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

**RSA No. 957 of 1990 (O&M)
Decided on: 19.02.2018**

Punjab Small Industries and Export CorporationAppellant

versus

The Union of India and anotherRespondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Mr. Neeraj Madaan, Advocate
for the respondent No. 1.

Rajbir Sehrawat, J.(Oral)

1. This is an appeal filed by the plaintiff in a suit for recovery against the concurrent judgments and decrees passed by both the Courts below; whereby the suit filed by the plaintiff was dismissed.

2. For convenience, the parties would be referred herein as the plaintiff and defendants; as they were referred in the original suit.

3. Stated in brief; the facts of this case are that the plaintiff had filed a suit for recovery of Rs. 10695.04 against the defendant No. 1, Northern Railways. It was pleaded in the suit that the plaintiff-Corporation had purchased pig iron weighing 57.200 MT vide invoice No. 10/48538 dated 10.02.1983 from Bokaro to Suranussi(Jalandhar). The material was consigned by defendant No. 2, Steel Authority of India Limited from Bhilai. The Railway had charged @1770/- per MT plus 4% Central Sales Tax on a total value of consignment Rs. 105293.76. The defendant No. 2 consigned the material to the plaintiff vide RR No. 791458 dated

08.02.1983 wagon No. 86950 from Bokaro to Suranussi. It was further averred that the consignment in question arrived at its destination very late and in damaged condition. On visual inspection, heavy shortage was suspected by the plaintiff. Therefore, a request was made to the Station Master of Railways for delivery of the consignment on weighment basis. However, the same was rejected. Under the circumstances, the delivery of the goods in question was taken under protest. Weighment of the consignment was done by independent surveyor M/s S.L.Passi & Co. with due notice to the Railways. However, on weighment the material was found to be short by 5.810 MT from the wagon. The plaintiff preferred claim under Section 78(B) of the Railway Act with the Chief Commercial Superintendent, Northern Railway, New Delhi for a sum of Rs. 10695.04, being the cost of shortage of material plus CST. The plaintiff also issued reminder dated 01.02.1986. However, the defendant had not made the payment without any sufficient cause. Hence, the suit for recovery was filed.

4. On notice, the defendants filed separate written statements. The defendant No. 1-Railways, in its written statement, took routine preliminary objections. On merit, the claim of plaintiff was refuted. It was further averred that there was no delay in arrival of the consignment. The consignment was delivered to the plaintiff under clear receipt and signatures. It was averred that the defendant was not bound by any unilateral weighment done by the plaintiff. In fact, there was no shortage of material as alleged. The plaintiff had taken the delivery of consignment without any protest. Hence, the dismissal of suit was prayed for.

5. Parties led their evidence.

6. After hearing learned counsel for the parties and perusing the

record, the learned Trial Court dismissed the suit filed by the plaintiff. While relying upon the Rule 15 of the Goods Tariff Act. The Trial Court held that mere issuance of railway receipt by the Railways does not amount to admission that the weight, shown in the receipt, has been received by the Railways or that the description of the goods as furnished by the consigner is correct. It was held by the Trial Court that the plaintiff has not led any evidence whatsoever to substantiate his claim that the material shown in the papers of the consignment was actually delivered to the Railways for carrying to Suranussi. Hence, the Trial Court held that it is not proved on record that the pig iron weighing 57.200 MT was actually loaded in the railway wagon at Bokaro Railway Station. Regarding the witnesses examined by the plaintiff, the Trial Court held that admittedly, these witnesses were not present at the Bokaro when the material was loaded in the railway wagon. Hence, the testimony does not show that the material weighing 5.810 MT was actually loaded and handed over to the Railways. Still further, the Trial Court recorded a finding that the plaintiff had received the goods under clear receipts and no objection was raised by the plaintiff at the time when the delivery was taken. Hence, the suit was dismissed. Aggrieved against this judgment and decree passed by the learned Trial Court, the plaintiff approached the lower Appellate Court.

7. However, the lower Appellate Court also dismissed the appeal filed by the plaintiff. Besides upholding the findings recorded by the Trial Court, the lower Appellate Court also held that the plaintiff has not been able to show that consignment was on weighment basis instead of being receipt basis. The lower Appellate Court further held that the document, Ex.P7/A, the application made by the plaintiff for giving delivery of

consignment to the plaintiff on weightment basis and Ex. P8/A, a letter claimed to have been written by the plaintiff to the Station Master, that the delivery was being taken under protest; cannot be relied upon because the originals of these documents were not available on the file. At the time of exhibition of these documents, the defendant had taken an objection. That objection was kept open by the Trial Court. However, that objection was not decided by the Trial Court at all. Hence, these documents cannot be read against the defendant. Further, the lower Appellate Court held that the contents of these documents have also not been proved by examining the witnesses. The lower Appellate Court held that the plaintiff claimed the endorsement of the Station Master on these documents. However, neither the Station Master was summoned as a witness in the case nor any questionnaire/notice was given to the defendant No. 1 to admit or deny these endorsement and the applications. Hence, these documents cannot be said to be proved as per the requirement of law. Still further, the lower Appellate Court held that it has been proved on record that the plaintiff had taken the delivery of consignment under clear receipt. While taking delivery no remarks was given in the column of railway delivery book. It was further held that even PW-2, who was examined by the plaintiff, has admitted in cross-examination that he had not written any protest in the delivery book at the time of taking of the delivery nor any separate complaint in this regard was made by the plaintiff to the officials or authorities of the Railway Department. On the contrary, Nanak Chand-DW1 has clearly deposed that delivery was taken by the plaintiff without any protest and under clear receipt. Hence, the plaintiff has failed to prove his case. Resultantly, the appeal filed by the plaintiff was dismissed. Aggrieved

against this judgment and decree passed by the lower Appellate Court, the present appeal has been filed by the plaintiff.

