

ST. JOSEPH TEXTILES

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v.

UNION OF INDIA AND ANR.

DECEMBER 17, 1992

[KULDIP SINGH AND P.B. SAWANT, JJ.]

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*Indian Railways Act, 1890: Sections 77 and 78—Responsibility of Railway Administration for delivery of goods—Claim for damages—When maintainable.*

The appellant-firm booked goods by Railways for carriage to its customer and sent the Parcel Way Bill and the Demand Draft given to it by the customer, to the Bank for clearance. However, the Bank returned the Demand Draft and the Parcel Way Bill to the appellant on the ground that the payment was not forthcoming. Immediately, the appellant wrote to the Station Master of the destination Railway Station to re-book the goods to it. On failing to get back the goods despite repeated requests, the appellant filed a suit claiming damages. Earlier, the appellant had also given a notice under Section 78 of the Indian Railways Act, claiming damages and alleging that Railway Administration was grossly negligent and misconducted itself and was careless in handling the goods and in not re-booking and delivering the goods back to the appellant.

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The suit was defended by the Railways, contending that the parcels and the Parcels Way Bill were carried by the Railways with due care and caution, that the delivery of the parcels was taken against production of the Parcel Way Bill and payment of all charges due to the Railways, 20 days after their arrival, that the appellant's request for re-booking of the parcels was received about two months after the termination of transit of the goods and, therefore, the respondents were not liable for the alleged non-delivery of the parcels that occurred after seven days after the termination of the transit, since they were protected against such non-delivery by the provisions of Section 77(2) of the Act. It was also contended that there was no negligence, misconduct or carelessness on the part of its servants, and that even assuming that the Railway receipt on which the delivery was effected was not a genuine one, the Railways were not liable for the loss which occurred after seven days of the termination of the transit of the goods at its destination.

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A The trial court decreed the suit. In appeal by the respondent-Railways, the High Court relied upon the provisions of Section 77(2) of the Act, and allowed the appeal.

B On the question: whether the respondent Railways could claim the protection of Section 77(2) of the Act for the delivery of goods to a wrong person against the non-genuine railway receipt since the delivery of the goods was not taken for more than seven days after the termination of the transit and the wrong delivery of the goods occurred after the expiry of the said period.

C Dismissing the appeal, this Court

D HELD : 1.1. Sub-section (1) of Section 77 of the Indian Railways Act states that the Railway Administration shall be responsible as a bailee under Sections 151,152 and 161 of the Indian Contract Act, 1872 for the loss, destruction, damage, deterioration or non-delivery of goods carried by Railways if such loss etc. has occurred within a period of seven days after the termination of the transit of goods. Therefore, to entitle a claimant to make claim, the liability on account of loss etc. should have arisen within the period of seven days after the transit is terminated. From the provisions of Section 77(2) it is clear that the period of seven days starts on the expiry of the free time allowed for removal of the goods from the Railway premises without payment of wharfage. Under the Rules for Warehousing and Retaining of Goods made under the Act, the said free time was of three days including the day of arrival of the goods.

[687-G,H; 688-A; 687-E]

F 1.2. In the instant case, the goods reached the destination on 1.7.1973. The alleged wrong delivery was effected on 21.7.1973 i.e., 20 days after the goods reached the destination and 11 days from the expiry of seven days after the termination of the transit of the goods. Since the goods were admittedly lost to the appellant on account of the wrong delivery by the Railways when they were in the premises of the Railways the liability of the Railways could be as that of a bailee. The Legislature has taken care to limit the period of liability of the Railways by providing specifically that notwithstanding what is contained in Sections 151,152 and 161 of the Contract Act, the liability of the Railways as a bailee does not extend beyond the period of seven days after the termination of the

