptance of the offer of the said amount towards full and final settlement of the claim lodged by the appellant and the claim application filed by the appellant re-agitating the same issue was not maintainable.

Learned counsel for the appellant argued that when it was an admitted fact that on reweighment the consignment booked by the appellant and loaded in the wagon under supervision of the railway staff was found to be short at the time of delivery at the destination station and a shortage certificate dated 27.08.1992 was issued by the railway staff and based on the same the appellant had lodged a claim for recovery of Rs.12,270.49 on

Rs.5897/- sent through cheque vide letter dated 08.02.1995 towards full and final settlement of the claim. There was no dispute regarding the weight of the goods as well as value of the goods that had been found to be short and therefore the appellant could not have accepted the payment of a lesser amount than the claim lodged by him. The cheque sent by the railway was got encashed as part payment of the claim and for protest letter dated 03.04.1995 objecting to the amount sent through cheque and demanding the balance amount was written to the Railways. To support his argument that for the mere reason that the cheque sent by the respondent-railways was got encashed would not mean that the appellant accepted the part payment towards full and final settlement of the claim, learned counsel relied upon *Union of India and another vs. M/s Gangaram Bhagwandas, 1977 AIR (M.P.) 215.*

The ratio of *M/s Gangaram Bhagwandas*'s case (supra) relied upon by learned counsel for the appellant is of no help to him. The same judgment was cited before learned Tribunal also by the appellant. On the other hand, the respondent had relied on the law laid down in *Amrit Banspati Co. Ltd. vs. Union of India, 1966 AIR (Allahabad) 104* to support its contention that where an offer is made subject to a condition, the benefit of the offer cannot be taken under the offer without accepting the condition. Learned Tribunal distinguishing the facts of the case in hand from the facts of *M/s Gangaram Bhagwandas*'s case (supra) had held that the proposition of law laid down in *Amrit Banspati Co. Ltd.*'s case (supra) is applicable to the case in hand on all its force and rightly so as in *M/s Gangaram Bhagwandas*'s case (supra) a suit was already pending in the

through cheque towards full and final settlement. The Court, which was seized of the matter, was not apprised of the aforesaid payment towards full and final settlement or otherwise. It was noticed that during evidence the railways did not lead any evidence to show that the intention of the plaintiff was to accept the cheque in full and final settlement of the claim and accordingly, it was held that the plaintiff was entitled to recover the remaining amount for which the suit was initially filed.

Indeed, when a claim application is pending in the Court, the parties cannot, without the permission of the Court, decide the terms and conditions of its settlement unless the claimant decides to withdraw the claim application on account of some settlement outside the Court. Contrary to the said facts, in the case in hand no claim application was pending before a Court of law. The appellant had lodged claim for shortage of goods of a sum of Rs.12,270.49. The respondent-railways sent a cheque of Rs.5897/- alongwith letter intimating that it was towards full and final settlement of the entire claim. The letter was received by the appellant on 13.03.1995 and the cheque was got encashed by it. Subsequently, the appellant sent a protest letter dated 03.04.1995 alleging that the amount sent was less than the claim lodged.

The Railways had accepted the shortage detected in the consignment on reweighment and had issued shortage certificate but there is nothing to indicate that the claim of Rs.12,270.49p lodged by the appellant was accepted by the Railways. Admitting its liability for the shortage to the extent of Rs.5897/- the railways had sent the cheque towards full and final settlement of the claim. If at all the amount sent through cheque was not

lodged by it, the cheque should have been immediately returned by the appellant declining the offer made through the same. Since the cheque was sent with a condition and the appellant accepted the cheque and got the same encashed, its action and conduct amounted to acceptance of the offer given by the respondent-railways. In other words, by its own act and conduct, the appellant proved that it accepted the payment sent by the railways towards full and final settlement of the claim lodged by it. Therefore, the appellant was estopped from re-agitating the claim after about 20 days. The appellant could not blow hot and cold in the same breadth. Having accepted the cheque sent with a condition, it could not raise objection to the condition after having availed the benefit by getting the cheque encashed.

Thus, there being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

24.05.2016.

jitender