

BadrudIn Vs. Secy. of State and ors.

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Court : Allahabad

Decided On : Apr-30-1935

Reported in : AIR1935All844; 158Ind.Cas.526

Appellant : Badruddin

Respondent : Secy. of State and ors.

Judgement :

ORDER

Bennet, J.

1. This is an application in revision by a plaintiff whose suit has been dismissed by the Small Cause Court. The plaintiff despatched a consignment of boots and shoes from Agra Cantonment to Karachi, at railway risk. The consignment arrived at Karachi, but plaintiff could not arrange for its delivery and at his request it was detained for a considerable time. The plaintiff then asked the railway company at Karachi, to have the goods rebooked from Karachi, to Agra. In accordance with rules and regulations the railway company stated that the plaintiff should execute risk note A if the goods were to be rebooked. The plaintiff refused to execute risk note A and has brought this suit for Rs. 145 compensation against the railway company. The consignment was still lying at Karachi, in charge of the railway company when the suit was brought. The only issue framed was:

Is the suit premature and is the plaintiff entitled to any and what amount of damages?

2. The Court below has held that the plaintiff has no cause of action and that the plaintiff is bound to carry out the rules of the railway company if he desires the railway company to rebook the consignment. Further the Court held that it was proved by a clerk that the boxes are no longer properly secured and that the railway company was correct in insisting on the execution of risk note A. The grounds of revision are directed against the validity of the rules of the company. I asked counsel to show under what provision of law the plaintiff had any right of action. He admitted that the Railways Act did not give any right of action to a plaintiff under these circumstances. He then referred to the Carriers Act, Act 3 of 1865. That Act provides for a suit for loss or damage to property delivered to a common carrier. But it does not make any provision for a case similar to the present. Moreover Section 72(3) Railways Act, states that nothing in the Carriers Act of 1865 shall affect the responsibility of a railway company as defined in. Section 72, Railways Act. I therefore consider that counsel is doubly wrong in his reference to the Carriers Act. He then referred to the common law of England. But that is also excepted by, Section 72(3). Under Section 72, Railways Act, the responsibility of the railway administration for the loss, destruction or deterioration of goods is that of a bailee, under Sections 151, 152 and 161, Contract Act. 'Bailment' is defined in Section 148 as a delivery of goods by one person to another for some purpose.

3. The goods in question were delivered to the railway company for the purpose of being carried to Karachi. When the railway company carried the goods to Karachi, they fulfilled their part of the contract and that contract came to an end.

4. Moreover there is no question of liability for loss, destruction or deterioration of the goods since it is not proved that any such loss, destruction or deterioration has occurred. What the plaintiff wants is that the railway company should be compelled to enter into a contract with him on the terms which he propounds. This doctrine of law is contrary to Section 2, Contract Act. The plaintiff is in the position of a proposer and it is open to the railway company to agree or not to agree to his

proposal. In the present case the railway company are willing to take the goods in accordance with their rule that a risk note must be executed. Learned counsel has failed to show any provision of law under which the railway company can be compelled to carry goods on terms imposed by a proposer which are contrary to the rules of the railway company. Some further objection was made on the allegation that the evidence of the clerk was not that the boxes were improperly secured at the time when the plaintiff asked the railway company to rebook the boxes to Agra but at some later date. Any question of that nature is a question of fact which should have been brought to the notice of the lower Court and cannot be brought before this Court in revision. I consider that no case has been made out for this revision which is therefore dismissed.

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