

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.1157 of 2000
and
C.M.P.No.10987 of 2000

- 1.M/s.NITCO Roadways Ltd.,
rep. By its Managing Director,
Nitco House, Jammu - 180 002.
- 2.M/s.NITCO Roadways Ltd.,
Branch Office by its Manager,
Opposite to Ashok Leyland,
Zuzuwadi, SIPCOT, Hosur,
Dharmapuri District.Appellants/Defendants/Respondents

Vs

- 1.Renowned Auto Products Ltd.,
Madras rep. By its Managing Director
by its Power of Attorney,
The New India Assurance Co. Ltd,
Anna Nagar, Chennai - 40
- 2.The New India Assurance Co. Ltd.,
Anna Nagar, Chennai - 40
rep. Through Power of Attorney
P.Chandran, Divisional Manager,
New India Assurance Co. Ltd.,
Salem.Respondents/Plaintiffs/Appellants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 12.04.2000 made in A.S.No.32 of 1999 on the file of the III Additional District Court, Dharmapuri, reversing the judgment and decree passed in O.S.No.276 of 1996 dated 22.07.1998 by the Subordinate Judge, Hosur.

For Appellants .. Mr.R.Venkatesulu for
M/s.G.R.Swaminathan

For Respondents .. No appearance

JUDGMENT

Appellants are the defendants in the suit. The suit has been filed, claiming damages for a sum of Rs.30,300/- along with interest. The appellants are the carriers entrusted with the handing over of the goods belonging to the first plaintiff/first respondent. As according to the first plaintiff, the goods were found to be in damaged condition, which was occasioned in the custody of the appellants, a notice was issued under Ex.A4 dated 13.07.1992. On the failure of the respondents to comply with it, the suit has been laid.

2.The trial Court after having held that the appellants were responsible for the damage, nonetheless dismissed the suit on the ground that Section 10 of the Carriers Act which mandates the action initiated by way of issuing notice claiming damages having been not complied with, the suit is not maintainable. The lower appellate Court reversed the judgment and decree of the trial Court, while confirming the finding of fact about the damage caused by the appellants by holding that no such plea of non-receipt of Ex.A4 notice has been raised by the appellants/defendants in the written statement and therefore, in view of the decision rendered by the other High Courts, having given up the said plea, the plaintiffs are entitled for the relief as prayer for. Challenging the same, the present second appeal has been filed.

3.At the time of admission, the following substantial questions of law have been framed:

(a)Whether the suit is barred by limitation, since the plaintiffs filed the suit not within three years from the date of booking of the consignment by the plaintiffs/1st respondent?

(b)Whether the suit claim is barred in law on account of the non-issuance of Section 10 notice by the respondents within the legally stipulated period?

(c)Whether the lower appellate Court had committed material irregularity in holding that the appellants had waived the plea as to non-issuance of Section 10 Notice?

4.Learned counsel appearing for the appellants submits that Section 10 Notice being mandatory, it is for the plaintiffs to substantiate it in the manner known to law. Hence the judgment and decree of the lower appellate Court requires interference.

5.This Court is not inclined to accept the said contention.

The plaintiffs have marked Ex.A4 which is a notice dated 13.07.1992 requiring the appellant to make the payment. The appellants/defendants have not raised a plea of non-receipt of notice in the written statement. Thus they have given up the said plea. Ex.A4 also was not opposed by the appellants. P.W.1 has deposed in support of Ex.A4. If Ex.A4 is taken into consideration, there is no limitation that would arise in non-suiting the plaintiffs for filing the suit. The Courts below have taken into consideration Exs.A2, A7, A11 and A12. There is sufficient evidence to show that the goods have been damaged at the hands of the appellants. In fact, such a finding has been rendered by both the Courts.

6.In such view of the matter, this Court does not find any substantial question of law, warranting interference. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional District Judge,
Dharmapuri.

2.The Subordinate Judge,
Hosur.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Nageswaram, Advocate, S.R.No.8763

+1cc to Mr.G.R.Swaminathan, Advocate, S.R.No.8858

S.A.No.1157 of 2000

PVS (CO)
RS (11/05/2017)