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Gopal Chandra Nandi Vs Union of India (UOI)

Appeal from Original Decree No. 148 of 1955

Court: Calcutta High Court

Date of Decision: March 21, 1960

Acts Referred:
Contract Act, 1872 â€" Section 151, 152, 161#Railways Act, 1890 â€" Section 55, 55(2), 56, 56(1), 56(2)

Citation: (1961) 1 ILR (Cal) 522

Hon'ble Judges: Guha, J; Banerjee, J

Bench: Division Bench

Advocate: A.D. Mukherjee and M.M. Mukherjee, for the Appellant; Ajoy Kumar Basu, for the Respondent

Final Decision: Dismissed

Judgement

Banerjee, J.
One Bkolanath Banarashi Das booked 201 bags of potatoes, weighing 402 mds. for carriage by railway from Chandausi to

Bankura, under R.R. No. A. 011701, Invoice No. 1, botli bearing the date December 29, 1951. The goods were consigned, freight to pay to self.

Gopal Chandra Nandi, who was the original Plaintiff, obtained title to the goods by purchase and by endorsement of the Eailway receipt in his

favour, for valuable consideration.

2. The goods arrived at Bankura, on January 18, 1952, that is to say, on the twenty-first day from the date of despatch from Chandausi.

According to the Plaintiff this unusual delay was due to the wagons being detained at Moghulsarai. Further, according to Plaintiff, when the goods

arrived at Bankura they had completely deteriorated on account of rotting and became unfit for human consumption. Since the Railway

administration, Plaintiff alleged, had not taken the reasonable care of a bailee and the goods rotted on account of its negligence, the Plaintiff refused

to take delivery of the same. Thereafter, the Railway administration purported to have sold the goods which, according to the Plaintiff, it had no

right to do. Also, it was alleged, the aforesaid goods had not been sold in compliance with the provisions in the Indian Railways Act. The Plaintiff

alleged that the price of each bag of potatoes was Rs. 25 and calculated at that rate the amount of domages suffered by him would come up to Rs.

5,025. After service of usxial statutory notices, the Plaintiff instituted the suit, out of which this appeal arises, and laid his claim at Rs. 5,025.

3. The main defence of the Railway administration was that on the unloading of the consignment at Bankura, on January 18, 1952, it was found

that 145 bags had partly deteriorated, five bags had wholly deteriorated, and the rest of the bags were in good condition. The Plaintiff refused to

take delivery of the consignment even on assessment of damages. The Plaintiff was then served with a notice to remove the goods and was further

informed that on his failure to do so the goods would be sold by public auction. The Plaintiff refused to accept the notice. Thereupon the goods

were sold, on January 24, 1952 and after deduction of the charges incurred by the Railway including charges for freight, amounting to Rs. 590-7,

the balance amounting to Rs. 1,309-9 was offered to the Plaintiff, which again he refused to accept. The attitude taken up by the Railway

administration was that it was not liable to pay any compensation to the Plaintiff or alternatively nothing in excess of Rs. 1,309-9

4. On the evidence, the learned Subordinate Judge came to the conclusion that there was negligence on the part of the Railway administration in

not reaching the" consignment, at Bankura, within a reasonable time from the date of booking. Nevertheless, he observed as follows:

Be that as it may, the learned lawyer for the Defendant submits that the Defendant is prepared to pay to the Plaintiff the price recovered by the

auction sale of the potatoes minus the dues of the Defendant on account of freight and wharfage. The learned lawyer for the Plaintiff has objection

only with regard to the wharfage now claimed by the Defendant. As the Plaintiff refused to accept delivery of the goods on arrival of the same at

Bankura on assessment of proper damages, I find that the Plaintiff is liable to pay the dues of the Defendant on account of freight and wharfage,

and that he is not entitled to claim the price of the whole of the consignment. In view of the offer made by the Defendant and as "I find that the

Plaintiff is liable to pay wharfage and freight for the goods. I find that the Plaintiff is now entitled to a decree, for a sum of Rs. 1,309-9 as. only. The

issue is answered accordingly.

