MANU/BH/0065/1949

Equivalent Citation: AIR1949Pat410

IN THE HIGH COURT OF PATNA
FULL BENCH

Decided On: 03.05.1949

Appellants: **Dominion of India**
Vs.
Respondent: **Hazari Lal and Ors.**

Hon'ble Judges/Coram:
Herbert Ribton Meredith, Manohar Lall and M. Prasad, JJ.

JUDGMENT

Herbert Ribton Meredith, J.

1. These two applications under Section 115, Civil P.C., arise out of two analogous suits against the Railway Administration of the Government of India. The suits were by the same plaintiff for recovery of compensation for non-delivery of portion of two consignments of thalis and lotas booked from Bankura Station on the B.N. Railway to Nirmali on the O.T. Railway. The plaintiff took open delivery in each case, and in each case shortage of the thalis and lotas was found, evidently due to pilferage en route. The learned Munsif found in favour of the plaintiff except with regard to notice under Section 77, Railways Act, and, considering the failure to serve this notice fatal to the suits, he dismissed them. In appeal the learned Subordinate Judge held that because the suits were based on failure to deliver, and not on loss, no notice under Section 77 was necessary. He, therefore, gave the plaintiff a decree in both cases.

2. I was responsible for these applications being referred to a Full Bench for consideration of the question whether the word "loss" in Section 77 meant only actual loss of the goods or would include loss to the plaintiff owing to failure to deliver. At the hearing it has become apparent that this question does not actually arise and the reference was unnecessary. When the applications originally came before me, my attention was not drawn to the plaints, but it now Appears that there is a clear statement in para. 5 of the plaints that the goods in respect of which the claim was made had been lost through the negligence of the Railway Administration. As was pointed out by a Full Bench of this Court in Puran Das v. E.I. Rly. Co. MANU/BH/0215/1927 where the plaintiff's allegation in the plaint is that the goods have been lost owing to negligence on the part of the servants of the defendant company, it being so admitted in the plaint that there was a loss of the goods, the onus no longer lies upon the defendant to call evidence upon the point which was admitted in the pleadings, and therefore, the case must be treated on the pleadings as one of loss. For this reason in that case also it was held that the question referred to the Full Bench, whether non-delivery is included in the word "loss" within the meaning of the Risk Note Form B, did not arise.

3. The present cases are, therefore, clearly cases of loss even though the plaintiff may have framed the suits as for non-delivery. In any view, therefore, notice under Section 77 was necessary, and the learned Subordinate Judge was wrong. He ought to have maintained the dismissal of the suits by the learned Munsif.

4. The question also arises, however, whether this Court has power to interfere in revision under Section 115. In my opinion no question of want of jurisdiction or irregularity in the exercise of jurisdiction at all arises. The error of the Court below was not on a point touching jurisdiction. Section 77 does not provide that no suit shall be entertainable in the absence of notice. It provides only that it cannot be decreed. The Court has always got the jurisdiction to entertain the suit, and has then to decide upon the necessity of notice. With regard to the necessity of notice, it has jurisdiction to decide rightly or wrongly. Had the matter been one under Section 25, Small Cause Courts Act, the position would have been different; but under Section 115, this Court, in my opinion, cannot interfere.

5. I would, therefore, dismiss these applications, but, in the circumstances, would make no order for costs.

Manohar Lall, J.

6. I agree. The first question does not really arise for decision because the plaintiff himself clearly stated in para. 5 of the plaint that the goods have been lost in transit. In these circumstances, the plaintiff's suit should have been dismissed as he did not give the notice required by Section 77, Railways Act. But I desire to emphasise that so far as the Patna High Court is concerned, it is now our settled practice which has prevailed for more than twenty years that in the cases where the plaintiff's suit is based upon non-delivery of the goods, he is not required to give a notice under Section 77 see the observations in Jaisram Rarn Rekha Das v. G.I.P. Rly. Co. MANU/BH/0187/1928The plaintiff, however, takes a risk in not giving the notice even in cases of non-delivery, because if it is established during the course of the trial that the case is not a case of non-delivery but of loss, then the suit will fail on that ground alone. I also desire to state that having examined a large number of cases cited before us on behalf of the petitioner, it is not possible to discard altogether the contrary view which appealed, for instance, to the learned Judges of the Madars High Court in M. & S.M. Rly. Co. Ltd. v. Haridoss Banmali A.I.R. 1919 Mad. 140, but so far as this High Court is concerned, as I have stated above, the settled practice should not be allowed to be disturbed.

7. With regard to the second, question, I fail to see how the misconstruction of the provisions of a statute not involving the jurisdiction of the Court can be held to result in the judgment of the Court below becoming a judgment without jurisdiction within the meaning of Section 115, Civil P.C. Their Lordships of the Privy Council have emphasised in a number of cases that if a Court has jurisdiction to decide a dispute between the parties, it has also jurisdiction to decide it rightly or wrongly both in fact and in law, and that Section 115, Civil P.C., is not directed to remedy wrong conclusions of fact or law where no question of jurisdiction is involved see Bala Krishna Udayar v. Vassudeva Ayyar A.I.R. 1917 P.C. 71. The matter has been again reviewed by their Lordships of the Judicial Committee in a case decided this year and re-ported as Venkatagiri Ayyangar v. Hindu Religious Endowments Board Madras A.I.R. 1949 P.C. 166. In this case their Lordships in reviewing the apparently conflicting decisions in the Indian High Courts have emphasised that the view of the Privy Council in Amir Hassan Khan v. Sheo Baksh Singh 11 I.A. 237. and Bala Krishna Udayar v. Vasudeva Ayyar A.I.R. 1917 P.C. 71, should be strictly followed, namely, that Section 115, Civil P.C.,

> empowers the High Court to satiety itself upon three matters: (a) That the order of the Subordinate Court is within its jurisdiction, (b) That the case is

one in which the Court ought to exercise jurisdiction and (c) That in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however, profoundly, from the conclusions of the subordinate Court upon questions of fact or law.

