

Keval Chand Vs. The Manager

Keval Chand Vs. The Manager

SooperKanoon Citation : sooperkanoon.com/1194298

Court : Karnataka

Decided On : Aug-13-2018

Judge : P.S.Dinesh Kumar

Appeal No. : RFA 1432/2003

Appellant : Keval Chand

Respondent : The Manager

Judgement :

RFA No.1432/2003 c/w RFA CROB182004 1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE13H DAY OF AUGUST, 2018 BEFORE THE HONBLE MR. JUSTICE P.S. DINESH KUMAR Regular First Appeal No.1432/2003 (MON) C/w RFA Crob No.18/2004 In RFA No.1432/2003 R BETWEEN: KEVAL CHAND S/O GYANMAL PROP. M.K.SURANA TEXTILES WHOLESALE CLOTH MERCHANTS CARRYING BUSINESS NO.2 & 3 DEVATHA MARKET, A.M.LANE CHICKPET CROSS BANGALORE-560 053 APPELLANT (BY SHRI P.D.SURANA, ADVOCATE) AND:

1. THE MANAGER KERALA ROAD WAYS LTD., NO.20/1, IV CROSS KALASIPALYAM NEW EXTENSION BANGALORE-560 002 2. THE MANAGER KERALA ROAD WAYS LTD., RFA No.1432/2003 c/w RFA CROB182004 2 QUILANDY KERALA STATE RESPONDENTS (BY SHRI G.BALAKRISHNA SHASTRY, ADVOCATE FOR R1 R2 SERVED BUT UNREPRESENTED) THIS

RFA IS FILED U/SEC.96 R/W.

ORDER

41RULE10OF CPC., AGAINST THE

JUDGMENT

AND DECREE DT.27.3.03 PASSED IN O.S.NO.16514/2000 ON THE FILE OF XXVI ADDL. CITY CIVIL AND SESSIONS JUDGE, MAYO HALL, BANGALORE (CCH-20) DISMISSING THE SUIT FOR RECOVERY OF MONEY. In RFA CROB No.18/2004 BETWEEN:

1. THE MANAGER KERALA ROAD WAYS LTD., NO.20/1, IV CROSS KALASIPALYAM NEW EXTENSION BANGALORE-560 002 2. THE MANAGER KERALA ROAD WAYS LTD., QUILANDY KERALA STATE CROSS OBJECTORS (BY SHRI G.BALAKRISHNA SHASTRY, ADVOCATE) AND: KEVAL CHAND S/O GYANMAL AGED ABOUT40YEARS PROP. M.K.SURANA TEXTILES WHOLESALE CLOTH MERCHANTS CARRYING BUSINESS NO.2 & 3 RFA No.1432/2003 c/w RFA CROB182004 3 DEVATHA MARKET, A.M.LANE CHICKPET CROSS BANGALORE-560 053 RESPONDENT (BY SHRI P.D.SURANA, ADVOCATE) THIS RFA CROB. IS FILED UNDER

ORDER

41RULE22OF CPC., AGAINST THE

JUDGMENT

AND DECREE DT.27.3.03 ON ISSUES NO.1 & 2 PASSED IN O.S.NO.16514/2000 ON THE FILE OF XXVI ADDL. CITY CIVIL AND SESSIONS JUDGE, MAYO HALL, BANGALORE (CCH-20), AFFIRMATIVELY ANSWERING ISSUES NO.1 & 2 AND THE CROSS OBJECTORS HEREIN PRAYS THAT THE FINDINGS RECORDED ON THE ABOVE ISSUES BE NEGATED. THESE RFA C/W RFA CROB. HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON1907.2018, COMING ON FOR PRONOUNCEMENT OF

JUDGMENT

, THIS DAY, THIS COURT PRONOUNCED THE FOLLOWING:-

JUDGMENT

Plaintiff in O.S.No.16514/2000 on the file of XXVI Additional City Civil & Sessions Judge, Mayo Hall, Bengaluru has filed RFA No.1432/2003 challenging the Judgment and Decree dated 27.3.2003 of the Trial Court, dismissing the said suit. RFA No.1432/2003 c/w RFA CROB182004 4 Defendants before the Trial Court have filed RFA CROB No.18/2004 to set aside the findings on issues No.1 and 2 recorded by the Trial Court.

