(1935) 01 AHC CK 0001

Allahabad High Court

Case No: None

Secy. of State	APPELLANT
Vs	
Simla Footwear Company	RESPONDENT

Date of Decision: Jan. 3, 1935

Acts Referred:

- Railways Act, 1890 - Section 55

Citation: AIR 1935 All 601 : 157 Ind. Cas. 1080

Hon'ble Judges: Bennet, J

Bench: Division Bench

Judgement

Bennet, J.

This is a second appeal by a defendant against whom the lower Courts have passed a decree for Rs. 600 damages. The appellant is the Secretary of State for India-in-council representing the North-Western Railway and the G.I.P. Railway. The facts arc simple. The plaint sets out that the plaintiff, a firm in Agra, sent certain boxes of shoes from Agra Fort to Amritsar, The date of despatch was 26th January 1929, and the consignment arrived on 7th February 1929. Delivery was not taken at Amritsar and on 20th April 1929 the railway company sent a registered notice to the plaintiff stating that the goods (had been sent to the lost property office and that proceedings would be taken under Sections 55 and 56, Railways Act. On 24th April 1929 the plaintiff sent a very indefinite letter to the railways company asking the railway company to retain the goods and stating that delivery would be taken about 1st May. The railway company sent no reply to this letter and the plaintiff took no further action in the matter. On 1st September 1929 the railway company put up the consignment for sale along with other goods at a general sale and the consignment was sold for Rs. 400. After this the plaintiff states that in the first week of October 192.9 he was informed that the goods had been sent to the lost property office in Lahore, and on 22nd October 1929 he was informed that the consignment had been sold by public auction. The railway company offered to the plaintiff the proceeds Rs.

400 less Rs. 28-2-0, that is, Rupees 371-14-0 which the plaintiff did not accept. The plaintiff has brought a suit for the cost price of the goods Rupees 759-12-0 and various other sums amounting in all to Rs. 1,035-11-0. The lower Courts have awarded Rs. 600 as damages.

2. The first point which was argued in second appeal was that the lower appellate Court erred in holding that no notice u/s 77, Railways Act, was necessary. This section states:

carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

3. The appellant claims that the present suit is one which would come under this section. The section refers to a suit for compensation for loss, destruction or deterioration of goods. The argument is that in the present case loss has been caused to the plaintiff by the sale of the goods by the railway company or the non-delivery of the goods to the plaintiff by the railway company, therefore the notice is required under this section, and the notice should have been given within six months from the date of delivery of the goods, i.e., within six months from 26th January 1929. The notice therefore, according to the appellants, should have been given by 26th July 1929. It is obvious that the notice according to this theory should have been given before the goods were sold. It is difficult to see on what grounds it could have been alleged on 26th July 1929 that the goods had been lost. On that date the goods were in the lost property office of the railway and the railway had made no refusal to deliver them to the plaintiff. On the contrary the railway had issued a notice to the plaintiff on 20th April 1929 asking the plaintiff to take the goods. It is clear therefore that it could not be said that the goods were in any sense lost on 26th July 1929. Therefore if the contention of the appellant were correct, it would be impossible to bring this case at all. Learned Counsel for the appellant, referred to a large number of cases which he contended established or tended to establish his point. The earliest of these cases is G.I.P. Ry. Co. v. Ganpat Rai (1911) 33 All. 544. That was a case where the goods had actually been lost as they had not actually reached their destination. The case was therefore different from the present case where the goods had reached their destination and had never been lost from the possession of the railway company until sold. The next case is E.I. Ry. Co. v. Sheo Ratan Das (1913) 19 I.C. 370. In that case the railway company retained the goods on the lien u/s 55. Secy. of State v. Jivan 1923 All. 426 is a case where it was held that the word "loss" in Section 7 Railways Act, means the actual loss to the company and not a loss to the plaintiff in the sense that he does not receive the value of the goods. This was also held in E.R. Ry. Co. v. Tirkha Mal 1924 All. 7, and E.I. Ry. Co. v. Makhan Lal, Bindeshri Prasad 1923 All. 605. In Badri Prasad v. G.I.P.R. 1925 All. 144 it

was held that a notice u/s 77 was only necessary where there was an actual loss of the goods by the railway company, and this ruling specifically dissented from certain rulings of Patna and Madras which held to the contrary. In E.I. Ry. Co. v. Fazal Ilahi 1925 All. 273 there was a case where the goods were actually lost and it was held that there was no distinction between a suit which was brought for damages for non-delivery and a suit which was brought for the loss of the goods. The expression "damages for non-delivery" was not intended in that ruling to apply to a case like the present. In Thakurdas Manrakhan Lal v. E.I. Ry. Co. 1926 All. 686 there was again a case where goods were actually lost by the railway company and it was held that a notice was necessary for a suit even though the suit was expressed as a suit for non-delivery. In the same volume on p. 698, Sheo Dayal Niranjan Lal v. G.I.P. Ry. Co. 1926 All. 698, there was a similar ruling in the case where there was a shortage found in the goods and it was held that notice was needed. In none of these cases were the facts similar to the present where the goods have all along been ''in the possession of the railway company until the railway company sold the goods. These rulings therefore are no authority for the proposition advanced by learned Counsel for the appellant. We may point out that Section 77 comes in Chapter 7. Railways Act, which is headed "Responsibility of Railway Administrations as Carriers." That chapter begins with Section 72 which lays down the responsibility of the railway administration for the loss, destruction or deterioration of animals or goods, and it is stated that the responsibility is that a bailee under Sections 151, 152 and 161, Contract Act. Those sections do not refer to the action of a bailee in selling the goods as in the present case, nor is a bailee entitled to do so. The right of a railway company as distinct from an ordinary bailee to sell goods depends on the statutory provisions in Sections 55 and 56, Ch. 6, Railways Act. Any claim which would arise from a railway company failing to act under those sections, although it purported to act under them, would, not come under Ch. 7. Accordingly the notice provided by Section 77, Ch. 7 clearly does not apply to the present case. Learned Counsel for appellant then argued that the suit was one to which Article 31, Schedule 1, Limitation Act applied, that the period for that article was one year from the time when the goods ought to have been delivered, which was on arrival on 7th February 1929, that the period of one year expired on 7th February 1930, that the present suit was brought on 4th October 1930 and was therefore time-barred. Article 31 is for a suit "against a carrier for compensation for non-delivery of, or delay in. delivering, goods."

