

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-798-1992 (O/M)

Date of decision : 05.11.2024

M/s Thomson Press (India) Ltd.

..... Appellant(s)

Versus

M/s Transport Corporation of India Ltd. and another Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Adarsh Jain, Advocate
for appellant.

Mr. Aditya Vermani, Advocate
for respondent No. 1.

Mr. Utkarsh Khatana, Advocate
for respondent No. 2.

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HARSH BUNGER, J. (ORAL)

1. Appellant [M/s Thomson Press (India) Ltd.] has filed the instant regular second appeal (RSA) being aggrieved of judgment and decree dated 28.01.1989, passed by learned Sub Judge 1st Class, Faridabad, whereby a suit for recovery of Rs. 9,470/- filed by respondent No. 1 (M/s Transport Corporation of India Ltd.) was decreed; as well as judgment and decree dated 12.11.1991, passed by learned Additional District Judge, Faridabad, whereby the appeal filed by appellant against the judgment and decree dated 28.01.1989 was dismissed.

2. Briefly, respondent No. 1-plaintiff filed a suit for recovery of Rs. 9,470/- against the present appellant [M/s Thomson Press (India) Ltd.] and respondent No. 2 herein (M/s Hindustan Machine Tools Limited) on the plea that respondent No. 2 being the consignor of goods

had handed over a wooden case containing a machine at Eranakulam to the branch office of respondent No. 1 (M/s Transport Corporation of India Ltd.) for transportation of the same by road to Faridabad for delivery to the consignee i.e. the present appellant-M/s Thomson Press (India) Ltd.

2.1 It was the pleaded case of respondent No. 1 that the consignment was booked at owner's risk and on freight to pay basis, wherein freight was settled at Rs. 8,910/- plus octroi and incidental charges and the said amount was to be paid by the consignee. According to respondent No. 1 (M/s Transport Corporation of India Ltd.), they carried the consignment from Eranakulam to Faridabad by exercising reasonable care and delivered the same to the present appellant, however, the payment of the charges were not made. Accordingly, the aforesaid suit for recovery was filed by respondent No. 1 (M/s Transport Corporation of India Ltd.).

2.2 It transpires that respondent No. 2 herein was proceeded against ex-parte in the suit before the learned trial Court, however, the suit was contested by the present appellant, inter alia, on the plea that respondent No. 1-plaintiff therein had undertaken the safe carriage of the machine, but it failed to take due care and the machine was extensively damaged and rendered useless; as the truck carrying the machine had met with an accident wherein the machine was damaged extensively and the machine was delivered without the packing case and in a damaged condition, therefore, it is respondent No. 1-plaintiff, who was bound to pay the cost of repair. It was also pleaded that appellant had paid the entire purchase price of the machine and they are entitled to recover the

same from respondent No. 1-plaintiff and they do not owe any amount to respondent No. 1-plaintiff by way of freight charges or otherwise.

2.3 On the basis of pleadings of the parties, the learned trial Court framed the following issues :-

“1) Whether the plaintiff is company duly incorporated under the Companies Act and the suit filed by O.P. Gupta on its behalf is through a duly authorised person ? OPP

2) Whether the plaintiff is entitled to recover an amount of Rs. 9470/- from the defendants as alleged ? OPP

3) Whether the plaintiff had been careful in transporting the goods and the loss to the suit consignment was not due to carelessness or negligence on its part ? OPP

4) If issue No. 3 is not proved, whether the defendant is not liable to pay the amount in question which is freight charges, octroi etc. ? OPD

5) Relief.”

2.4 The learned trial Court decided issue No. 2 in favour of respondent No. 1-plaintiff by holding that the present appellant was liable to pay the freight and octroi charges and respondent No. 1-plaintiff was entitled to recover the amount of Rs. 9,470/-. However, the trial Court disposed of issue No. 3, by observing as under :-

“ No finding is called for on issue no. 3 as even if it is found in the appropriate proceedings that the plaintiff was careful, I am of the opinion that the plaintiff would still be entitled to the freight charges as they had conveyed the goods from Ernakulam to Faridabad and no counter claim or set off, has been claimed in this case. The parties can move the appropriate Court for the decision on this issue which both the counsel have

pointed out during the course of arguments in this case that the proceedings have been initiated in the Delhi High Court.”

2.5 Accordingly, the learned trial Court, vide judgment and decree dated 28.01.1989, decreed the suit filed by respondent No. 1-plaintiff against the present appellant for recovery of Rs. 9,470/- being freight and octroi charges alongwith cost and interest at the rate of 10% per annum from the date of institution of the suit till its realization.

