

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Revision Petition No. 330/2024

Amrit Transport Company, R/o Plot No. 405, New Transport Nagar,
Jhalawar Road, Kota Through Proprietor Harpal Singh Hundal S/o
Arjun Singh Hundal.

----Petitioner/ Defendant No. 1

Versus

1. Oriental Insurance Company Ltd., Registered Office At A-25/27, Aasif Ali Road, New Delhi-110002 Regional Office Jaipur And Mandal Office At Jhalawar Road, Kota Through Power Of Attorney Holder Sh. K.p. Sharma.

---- Respondent No. 1/ Plaintiff

2. M/s K.S. Commodities Pvt. Ltd., 719-720, Inprakash Building, 21, Bara Khamba Road, New Delhi 110001

----Respondent No. 2/ Defendant No. 2

For Petitioner(s) : Mr. Abhishek Bhardwaj with Mr.
Shantanu Sharma

For Respondent(s) : None

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

16/12/2024

1. Aggrieved from order dated 21.09.2024 in civil suit no. 20/2016 titled as "Oriental Insurance Company Ltd. Vs. Amrit Transport Company and Ors." by learned Senior Civil Judge, Kota instant revision petition is preferred by petitioner defendant.
2. Service upon respondent no.1 (plaintiff) is sufficient and no one has appeared on behalf of respondent no.1. Respondent no.2 is proforma party.
3. Learned counsel for petitioner submits that Section 16 of the Carriage by Road Act, 2007 (hereinafter referred as "Act of 2007") provides that it is necessary to serve a notice before institution of a suit or legal proceeding. He further submits that a similar issue was considered by Hon'ble Supreme Court in case of **Essemm**

Logistics Vs. Darcl Logistics Limited and Ors. Civil Appeal No. 3229/2023 reported in **MANU/SC/0503/2023**. He also submits that initially this suit was decreed ex-parte wherein one evidence was produced by respondent plaintiff and he exhibited a claim bill as notice and further while considering the application under Order VII Rule 11 CPC the respondent plaintiff has referred claim bill as notice. He submits that a claim bill cannot be replaced as notice. He also submits that when a specific provision has been inserted in the Act, then it is necessary to make compliance before filing the civil suit. He also referred the proceedings and submits that initially ex-parte judgment was passed against the petitioner defendant but later on his application under Order 9 Rule 13 of CPC, the ex-parte judgment was set aside and the petitioner defendant was allowed to participate in the proceedings before the trial court wherein he moved an application under Order VII Rule 11 CPC.

4. Considered submissions of learned counsel for petitioner and also perused the judgment in case of **Essemm Logistics Vs. Darcl Logistics Limited and Ors. (supra)**.

5. Admittedly, a civil suit for recovery of ₹2,71,717 was filed by Oriental Insurance Company Ltd. (plaintiff) against Amrit Transport Company (goods transporter). As per plaint respondent no.2 M/s. K.S. Commodities Pvt. Ltd. has booked a consignment through present petitioner under a Marine Policy issued by respondent no.1 (plaintiff) for safe transportation of goods but before reaching to Wagha Border (Punjab) for export, the goods were looted and FIR no. 187/2013 was registered at P.S. Sarhali, District Tarntaran (Punjab). Out of looted goods, some were

recovered and some were not. As a result, defendant no.2 the original consignee has claimed compensation from Insurance Company and same was allowed. Later, under an authority by respondent no.2, the Insurance Company has filed a civil suit for recovery against the transport company (petitioner herein). This suit was decreed ex-parte on 09.09.2019 but later on in an application under Order IX Rule 13 CPC, this ex-parte decree was revoked and set aside and present petitioner was allowed to participate in the proceedings.

6. The defendant (petitioner herein) has filed an application under Order VII Rule 11 CPC on the ground that no notice was served upon petitioner before instituting civil suit by plaintiff, as mandated under Section 16 of the Act of 2007. In repeated Act, of 1865, a parimateria provision under Section 10 was there. Section 10 of Carriers Act, 1865 was replaced with Section 16 of Carriage by Road Act, 2007 and same is read as under:

"Notice for Institution of a suit: No suit or other legal proceeding shall be instituted against a common carrier for any loss of, or damage to, the consignment, unless notice in writing of the loss or damage to the consignment has been served on the common carrier before the institution of the suit or other legal proceeding and within one hundred and eighty days from the date of booking of the consignment by the consignor."

7. The carriage by Road Act, 2007 was enacted to regulate relationship, responsibilities and legal liability of common carrier, transport company etc. with the consignor etc. It provides that before institution of suit or legal proceedings, it is necessary to serve a notice of demand in writing. Thus, a suit or proceeding can be instituted, only after such notice.

8. Herein this case, the petitioner plaintiff on basis of a claim voucher dated 03.03.2014 issued by M/s. K.S. Commodities Pvt. Ltd. against policy no. 214303/21/2014/458, certificate no. 214303/21/2014/458/0012 dated 31.10.2013 has filed present suit against present petitioner. The plaintiff has termed voucher (claim bill) as notice dated 03.03.2014. The plaintiff has referred this claim voucher as notice in Para no.8 of the plaint. No other document, other than claim bill was produced by plaintiff in compliance of the provision of Section 16 of Carriage by Road Act, 2007. Herein only question before this Court is that whether said claim bill fulfills mandate of notice, as provided under Section 16.

9. Ordinarily, notice herein means that on the basis of a particular cause of action a liability is fastened upon someone to demand particular amount in pursuant to cause of action and in failing to take steps legal proceedings has been suggested. A notice is for demand of justice and if, it does not fulfill the basic purpose then, the Court may observe that the notice does not comply with the provision of law. Herein, a claim bill which was issued by M/s. K.S. Commodities Pvt. Ltd. does not contain any of the essential ingredient to fulfil same and treat same as notice.

10. Nowhere it has been mentioned that ₹2,97,855/- was demanded on account of damage or loss of consignment, which was booked by M/s. K.S. Commodities Pvt. Ltd. through present petitioner for delivery of dry port [Wagha Border (Punjab)] for export. Herein this case, no document is available to comply the provision of Section 16.

11. Hon'ble Supreme Court in a reverse situation has considered almost same issue in case of **Essemm Logistics Vs. Darcl Logistics Limited and Ors. (supra)** wherein the claim was for loss of business or loss of reputation and loss on account of idling of man, machine and overheads and opined that for filing of such claim the requirement of notice under Section 16 is not *sine qua non* but while allowing the appeal Hon'ble Supreme Court has observed that in case of claim for loss of consignment, the invocation of principles under Section 16 is a mandatory provision and before complying the same the suit cannot be filed. Herein a specific notice setting out the cause of action, damage, loss and relief was not served upon present petitioner by plaintiff.

12. The trial court has committed serious error while construing the provision under Section 16 of the Act of 2007. As no notice was served upon present petitioner before filing a suit for recovery of money, therefore, the suit cannot be instituted in view of bar as contained under Section 16 of the Act of 2007.

13. In view of discussion made hereinabove, the revision petition is hereby allowed and the order passed by the trial court is set aside. The application under Order 7 Rule 11 CPC is allowed and the suit filed by the plaintiff respondent no.1 is hereby rejected. After service of notice, plaintiff may institute a fresh civil suit, if permitted under the law.

14. No order as to costs.

(ASHOK KUMAR JAIN),J