8. In the case of Kumar Ram Kinker Sinha v. Muhammad Ismail 16 P.L.T. 99, a Division Bench of this Court held that the decree passed on a handnote cannot be held to be a decree without jurisdiction because the Court failed to notice that the plaintiff had not produced a succession certificate as required by Section 214, Succession Act of 1925. That section so far as it is relevant provides that no Court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person except on the production, by the person so claiming, of a probate or letters of administration or a succession certificate granted under part X and having the debt specified therein. In my opinion, this is a correct decision. It will be noticed that the words of this section are more imperative than the words of Section 77, Railways Act.

9. Again, it is only necessary to draw attention to the provisions of Section 11, Civil P.C. which provides, inter alia, that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, etc. Numerous cases will be found in the books to show that a wrong decision of a Court as to the effect of Section 11 in a particular proceeding does not affect the jurisdiction of the Court when he decides the suit, because the plea under Section 11 is a plea in bar and when raised, it is to be decided by the Court which may decide it rightly or wrongly. I consider the effect of Section 77, Railways Act is similar, viz., that it is a plea in bar which has to be raised before the Court having jurisdiction to decide the dispute between the parties; the Court has full jurisdiction to accept or reject this plea in the case before it, and merely because the Court decides the matter rightly or wrongly either in fact or in law or in both, this does not affect the jurisdiction of the Court in deciding the suit one way or the other. For these reasons, I agree that the second point should be answered as proposed by my learned brother.

10. I would also dismiss these applications but in the circumstances make no order for costs.

M. Prasad, J.

I agree.

11. The first question referred to this Bench, whether the word "loss" in Section 77, Railways Act meant actual loss of the goods or loss to the plaintiff occasioned by the failure of the railway company to deliver does not arise as the case made out by the plaintiff in the plaint clearly was that of goods having been actually lost in the transit.

12. I desire, however, to state that on consideration of the terms of Section 77 and the context in which the word "loss" occurs therein, I am in agreement with the opinion expressed in, the case of Jaisram Ramrekha Das v. G.I.P. Rly. Co. A.I.R.1929 Pat. 109, and I have no hesitation in holding that the case of the B.N. Rly. Co. Ltd. v. Hamirmull Changanmull A.I.R. 1925 Pat. 727, holding the contrary view was wrongly

decided and must be deemed to have been overruled by the decision of the Full Bench in the case of Puran Das v. E.I. Rly. Co. MANU/BH/0215/1927The word "loss" in Section 77 and Risk Note B, has been used in the same context and in the same sense, and there seems no reason why it should have a different meaning in Section 77 than what it has been held to have in Risk Note B. The decision of this Court in Jaisram s case MANU/BH/0187/1928, should not be disturbed also for the reason that it has held the field for the last twenty years, and in consequence of this decision, not to give notice under Section 77 in cases of "non-delivery" has become the settled practice.

13. Having regard, however, to what was, pleaded in the plaint in the present case, the suit of the plaintiff was clearly bad for want of notice under Section 77 and ought not to have been decreed by the Court of appeal below.

14. The question then arises: Whether this Court in its revisional jurisdiction under Section 115, Civil P.C., is entitled to reverse the decision of the Court of appeal below and give relief to the defendant Company? This is the second question referred to this Bench to which the answer, I agree, is surely in the negative. For the principle on which this Court should act when invited to interfere with the decision of subordinate Courts in its revisional jurisdiction, the line of authority is that beginning from Amir Hassan Khan's case 11 I.A. 237 right down to the case of Venkatagiri Ayyangar v. Hindu Religious Endowments Board Madras MANU/PR/0004/1949 decided this year by the Privy Council, The principle is that if the Court has jurisdiction to decide a either it has jurisdiction to decide it rightly or wrongly both in fact and in law. The learned Subordinate Judge in the present case in passing the decree in question in the absence of a notice under Section 77 can at best |be said to have committed an error of law. Section 77 by its terms does not impose a bar against a Court entertaining a suit in the absence of a notice contemplated by it--it merely disentitles the plaintiff to the relief which he claims. The suit having been entertained by the Court with jurisdiction, it was certainly for the Court to decide whether, in the circumstances of the case, in the absence of a notice under Section 77, a decree in favour of the plaintiff should have been passed. The Court has undoubtedly erred in law in, deciding the question in favour of the plaintiff, but has not erred in exercise of its jurisdiction or has omitted to exercise the jurisdiction vested in it by law. It cannot be said even to have acted illegally or with material irregularity in exercise of its jurisdiction in that it has not committed any error of procedure in the trial of the suit materially affecting its ultimate decision.

15. I would, therefore, dismiss the applications but without making any order for costs.