5. The suit was accordingly decreed for Rs. 1,309-9 only. Against the aforesaid decree the Plaintiff preferred the instant appeal and valued the

appeal at Rs. 3,715-7. The Plaintiff-Appellant died during the pendency of the appeal and his heirs and legal representatives got themselves

substituted in this case.

6. Since the court below came to the conclusion that the Railways administration was negligent in the matter of carriage of the goods, the only

question for our consideration is to what measure of damage the Plaintiff became entitled.

7. Mr. Apurbadhan Mukherjee, learned advocate for the Appellant, contended that the Railway administration could sell the goods only under the

provision of Section 55 of the Indian Railways Act. That section came in operation only if the consignor or any other person liable, failed to pay on

demand made by or on behalf of the Railway administration any rate, terminal or other charge due from him in respect of any animal or goods.

Since no demand had been made by or on behalf of the Railway administration for the charge of freight and any other chaiges due to the Railway

administration there was no occasion for the sale. Mr. Mukherjee further argued that no date, time and place was fixed for the sale and there was

no publication of the sale notice in any of the local newspaper; the pretended auction-sale was therefore no sale at all. Since a sale u/s 55 can only

be made by public auction and in accordance with the procedure laid down in Section 55(2) of the Indian Railways Act, the price fetched at the

sale was no index of the measure of damage suffered by the Plaintiff.

8. Mr. Ajoy Kumar Basu, learned advocate for the Respondent Railway, tried to repel the argument of Mr. Mukherjee, by contending that the

sale in the instant case was held under the provision of Section 56 of the Indian Railways Act and that the date, time and place of public auction

had been declared by beat of drum. He contended further that the price brought at the sale, less Railway charges, was the measure of damage to

which the Plaintiff became entitled.

9. The question for our consideration, therefore, is whether Section 56 of the Indian Railways Act would be applicable to the facts of the instant

case.

10. u/s 72 of the Indian Railways Act. the responsibility of a Railway administration for the loss, destruction or deterioration of animals, goods

delivered to the administration to be carried by Railway shall subject to the other provision of the Act, be that of a bailee under Sections 151, 152

and 161 of the Indian Contract Act. Section 161 of the Contract Act is to the following effect:

If by default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss,

destruction or deterioration of the goods from that time.

11. The purpose of the bailment in the instant case was carriage by Railway from Chandausi to Bankura. During the period of bailment, the bailee

Railway was bound to take, u/s 151 of the Contract Act, as much care of the goods bailed to it as a man of ordinary prudence would under similar

circumstances take of his own goods of the same bulk quality and value as the goods bailed. From the date of booking on December, 29. 1951 to

the date of tender for delivery at Bankura on January, 18, 1952, according to the finding of the court below, the Railway did n""4 take that care and

therefore, became liable to pay all damages suffered by the Plaintiff between the reasonable date of delivery and January, 18, 1952. On that date

however, the goods partly deteriorated, were tendered for deli-very. But the Plaintiff refused to take delivery thereof. According to Mr. Basu the

contract of bailment ended with the refusal by the Plaintiff to take delivery of the goods. The consignment thereafter, did lie in the Railway''s

premises as unclaimed property within the meaning of Section 56 of the Indian Railways Act. The Railway administration was justified in selling the

goods u/s 56 of the Railways Act, Mr. Basu contended, and in offering to the Plaintiff only the surplus sale proceeds after deduction of Railway

charges. Section 56 of the Indian Railways Act is to the following effect:

Section 56(1).-When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not

claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall if such owner or

person is known oause a notice to be served upon him, requiring him to remove the animals or goods.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice the

railway administration may, within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or

goods as nearly as may be tinder the provisions of the last foregoing section, tendering the surplus if any, of the proceeds of the sale to any person

entitled thereto.