2. For the sake of convenience, parties shall be referred to as per their status before Trial Court.

3. Heard Shri P.D.Surana, learned Advocate for the plaintiff and Shri G.Balakrishna Shastry, learned Advocate for the defendants.

4. Briefly stated the facts of the case are, plaintiff is a Wholesale Cloth Merchant. He entrusted certain goods for transportation from Bengaluru to Quilandy in Kerala, to the first defendant. The goods were sold on credit and the documents were sent through Bank. The purchaser, who was required to pay the value of goods and collect the documents, failed to do so. In the circumstances, the plaintiff called upon the first defendant to re-book the RFA No.1432/2003 c/w RFA CROB182004 5 goods from Quilandy to Bengaluru. The defendant- Transporter Company did not comply with plaintiffs request compelling the plaintiff to file instant suit to recover the value of goods and interest thereon.

5. Suit was resisted by the defendants by filing written statement contending inter alia that, the suit was filed against the Branch Managers of M/s.Kerala Road Ways Limited and they are not personally liable for any action and denying the value of goods and liability to pay interest. It was further contended that, the plaintiff did not issue a notice as required under Section 10 of the Carriers Act, 1865. Based on the pleadings, the Trial Court framed the following issues: 1. Whether the Plaintiff proves that at the instructions of Sri Girishan Parambir House M/s. S.M.Agencies, it entrusted the goods to Defendant No.1 to deliver it through Defendant No.2 under L.R.No.9817997 dated 07.02.1998?.

2. Whether the Plaintiff proves that after the documents are sent to the Bank, the purchaser did not release the Hundis as alleged?. RFA No.1432/2003 c/w RFA CROB182004 6 3. Whether the Plaintiff proves that the Defendants did not rebook the goods inspite of the requests and the notice dated 10.07.2000?.

4. Whether the suit is defective as contended in Para No.2 of the Written Statement?.

5. Whether the suit is bad for want of notice under Section 10 of the Carriers Act?.

6. Whether the suit is barred by limitation?.

7. Whether the Plaintiff is entitled to recover the suit claim as prayed for?.

8. What Decree or Order?. 6. With the above pleadings and issues, parties went to trial. Plaintiff was examined as PW.1. Exhibits P1 to P5 were marked on his behalf. None was examined on behalf of the defendants nor any document exhibited.

7. On appreciation of evidence, the Trial Court held issues No.1, 2, 3, 5 and 6 in the affirmative, issues No.4 and 7 in the negative and dismissed the suit. Feeling aggrieved by the Judgment and Decree of the Trial Court, both the plaintiff and defendants are before this Court. RFA No.1432/2003 c/w RFA CROB182004 7 8. Shri Surana, learned Advocate for the plaintiff mainly urged two contentions: Firstly that, issues No.1 to 4 have been held in favour of the plaintiff. The learned Trial Court dismissed the suit principally on the ground that it is bad for want of notice under Section 10 of the Carriers Act, 1865. Defendants have not let-in any evidence nor produced any documents before the Trial Court. Therefore, the Cross-Objection is devoid of merit and liable to be dismissed. Secondly that, in view of the findings recorded by the Trial Court on issues No.1 to 4, the question requires to be considered by this Court is a question of law dealt with in issue No.5 by the Trial Court. He placed reliance on the Judgment of the Honble Supreme Court in the case of Transport Corpn. of India Ltd. v. Veljan Hydrair Ltd. reported in (2007) 3 SCC142 to contend that, in a case where the goods are sought RFA No.1432/2003 c/w RFA CROB182004 8 to be re-booked by the consignor, Section

10 of the Carriers Act, 1865, shall have no application.

9. I have carefully considered the submissions of learned Advocates appearing for the parties and perused the records.

10. In the conspectus of facts of this case, the point that arises for consideration of this Court is: Whether notice under Section 10 of the Carriers Act, 1865 is necessary?. 11. Facts are not in dispute. Plaintiff entrusted goods for transshipment to the Bengaluru Branch of M/s.Kerala Road Ways Limited. Consignee did not retire the documents from the Bank and take delivery of goods. Plaintiff sought re-booking of goods back from Quilandy to Bengaluru.

12. Ex.P3 is a letter dated 23.10.1998 from the plaintiff to the General Manager of the Transport Company RFA No.1432/2003 c/w RFA CROB182004 9 to re-book the goods. Ex.P4 is the legal notice dated 10.7.2000, calling upon the first defendant to pay ` 24,740/-, the value of goods together with interest at 24% and ` 200/- towards legal expenses. Ex.P5, is a communication dated 24.10.1998 from the Bengaluru office of M/s.Kerala Road Ways Limited to its Quilandy office, asking them to re-book the consignment. Ex.P5, also shows that, necessary invoice and declaration were enclosed along with the said communication.