transit. Taking into consideration the period of free time allowed for the removal of goods in question, the liability of the Railways extended only up to 10th July, 1973. Since the goods were wrongly delivered or delivered against a non-genuine receipt on 21.7.1973 the absolute bar created against the Railways had come into operation at the end of the 10th July, 1973. The appellant had retained the ownership in goods with it since the goods were not to be parted except on the presentation of the Parcel Way Bill and the payment of the Bank Demand Draft. It was expected to know when the goods would reach the destination Railway Station and keep itself informed about the arrival time of the goods at the destination and should also have taken precaution to see that the goods were lifted by it or its agents or its consignees during the said period. In any case after the expiry of the said period, when the appellant would have learnt that the goods were not lifted by the consignee it was its duty to take prompt steps to remove the goods itself or through its agents. The appellant moved into the matter only about two months after the expiry of the period of liability of the Railways. Hence, the respondents are not liable to pay damages to the appellant. [689-B; 688-D,G]

1.3. Since the wrong delivery or loss of the goods was not during the transit of goods, provisions of Sections 72 and 73 of the Act would not be applicable to the facts of the instant case. It falls under Section 77(2) which itself provides for the limited period of liability. [689-C,D]

*Union of India v. W.P. Factories, A.I.R., 1966 S.C. 395, inapplicable.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4694 of 1984.

From the Judgment and Order dated 9.8.84 of the Madras High Court in Appeal Suit No. 399 of 1978.

V. Krishnamurthy, V. Balachandran and A.K. Sinha for the Appellant.

V.C. Mahajan, C.V. Subha Rao, V.K. Verma and Ms. Ameeka Singh for the Respondents.

The Judgment of the Court was delivered by

**SAWANT, J.** The appellant is a firm carrying on business in textiles

- A at Karur. One Ganesh Chander Das of Azim Ganj, West Bengal had visited Karur and selected handloom cloth worth Rs. 53441.93 to be booked by the appellant firm to Azim Ganj City Railway Station. He sent the Parcel Way Bill along with bank demand draft for a sum of Rs. 52,672.93 being the price of the goods supplied less railway freight of Rs. 769/- to the State Bank of India at Jiaganj. He undertook to clear the demand draft by payment to the Bank and take the Parcel Way Bill from the Bank. The appellant booked the cloth at Karur Railway Station for carriage by railway to Azim Ganj on 11.6.1973 under Parcel Way Bill No. 835434 of the same date. The appellant then sent the said Parcel Way Bill and the demand draft to the State Bank of India, Jiaganj. The normal time for the goods to reach the destination was less than 30 days. The State Bank of India sent back the demand draft and the Parcel Way Bill to the appellant on 12.9.1973 for the reason that the payment was not forthcoming. Therefore, on 12.9.1973, the appellant addressed a letter to the Station Master, Azim Ganj requesting him to rebook the goods to Karur. Along with the request, the appellant enclosed the original Parcel Way Bill endorsed in his favour and the General Forwarding Note duly signed, to enable the Station Master to rebook the goods to Karur. This letter was acknowledged by the Station Master, Azim Ganj on 18.9.1973. However, he did not reply to the appellant. Thereafter, the appellant sent an Express telegram on 4.10.1973 which was followed by a letter of even date sent by registered post. It appears that in reply, the Station Master, Azim Ganj City Railway Station communicated to the appellant on 15.10.1973 that he had already sent a letter dated 27.9.1973 to the appellant in which he had stated that the appellant's letter had been forwarded to the Divisional Commercial Superintendent, Eastern Railway, Howrah and Chief Commercial Superintendent, Eastern Railway, Calcutta and that he had not received any reply from the said officers. The communication also stated that the matter would be disposed of as soon as orders were received from the said officers. The appellants then sent telegrams to the Chief Commercial Superintendent and the General Manager, Eastern Railways on 6.10.1973. On 8.10.1973, the appellant addressed further letter to Station Master, Azim Ganj, to the General Manager, Eastern Railway, and the Chief Commercial Superintendent, Eastern Railway by way of reminder. On 9.10.1973, he also gave notice of claim for Rs. 53,441.93 under Section 78 of the Indian Railways Act (hereinafter referred to as the 'Act') to the General Manager (Claims), Eastern Railway, Calcutta and to the General Manager (Claims), Southern