12. The point is whether the words ""are not claimed by the ""owner or other person appearing to the Railway administration ""to be entitled

thereto"" include a person, ''either owner or otherwise entitled to the goods'' who did claim the goods on arrival but refused to take delivery

thereof on account of deterioration suffered. The point seems to be covered by decisions.

13. In the case of Sri. Gangaji Cotton Mills Company Ltd. v. East Indien Railway Company (1922) ILR 44 All. 763, the Plaintiff had booked 108

bales of cotton for carriage from Jaipur to Marzapur. Fifty-four bales were duly delivered to the Plaintiff owner but the rest of the consignment was

delayed until too late. On notice of arrival being given to the Plaintiff, he inspected the goods btit refused to take delivery on the ground that the

bales had become damaged. Thereafter the Plaintiff claimed compensation for the damage caused to his goods. The Railway was not prepared to

pay the damage as claimed and served notice upon the Plaintiff that unless the goods were removed by a date mentioned in the notice, they would

be sold at the Plaintiff''s risk. The goods were sold thereafter and the sale proceeds, less amount due to the Railway, were offered to the Plaintiff

who, however, refused to accept the same. The Plaintiff thereafter sued the Railway for compensation but lost. On appeal being taken to the High

Court, at the instance of the Plaintiff Lindsay and Kantiya Lai, JJ., dismissed the appeal with the following observations:

He has however, in my opinion dealt with the case on the right lines as a whole and has definitely found that the Railway Company was justified in

selling the Plaintiff"s goods in exercise of the power conferred by Section 56 of the Indian Railway Act (IX of 1890) which authorises Railway

administration in certain circumstance and on certain conditions to sell unclaimed goods.

14. There was a decree passed in favour of the Plaintiff equivalent to the sale proceeds of the goods only.

15. The next case is Bengal North Western Railway Company v. Finn Dassundhi Mal-Bishambar Das AIR (1928) Lah. 166. In that case a

consignment of food grains and oil cakes arrived at the destination partly damaged. The Plaintiff owner asked the Railway officials to make a note

as regards the condition of the goods in the Railway Register. But the Railway officials declined to do so. Thereupon the Plaintiff also refused to

accept delivery. After some time, the goods were auctioned by the Railway, after service of notice on the Plaintiff and the price fetched at the sale

less dues of the Railway, was offered to the Plaintiff, which he refused to accept. The Plaintiff, thereafter sued the Railway for compensation, on

the basis of the market rate of the goods and got a decree. The railway appealed. Shadi Lal, C.J., and Bhide, J., allowed the appeal with the

following observations:

Owing to the Plaintiff"s refusal to accept delivery at destination the E.I. Railway was entitled to sell the goods after notice u/s 56 of the Indian

Railways Act and action was taken accordingly. * *

* * * * * *

It was argued on behalf of the Plaintiff that the sale was unnecessarily delayed with the result that the goods deteriorated still further and fetched a

very low price. As regards this it may be pointed out that the liability of the Railways as ""carriers"" terminated when the Plaintiff refused to accept

delivery. In the absence of any agreement to the effect the Railway cannot be held liable even as were house men thereafter. * * * *

After the Plaintiff"s refusal to accept delivery the Railway"s liability was merely as holders of unclaimed property u/s 56, Railways Act, and the

provisions of that section appears to have been complied with. As a result of the above findings my conclusion is that the Plaintiff is only entitled to

recover the balance of the sale price as offered by the E.I. Railway.

16. The third ease to which a reference need be made is Secretary of State v. Simla Footwear Company AIR (1935) All. 601. In that case a

consignment of shoes was not taken delivery of by the Plaintiff owners on arrival at destination and the Railway sent a notice to the Plaintiff stating

that the goods had been sent to the lost properties office and that proceeding would be taken under Sections 55 and 56 of the Railways Act. The

Plaintiff, thereupon, replied asking the Railway to retain the goods and assuring that delivery would be taken within a time stated in the reply.