8. While arguing the case, learned counsel for the appellant has submitted that railway receipt clearly mentioned the weight of the consignment. On suspicion of shortage of the material an independent surveyor was engaged by the plaintiff to weigh the consignment with due notice to the Railway. The notice-Ex.P7 was given to the Station Master for deputing his representative at the time of weighment. It was further argued by learned counsel for the appellant that at the time of taking of the delivery a letter-Ex.P8 was duly written to the Station Master that delivery was being taken under protest. The argument of learned counsel for the appellant is that the Station Master has put his endorsement on both these letters. Therefore, it is proved that these letters were communicated to the Station Master. So far as, not recording any protest in the delivery book of the Railway, is concerned, learned counsel for the appellant submits that the officials of the plaintiff were not permitted to make entry in the book. Hence, no fault could be found on their part. It is further pleaded by the learned counsel for the appellant that despite refusal of the railway authorities to depute their nominee at the time of weighment, the plaintiff was bound to lift the material from the railway yard because, otherwise, they would have been liable to pay further charges to the Railway under Section 2 of the Railway Act. It is further submitted by him that the case of the plaintiff was duly proved by examining the witnesses who were present at the time of taking of the delivery and at the time of making of the applications to the Station Master. These witnesses have been examined by the plaintiff. It is further submitted by the counsel even DW-1 has admitted

in cross-examination that the endorsement on the Ex-P7 and Ex:P8 were made by the Station Master. Hence, the protest on the part of the plaintiff stands duly proved.

9. On the other hand learned counsel for the respondent No. 1-Railway has submitted that the consignment was taken by the Railway on receipt basis. No one from Railways was present at the time of weighment of the consignment at Bhilai at the time of the loading in the railway wagon. Still further, it is submitted by the learned counsel for the defendant No. 7 that mere entry in the railway receipt is not the proof of the fact that the quantity of goods mentioned in the railway receipt was actually received by the Railways. Still further, it is submitted by the learned counsel for the defendant No. 1 that the applications Ex. P7 and Ex.P8 were never given to the Station Master. Neither the originals of these documents have been placed on record nor the contents of documents have been proved as per the requirement of law. Hence, these documents cannot be taken into consideration against defendant No. 1. Hence, the dismissal of the appeal is prayed for.

10. Having considered the arguments raised by the learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that the argument raised by the learned counsel for the appellant are not sustainable in law. The Trial Court has rightly recorded a finding that, mere mention of a particular weight or description of the goods in the railway receipt is not any admission on the part of the Railways regarding the correctness of the weight or description of the goods. To claim any deficiency at the time of delivery, the plaintiff was required to prove that the quantity mentioned in the railway receipt was actually

delivered to the Railways. The Trial Court has rightly recorded a finding that no such evidence has been led by the plaintiff that the quantity of 56.560 MT was actually delivered to the Railways at the time of handing over the consignment to it. Hence, the plaintiff cannot claim any shortage against the Railways.

11. Still further, this Court does not find any infirmity in finding recorded by the lower Appellate Court that the documents Ex. P7 & P8 have not been proved on record as per the law. Admittedly, the originals of these documents are not on record. Learned counsel claims that the originals of these documents were seen and returned by the Court. However, this fact also cannot be relied upon by the plaintiff for the simple reason that cross examination of the witness of the plaintiff shows that even before the Court it was only photostat which was produced; because the witness had admitted in cross examination that they have only the photostat copy of these documents. Moreover, the defendant had raised objection to exhibition of these documents and the objections was not overruled by the Court even at the time of final decision. Hence, the objection of defendant had not been discarded. Even the contents of these documents have not been proved on record. The endorsement on these two documents is claimed to have been made by the Station Master. However, neither the Station Master has been examined as witness by the plaintiff nor any questionnaire and notice to the Railways for admitting these endorsement has been brought on record. So far as the admission of DW-1 regarding the endorsement is concerned, admittedly, he is not claimed to be present at the time of making these endorsements by the Station Master. Therefore, his alleged admission regarding the endorsement cannot be read against the defendant No. 1-

Railways. There is another aspect to the case. The plaintiff had claimed that the consignment had arrived very late. However, it has been proved on record that the consignment had arrived well in time on 13.02.1983. Delivery of the same was also taken by the plaintiff on 13.02.1983 itself. However, thereafter the material was left open and unattended by the plaintiff. The weighment of the material is claimed to have been done on 15.02.1983. Therefore, possibility of pilferage, if any, during this period cannot be ruled out. The delivery from the Railways was taken by the plaintiff under clear receipt and DW-1 has duly proved this fact. Therefore, by any means, it is not proved that the shortage has ever happened at the hand of Railways. The plaintiff had not even raised an issue with the higher authorities of Railways. Even the present suit of recovery is filed after about 3 years of the date of taking of delivery of the consignment.

- 12. No other argument was raised by learned counsel for the parties.
- 13. In view of the above, finding no merits in the appeal the same is dismissed.

19th February, 2018
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned - Yes
Whether reportable - No