Railway, Madras. In the notice, it was alleged that the Railway Administration was grossly negligent and misconducted itself and was careless in handling the goods and in not rebooking and delivering the goods back to the appellant. The Chief Commercial Superintendent acknowledged the notice on 7.11.1973. In the meanwhile, the appellant again sent another letter on 31.10.1973 to the Divisional Superintendent, Eastern Railway, Howrah to return the Parcel Way Bill which had been sent by it to the Station Master, Azim Ganj and which the Station Master had forwarded to the said officer for action. To this letter also, there was no reply from the said officer. The appellant thereafter filed the present suit claiming from the Railways Rs. 53,441.93 by way of damages.

2. The suit was defended by contending that the parcels and the Parcel Way Bill were carried by the Railways with due care and caution, and they reached Azim Ganj City Railway Station on 1.7.1973 in good condition and were made available for delivery for more than seven days. No one turned up for taking delivery of the goods till 20.7.1973. On 21.7.1973, the parcels were taken delivery of by one Sunil Dutta against the Parcel Way Bill produced by him, and against payment of all charges due to the Railways. The appellant's request for rebooking of the parcels to Karur was received on 12.9.1973, i.e., about two months after the termination of transit of the goods. The defendants were, therefore, not liable in law for the alleged non-delivery of the parcels that occurred after seven days after the termination of the transit, since the Railways were protected against such non-delivery by the provisions of Section 77 (2) of the Act. It was also contended that there was no negligence, misconduct or carelessness on the part of any of its servants. The defendants were also not liable for the fraud practised by the consignor or the consignee or their agents. It was further contended that even assuming that the Railways receipt on which the delivery was effected to the said Sunil Dutta was not a genuine one, the Railways were not liable for the loss which occurred after seven days of the termination of the transit of the goods at its destination.

The Trial Court decreed the suit. In appeal by the Railways, the High Court relied upon the provisions of Section 77 (2) of the Act which exonerated the Railways of any liability for loss etc. beyond the period of seven days after the termination of the transit, and allowed the appeal and dismissed the suit.

- A 3. In this appeal against the decision of the High Court, the only question to be answered is whether the respondent-Railways can claim the protection of Section 77 (2) of the Act for the delivery of goods to a wrong person against a non-genuine railway receipt since the delivery of goods was not taken of for more than seven days after the termination of the transit and the wrong delivery of the goods occurred after the expiry of the said period. Section 77 of the Act reads as follows:

"77. Responsibility of a railway administration after termination of transit - (1) A railway administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872, for the loss, destruction, damage deterioration or non-delivery of goods carried by railway within a period of seven days after the termination of transit:

- D Provided that where the goods are carried at owner's risk rate, the railway administration shall not be responsible for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

- E (2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, arising after the expiry of the period of (seven days) after the termination of transit.

- F (3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of the goods mentioned in the Second Schedule, animals and explosives and other dangerous goods carried by railway after the termination of transit.

- H (4) Nothing in the foregoing provisions of this section shall relieve the owner of animals or goods from liability to any demurrage or wharfage for so long as the animals

or goods are not unloaded from the railway wagons or removed from the railway premises. A

(5) For the purposes of this Chapter-

(a) Unless otherwise previously determined, transit terminates on the expiry of the free time allowed (after the arrival of animals or goods at destination) for their unloading from railway wagons without payment of demurrage, and where such unloading has been completed within the free time so allowed, transit terminates on the expiry of the free time allowed for the removal of the animals or goods from railway premises without payment of wharfage; B

(b) 'demurrage' and 'wharfage' have the meanings respectively assigned to them in clause (d) and clause (h) of section 46-C." C