Nothing was done by the Plaintiff thereafter and the goods were sold and the Plaintiff was offered the sale price, less railway charges. The Plaintiff

refused to accept the amount and sued the Railway for damages, equivalent to the cost-price of the goods. The Plaintiff got a parj decree. On

appeal by the Railway, Sulaiman, C.J., and Bennet, J., modified the decree to the extent of the sale price realised and observed as follows:

The railway was not bound to accept the request of the Plaintiff to act as his store-keeper. The railway with great patience waited till August 10,

1929, when it sent a notice to five newspapers of a sale of property on September 1, 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 the Railway rate for the goods entered in the Railway

Recepit 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 April

20, 1929 and he had failed to comply with the re-quisition in the notice. * * *

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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

oomply with the notice to remove them.

17. The only case in which a discordent note was raised is the one in Dominion of India v. Adam Haji Pir Muhamed Essac AIR (1953) Mad. 217,

218. But Govinda Menon and Mack, JJ., who delivered the judgment did not lay down any hard and fast rule. That was also a case of refusal by

the Plaintiff consignor to accept delivery. The lower appellate court had decreed the Plaintiff''s suit for damages at the value of goods, minus certain

Railway charges. On appeal by the Dominion of India, the Madras High Court modified the decree passed by the lower appellate court. Observed

Lordships:

There is nothing in the bailment sections of the Contract Act which lay dowts any obligation on the bailor to take delivery from the bailee when he

offers it nor is there any decision which lays down any such hard and fast rule. Normallj as property in the goods entrusted to a carrier remains

with the owner he is bound to take delivery even if they are damaged his remedy being to claim compensation, nor can he cast upon the bailee

responsibility for further custom as bailee without payment of storage or demurrage dues. Each case has to be considered on ita own facts and no

hard and fast rule can be laid down. * * ******

There was ** a duty cast upon the plaintiff to take delivery the goods though damaged when delivery was offered on 24-1-1945 in accordance

with the very fair and reasonable terms offered by the Railway Company in their letter ext. D(31). The legal position in the extract from this letter

supra is in my opinion correct though it does not necessarily follow in all cases that a consignor refusing to take delivery is precluded from filing his

suit for compensation and can only receive what the goods fetched in auction when sold u/s 56(2) of the Railways Act.

18. Mr. Apurbadhan Mukherjee, could not substantially distinguish the above decisions from the facts of the present case. He, therefore, tried to

escape the effect of the above decisions by contending that even though Section 56 of the Indian Railways Act became applicable in the facts and

circumstances of the instant case, the sale held was not in accordance with the provisions of that section. He contended that a sale u/s 56 has to be

held as nearly as may be under the provision of Section 55 of the Indian Railways Act, the sale as held was not in accordance with these

provisions because no notice had been given to the Plaintiff of the date, time and place of the sale and no advertisement had been made in the local

newspaper. The provisions as to sale u/s 55 are as hereinbelow quoted:

The railway administration may sell by public auction in the case of perishable goods at once, and in the case of other goods or of animals on the

expiration of at least fifteen days'' notice of the intended auction, published in one or more of the local newspaper, or where there are no such

newspaper in such manner as the (Central Government) may prescribe.

19. The argument of Mr. Mukherjee is misconceived. There can be no dispute that the potatoes were perishable goods. As such Railway

administration was entitled to sell the potatoes at once, on the refusal of the Plaintiff to accept delivery. In the instant case the necessity for selling

the potatoes at once was all the greater because rottening of the potatoes had already started. The law entitled the Railway administration to sell

the goods, m such circumstances, at once, and without the formalities of publication of notice in the local newspapers.

20. Realising the infirmity of his argument as made in the opening Mr. Mukherji recast his argument in his reply and contended that the purported

sale was not an auction sale as provided in Section 56 read with Section 55 of the Railways Act and was therefore, no sale in the eye of law. The

price fetched at the sale such as the Railway Administration held was not the real measure of damage Buffered by the Plaintiff.