4. Learned Counsel argues that the present plaint could have been based on the non-delivery to the plaintiff as the cause of auction, and that therefore the suit might come under this Article 31. But the cause of action is not stated in the plaint to be non-delivery, Para. 11 of the plaint states that the cause of action was the sale by public auction against, the express direction of the plaintiff. This cause of action is more than mere non-delivery, and the cause of action will come under Article 48:

For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation, for wrong full taking or detaining the same.

5. The plaint alleges that the railway company acted without justification in taking the goods of the plaintiff and selling them by auction, and that the plaintiff is entitled to compensation for this wrongful act. The period of limitation for Article 48 is three years from the time when the person having the right to the possession ,of the property first learns in whose possession it is. Consequently the present suit is within time under this article, whether we take the starting point for limitation as 20th May 1929 when the goods were sent to the lost property office at Lahore, or 1st September 1929, the date of auction sale.

6. The third ground sets out, that under the circumstances of the case the sale was regular, justified, and according to law. The facts are that the plaintiff sent the goods on 26th January 1929 the goods arrived at Amritsar on, 7th February 1929, consigned to self, but his customer did not want the goods, and para. 2 of the plaint admits that plain tiff asked the railway company to keep the goods till the plaintiff was in a position to take delivery of them. Para. 3 shows that the plaintiff wanted the railway to store his goods till he would he able to sell them at, Amritsar. It is no part of the business of a railway to act as a storage company and the request was unreasonable. On 20th April 1929 the railway sent a registered notice to the plaintiff in clear terms telling him to take delivery of his goods or the railway would deal with the goods under Sections 55 and 56, Railways Act. The plaintiff did not take delivery and took no steps in the matter other than to send on 24th April 1929 a maundering letter on the back of one of his advertisements, asking the railway to keep the goods and that he would be responsible for the charges and would arrange for someone to take delivery about 1st May 1929. No reply was given by the railway and the railway was not, bound to accept, the request of the plaintiff to act as his storekeeper. No person was sent, by the plaintiff to take delivery about 1st May.

7. The railway with great patience waited till 10th August 1929 when it sent a notice to five newspapers of a sale of property on 1st, September 1929. The railway was entitled to take this action in regard to the goods both u/s 55(2), Railways Act, as the plaintiff had failed to pay on demand and the railway rate for the goods entered in the railway receipt, and u/s 56 as the plaintiff had failed to claim the goods (that is, to take delivery of the goods) and notice had been served on him on 20th April 1929 and he had failed to comply with the requisition in the notice, Up to this point the action of the railway was strictly according to statute. The plaintiff is able to show that at this stage there was a very minor irregularity. Although the notices were of 10th August, the various papers made some delay in publishing the notices, and the earliest notice to appear was in the edition of the Civil and Military Gazette bearing date Monday 19th August 1929, which is delivered to the public on 18th August. From 18th to 31st August is 14 days, and thus there was 14 days notice before the

sale of 1st September, Section 55(2), Railways Act, says that the auction should be "on, the expiration of at least fifteen days notice of the intended auction," The notice was therefore short by one day. We consider therefore that the auction was not strictly justified u/s 55(2), and therefore the railway cannot deduct the amount of Rupees 28-2-0 from the auction price, as the right to realise charges comes under this section. But the railway was also proceeding u/s 56, which gives a right of sale "as nearly as may be under the provisions of the last foregoing section." We lay stress on the words "as nearly as may be" and Ave consider that, these words imply that the terms of Section 55 are not to be rigidly applied in a sale u/s 56. We consider that, the notice of fourteen days was a sufficient notice for a sale u/s 56. The sale was a general one as the terms of the published notice shows, and there would be a number of bidders at such a sale. Mere postponement of the sale of this lot of goods to 2nd September would not be likely to produce more bidders. The plaintiff was unaware of the date of sale and he would have taken no action in the matter. No evidence has been called to show that, any higher price would have resulted from sale on a later date. The point therefore is merely technical and not, a point of substance.

8. One further point, was urged and finds place in the judgment of the lower appellate Court that the papers should be "local" papers as laid down in Section 55(2) and that local moans the papers of the place where plaintiff resides. We consider that the word "local" in Section 55(2) means papers of the place where the sale is to be held, and that the provision is intended to give notice of the sale to persons of the locality who are likely to attend the purchase. The owner of the goods is provided for in Section 56(1) which directs that notice to remove the goods should be sent to him.

9. We hold that the sale u/s 56 was a good sale and that the railway was fully justified in selling the goods to dispose of them when plaintiff failed to comply with the notice to remove them. But the company is not entitled to make any deduction from the sale price of Rs. 400. Accordingly we allow this appeal to this extent that we set aside the decrees of the Courts below and we substitute & decree in favour of the plaintiff for Rs. 400 with interest at 6 per cent, per annum from the data of suit till the date of realisation, are we direct that the parties should pay their own costs throughout.