4. It is clear from the provisions of Section 77 (2), that the period of seven days starts on the expiry of the free time allowed for removal of the goods from the railway premises without payment of wharfage. In the present case, under the Rules for Warehousing and Retaining of Goods made under the Act, the said free time was of three days including the day of arrival of the goods. The goods reached the Azim Ganj Railway Station on 1.7.1973. The alleged wrong delivery was effected on 21.7.1973, i.e., 20 days after the goods reached the destination and 11 days from the expiry of seven days after the termination of the transit of the goods. Since the goods were admittedly lost to the appellant on account of the wrong delivery by the Railways when they were in the premises of the Railways, the liability of the Railways would admittedly be as that of a bailee. That is why Section 77 makes a provision for limiting the period of the said liability as a bailee. D

5. Sub-section (1) of Section 77 of the Act states that the Railway Administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 ('Contract Act') for the loss, destruction, damage, deterioration or non-delivery of goods carried by Railways if such loss etc. has occurred within a period of seven days after the termination of the transit of goods. According to this provision, therefore, to entitle a claimant to make claim the liability on account of loss etc. should have E

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A arisen within the specified period of seven days after the transit is terminated. However, even this entitlement is qualified by the proviso to the said section which states that if the goods are carried at owner's risk rate, the Railway Administration is not responsible even for such loss except on proof of negligence or misconduct on the part of the Railway Administration or any of its servants.

B Sub-section (2) of Section 77, however, states that where the goods are carried at owner's risk rate or otherwise, in no case the Railway Administration shall be responsible for the loss etc. after the expiry of seven days from the termination of the transit of the goods.

C Section 151 of the Contract Act states that in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would in similar circumstances take of his own goods of the same bulk and quality and value as the goods bailed. Section 152 provides that the bailee in the absence of any special contract, is not

D responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care described in Section 151. Section 161 of the Act provides that, if by the 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

E time. It is for this reason that the legislature has taken care to limit the period of the liability of the Railways by providing specifically that notwithstanding what is contained in Sections 151, 152 and 161 of the Contract Act, the liability of the Railways as a bailee does not extend beyond the period of seven days after the termination of the transit.

F 6. We have already pointed out above that taking into consideration the period of free time allowed for the removal of the goods in question, the liability of the Railways extended only upto 10th July, 1973. Since admittedly the goods were wrongly delivered or delivered against a non-genuine receipt on 21.7.1973, the absolute bar created by Section 77 (2) for claiming damages against the Railways had come into operation at the end of the 10th July, 1973.

G 7. In the present case, the appellant had retained the ownership in goods with it since the goods were not to be parted except on the presentation of the Parcel Way Bill and the payment of the bank demand draft.

H It was expected to know when the goods would reach the destination

Railway Station, viz., Azim Ganj Railway Station. In any case, it was expected to keep itself informed about the arrival time of the goods at the said destination. As stated earlier, the goods arrived at the destination railway station on 1.7.1973. It ought to have, therefore, taken precaution to see that the goods were lifted by it or its agents or its consignees during the said period. In any case, after the expiry of the said period when the appellant could have learnt that the goods were not lifted by the consignee, it was its duty to take prompt steps to remove the goods itself or through its agents. As pointed out above, the appellant-firm moved into the matter only on 12.9.1973, i.e., about two months after the expiry of the period of liability of the Railways. A

8. Since, admittedly a wrong delivery or loss of the goods in the present case was not during the transit of the goods, provisions of Sections 72 and 73 of the Act would not be applicable to the facts of the present case. Hence the decision of this Court in *Union of India v. W.P. Factories*, (AIR 1966 SC 395) would be inapplicable. It may, however, be pointed out that in that case the responsibility of the Railways under Section 72 of the Act was under consideration and it was held that that responsibility cannot be cut down by any rule. As has been pointed out above, the present case falls under Section 77 (2) which itself provides for the limited period of liability as a bailee. B

9. In the circumstances, we agree with the conclusions of the High Court and confirm the order dismissing the appellant's suit. The appeal is, therefore, dismissed. In the circumstances of the case, however, there will be no order as to costs. C

N.P.V.

Appeal dismissed. D

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