21. Mr. Mukherjee strongly relied on a judgment of the Privy Council reported in Secretary of State v. Sunderji Shivji and Company (1937) L.R.

65 I.A. 21. In the aforesaid case, in respect of certain consignments of coal, of which delivery had not been taken, the Railway administration

exercised its power of sale under Sections 55 and 56 of the Railways Act. The sale was at first advertised in the Civil and Military Gazette,

published at Lahore, there being no local newspaper at the place where the sale was at first sought to be made. The bid being insufficient at the first

auction sale the same was not accepted and a second sale was attempted at a different place. This time a sale proclamation as it was called, was

published in the Bazar and a notice of the proposed sale was placed in the notice board of the Station. At the sale a sum of Rs. 205 was accepted

as the highest offer made and the coal was fold for the price. The consignee Plaintiffs sued the Railway administration for conversion of the goods.

They lost in the trial but won before the High Court. The Secretary of State representing the Railway administration appealed to the Privy Council.

In dismissing the appeal, Sir Lancelot Sanderson observed:

In their Lordships" opinion, it is clear that whether the right of the Railway Company to sell the coal arose by reason of Section 55, Sub-Section 2,

or by reason of Section 56, Sub-Section 2, the sale should have been by public auction and in no other way. It is true that in Section 56, Sub-

Section 2 it is provided that the Railway Company is to sell the goods as nearly as may be under the provisions of the last foregoing section," but

no suggestion has been made that there were any facts in this case which would prevent the Railway Company from selling by means of a public

auction in the event of the Company putting in force the right to sell given to the Railway Company by Section 56, Sub-Section 2.

There is no definition in that Act of the words ""public auction"", and their Lordships are of opinion that there can be no doubt that they must bear

the meaning when is ordinarily given to them in the English language. The words mean a public sale at which each bidder offers an increase upon

the price offered by the preceding bidder the article put up being sold to the highest bidder. This in-involves the auction being held in public, all

members of the public having a right to attend and a valubale element being the competition between the person who are openly bidding for the

subject-matter of the sale. This is of importance not only to the Railway Company but also to the owner of the goods, the competition being

calculated to produce the highest price. Their Lordships are of opinion that in this case there was no public auction of the coal in question.

Notice of the intended sale was given in the manner already mentioned by proclamation and notice on the board at the station and some offers

were sent to the station master at Mogalpura which were forwarded by him to his superior officer who directed him to accept the offer of Rs. 205

which was in fact the highest. But there was no public auction in the ordinary meaning of the words; there was no sale public; there was no

opportunity for competitive bidding; in fact, what was done bore no resemblance to a public auction". This conclusion is sufficient to dispose of the

appeal for the Railway Company did not sell the coal in the manner prescribed by the above mentioned sections, and therefore, the Railway

Company cannot rely on the protection given by the Act.

As already stated the question of the sufficiency of the notice was referred to in the course of the argument and while their Lordships in view of the

conclusion already mentioned, do not consider it necessary to give any decision on that part of the case, they are of opinion that it is difficult to see

how a notice of an intention to sell at a public auction can be sufficient or effective unless it specifies the time and place of the proposed public

auction the nature of the goods intended to be sold, and all other particulars necessary to enable the members of the public to appreciate what it is

whirl) it is intended to put up for sale at the public auction.

22. In the instant ease three witnesses deposed as to how the sale was advertised and conducted. They are C.N. Roy. Assistant Goods Clerk

(D.W. 6), It. Banga, A.D.C.I. Adra (D.W. 7) and P.R. Banerjee, Sub-Inspector W. and W. (D.W. 8).

23. D.W. 6, the Assistant Goods Clerk, staled in his cross-examination as follows:

There are newspaper in Bankura. We do not advertise sales in local papers The sale was proclaimed. I did not go to the Plaintiff. The Plaintiff did

not accept notices. The Station Master has retired from serivee. The sale was proclaimed by beat of drums. I cannot speak about the price of

potatoes. Sale was held in the Malgoodam where public had access. I did not conduct the sale and I was present there.