2.6 The present appellant challenged the aforesaid judgment and decree dated 28.01.1989 by filing an appeal, which was dismissed by learned Additional District Judge, Faridabad, vide its judgment and decree dated 12.11.1991 by holding that according to the consignment order (Ex.D1) dated 16.09.1983, the freight and octroi charges etc. were to be paid by the consignee i.e. the present appellant and the present appellant's claim (if any) on account of damage caused to the machine on account of accident, may be recovered from the transport company separately. It was further noticed by the lower appellate court that a suit for recovery of the aforesaid damages had already been filed by the present appellant against the transport company (respondent No. 1-plaintiff), which was pending in the Court at Delhi. Accordingly, the lower appellate court upheld the findings returned by the learned trial Court on issues No. 2, 3 and 4.

3. In the aforementioned circumstances, the appellant has filed the instant regular second appeal before this Court.

4. The only argument raised by learned counsel for appellant is that the learned Courts below have erred in not returning any finding on issue No. 3, i.e. whether the plaintiff (respondent No. 1 herein) had been

careful in transporting the goods and the loss to the suit consignment was not due to carelessness or negligence on its part. It is submitted that in case the finding on the said issue No. 3 is returned against respondent No. 1 herein, then appellant would not be liable to pay the freight charges.

4.1 During the course of hearing, learned counsel for appellant has handed over photocopy of judgment and decree dated 07.02.2014, passed by learned Additional District Judge, Central-14, Delhi, in Court today, whereby the suit for recovery filed by the present appellant against the Transport Corporation of India Limited (present respondent No. 1) and others has been decreed for a sum of Rs. 10,00,000/- and the same is taken on record as Mark 'X' subject to all just exceptions. It is stated that an appeal against aforesaid judgment and decree dated 07.02.2014 is pending, therefore, the present appeal be adjourned to await decision of appeal against judgment and decree dated 07.02.2014.

5. Per contra, learned counsel appearing for respondent No. 1 has countered the aforesaid submissions by submitting that appellant had not filed any counter claim in the suit, filed by respondent No. 1, rather, appellant had filed a separate suit at Delhi, seeking recovery of an amount of Rs. 12,98,152.95 on account of damage/loss etc. to the machine, delivered by present respondent No. 1; wherein an issue No. 4 had been framed that *had defendant No. 2 (present respondent No. 1-Transport Corporation of India Limited), its servants or agents had taken due care in the carriage of the machines in dispute and accident was purely beyond human control.* It is contended that the learned trial court had rightly not returned any finding on issue No. 3 considering the fact that

there was no counter claim or set off claimed by present appellant and it was found as a matter of fact that respondent No. 1-plaintiff had conveyed the goods from Ernakulam to Faridabad, for which respondent No. 1 was entitled to freight charges and further that separate proceedings have already been initiated in Courts at Delhi.

6. I have heard learned counsel for the parties and have also perused the paperbook with their able assistance.

7. Having considered the submissions made on behalf of respective parties, I am of the considered view that the learned trial Court has rightly held that since the goods were actually delivered by respondent No. 1-plaintiff from Ernakulam to Faridabad in terms of the consignment order, to present appellant, therefore, the carrier (respondent No. 1-M/s Transport Corporation of India) was entitled for the freight and octroi charges etc.

7.1 As regards the contention of appellant that respondent No. 1-plaintiff was not entitled to the aforesaid freight and octroi charges as it had not been careful in transporting the goods and the loss to the consignment was on account of their carelessness and negligence; it is observed that learned trial Court framed issue No. 3 in this regard, which was disposed of by observing that the said issue would be decided by the appropriate court where the proceedings had already been initiated in Delhi. Infact, the separate suit for recovery filed by appellant at Delhi for claiming amount on account of loss/damages caused to the machine and other charges, has already been decreed in favour of appellant, vide judgment and decree dated 07.02.2014, passed by learned Additional District Judge, Central-14, Delhi. Furthermore, the appellant did not file

any counter-claim/set off in the suit filed by respondent No. 1-plaintiff (Transport Corporation of India), so as to avoid payment of freight and other charges etc. to respondent No. 1-plaintiff. Therefore, there is no scope for any interference in the findings returned by learned Courts below.

7.2 That apart, in ***Gurnam Singh (D) By Lrs and others v. Lehna Singh (D) By LRs, 2019(2) RCR (Civil) 586***, the Ho'ble Apex Court has observed as under:-

"Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal."

8. In my considered opinion, no question of law much less a substantial question of law arises for consideration in this appeal.

9. No other argument has been raised.

10. Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 28.01.1989 and dated 12.11.1991, passed by learned Sub Judge 1st Class, Faridabad, and learned Additional District Judge, Faridabad, respectively, are upheld.

11. Present appeal is, consequently, dismissed with no order as to cost.

12. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

05.11.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No