13. The Honble Supreme Court in the case of Transport Corpn. of India Ltd (supra), held in paragraph No.7 of the Judgment as follows: 7. Section 10 of the Act requiring notice, is extracted below: 10. Notice of loss or injury to be given within six months.- No suit shall be instituted against a common carrier for the loss of, or injury to, goods including containers, pallets or similar articles of transport used to consolidate goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the RFA No.1432/2003 c/w RFA CROB182004 10 suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff. Section 10 requires a notice in the manner set out therein, for initiation of a proceedings against a common carrier for loss of goods or injury to goods entrusted for carriage. The notice need not say specifically that it is issued under Section 10 of the Carriers Act, 1865. It is sufficient if the notice fulfils the requirement of Section 10, that is to inform the carrier about the loss or injury to the goods. Such notice,

under Section 10 will certainly be required where the common carrier delivers the goods in a damaged condition, or where the common carrier delivers the goods in a damaged condition, or where the common carrier loses the goods entrusted for carriage and informs about such loss to the consignor/consignee/owner. The object of the section is to put the carrier on notice about the claim in respect of the loss or damage to the consignment so that it can make good the loss occasioned. But where there is no loss or injury to the goods, but the common carrier wrongly or illegally refuses to deliver goods and the person entitled to delivery initiates action for non-delivery, obviously, Section 10 will not apply. Similarly, where the common carrier informs the person entitled to delivery (consignor/consignee/owner) that the consignment is being traced and process of tracing it is still going on and request him to wait for the consignment to be traced and delivered, but does not subsequently inform him either about the loss of the consignment, or about its inability to trace and deliver the consignment, the claim by the consignor/consignee, will not be for loss or injury to goods but for non-delivery of goods. The requirement relating to notice within six months in Section 10 will not apply to a claim based on such non-delivery. In fact Section 10 does not use the RFA No.1432/2003 c/w RFA CROB182004 11 word non-delivery of goods, but uses the words loss of, or injury to, goods. A case of non-delivery will become a case of loss of consignment, only when the common carrier informs the consignor/consignee about the loss of the consignment.

14. Shri G.Balakrishna Shastry, made an attempt to distinguish the above proposition of law by placing reliance on an authority in the case of American Export Isbrandtsen Lines Inc. and another v. Joe Lopez and another reported in AIR 1972 SC1405 contending that non-delivery of goods also must be construed as loss or damage inasmuch as so far as the consignor is concerned, it is nothing but loss. Shri Surana, would counter this argument, urging that the authority cited by Shri G.Balakrishna Shastry, is under the Indian Carriage of Goods by Sea Act, 1925, whereas, the Judgment in the case of Transport Corpn. of India Ltd. (supra), is directly on the point dealing with Section 10 of the Carriers Act, 1865. RFA No.1432/2003 c/w RFA CROB182004 12 15. In the case of Transport Corpn. of India Ltd. (supra), the Honble Supreme Court has held that, notice is not necessary under Section 10 of the Carriers Act, 1865. Hence, the said Judgment

is fully applicable to the facts of this case.

16. In the light of undisputed fact that, the plaintiff had sought re-booking of the goods and the defendants have failed to comply with the said request, in my considered view, the Trial Court erred in dismissing the suit for want of notice under Section 10 of the Carriers Act, 1865.

17. Resultantly, appeal in RFA No.1432/2003 merits consideration and the RFA.CROB.No.18/2004 is liable to be rejected being devoid of merits. Hence, the following:

ORDER

(i) RFA No.1432/2003 is allowed in part and the Judgment and Decree dated 27.3.2003 in O.S.No.16514/2000 on the file of XXVI RFA No.1432/2003 c/w RFA CROB182004 13 Additional City Civil & Sessions Judge, Mayo Hall, Bengaluru, is set aside; (ii) Suit in O.S.No.16514/2000 is decreed, directing the defendants to pay a sum of ` 24,740/- with simple interest at the rate of 12% p.a. from the date of suit till the date of realization. (iii) RFA.CROB.No.18/2004 is dismissed. No costs.
JUDGE Sd/- cp*

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com