24. D.W. 7. the A.D.C.I., Adra, deposed as follows:

I attended the auction. S.I. Watch and Ward was also present. There were 18 bidders who put their signatures on papers after the sale was held. I

signed the bid sheet Ext. J. The potato was sold for Rs. 1,900.

25. D.W. 8, the Sub-Inspector, Watch and Ward, gave evidence as heiebelow quoted:

The potatoes were auctioned in my presence. Eighteen bidders were present. The price fetched in auction was Rs. 1,900. Mr. Guha held the

auction-sale

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Cross-Examination: The sale was held at 11-30 p.m. I know some of the bidders Rampada Kundu, a potato dealer was one of the bidders. Ashu

Dutta, a potato dealer, Sagar Dutta, also a potato dealer, were also bidders.

26. Ext. J. is the bid sheet. That document shows that 18 persons bid and the bid rose from Rs. 300 to Rs. 1.900.

27. About the manner of publication of the sale proclamation, apart from oral evidence, there is a letter (Ext. F) from the Station Master, Bankura.

to the District Commercial Officer, a material extract from which is set out below:

I beg to inform you that the necessary circulation of the auction date and time has been made by beating drum on 23-1-52 by one drum beater

named Puma Kalindi for which Rupee one was paid to him for his usual charges.

28. Mr. Mukherjee may be right in his contention that the proclamation of the sale was purfunctory and the public had not got sufficient notice of

the sale. The sale held within the Malgoodam (goods shed), may not have been a public auction in the ordinary meaning of the term.

29. But even if that is so, we do not see how we can help the Plaintiff. He was himself in the wrong when he refused to take delivery of the goods,

because they had partly deteriorated. The proper course for him was to take delivery and thereafter to sue the Railway administration for loss or

damages suffered. He could very well keep evidence of deterioration and damage caused to the goods, as at the date of delivery. By not having

adopted the right course, he invited misfortune for himself. As Plaintiff it was for him to prove the measure of damages suffered. According to the

evidence led by the Defendant Railway, which we have no reason to disbelieve, the Plaintiff had only suffered partial damage, because some of the

bags of potatoes had not deteriorated at all. Therefore, when the Railway administration had tendered the goods to the Plaintiff, for delivery, on

January 18, 1952 the Plaintiff was not entitled to claim damages for the entire consignment of goods at the market rate. His refusal to take delivery

caused the goods being left at the Railway premises. There the goods may have suffered further deterioration or may not have. We are not sure.

But the position is that there is no evidence from which it can now be exactly determined how much damage the Plaintiff suffered on January 18,

1952, when the Railway administration had tendered the goods for delivery to the Plaintiff. The Plaintiff fails because he has not succeeded in

substantiating his claim. He can, at best get the surplus sale proceeds. That is the sum which has been decreed in his favour and we are unable to

disturb that decree.

30. Before we close this judgment, we desire to make one point clear. We respectfully agree with the observations of Govinda Menon and Mack,

JJ., in Dominion of India v. Adamji Pir Muhamed Essac (supra) to the effect that a consignor is not in all cases bound to receive as compensation

only the price fetched at the auction-sale. Each such case will have to be decided on its particular facts. In the circumstances of the case, the

Plaintiff is not entitled to any other sum of money, because of his failure to prove the exact measure of damage suffered by him.

31. We also express our doubts as to the applicability of Section 56 of the Indian Railways Act, in a case where the consignor or the consignee

claimed the goods but ultimately refused to accept delivery because of loss or damage caused to the goods. It is, however, not necessary for us to

press our own scepticism to a point of dissent from the line of cases above referred to because we dismiss the Plaintiff"s appeal on a different

ground.

32. The appeal fails and is dismissed. There will be no order as to costs.

Guha, J.

33. I agree.