

IN THE COURT OF SH. VINOD JOSHI, CIVIL JUDGE-05:
CENTRAL DISTRICT:TIS HAZARI COURTS:DELHI

CSSCJ No. 2658/2017

Zenith Creations
Through its proprietor,
Sh. Vijay Gupta,
Office at: C-447, Main 100 feet road,
Chajjupur, Shahdara, Delhi-32. Plaintiff

Versus

Niwash Cargo Movers
Through its proprietor,
Sh. Kishan Yadav
C-72, Multani Dhanda,
Paharganj, New Delhi-55. ...Defendant

JUDGMENT

Date of institution : 19.05.2015
Date of final decision : 20.02.2020

1. Vide this judgment, I shall dispose of the present suit filed for the recovery of Rs.1,97,550/-, alongwith pendente lite and future interest @ 18% p.a.

2. The case of the plaintiff as per the plaint, is as follows:

- a. The Plaintiff booked consignment from the defendant vide Bilti/C No. 1702 dated 30.08.2014 for delivery of 1200 ready reckoner books and vide Bilti/C No. 1703 for 800 ready reckoner books. The total cost of the said articles was Rs.1,80,000/-(2000 x 90). The aforesaid ready reckoners were to be delivered by the Defendant to LIC of India at Jivan Prakash, Meharpur, Silchar, Assam and at Agartala, in good and proper condition.
- b. The plaintiff has paid freight charges for the delivery of the said goods but till date, the said goods have not been delivered by the Defendant to the consignee i.e. LIC of India. The said consignee has several times asked Plaintiff to deliver the said goods and thereafter, Plaintiff was constrained to deliver the said items again to the consignee.
- c. Due to the failure of the defendant to deliver the consignment, the plaintiff has suffered a loss of Rs.1,80,000/- and despite repeated request and demands, the defendant has failed to deliver the goods to the consignee and also has not returned the booked items to the plaintiff.
- d. Therefore, the defendant is liable to pay a sum of Rs. 1,80,000/- to plaintiff along with interest @ 18% per annum w.e.f. 30.08.2014 as the defendant has misappropriated the goods booked by the plaintiff.

e. The total liability of the defendant is as under:

i)	Principal Amount	Rs.1,80,000/-
ii)	Interest @ 18% p.a.	Rs.17,550/-
	Total amount	Rs.1,97,550/-

f. The Plaintiff issued a legal notice dated 28.11.2014, which was sent to the Defendant on 02.12.2014, through counsel by way of speed post, but despite the service of the notice, the Defendant failed to comply with the same and neither replied to the notice nor gave the outstanding payment to the Plaintiff as demanded in the said notice.

In this background, the plaintiff has filed the present suit for recovery of Rs.1,97,550/- alongwith pendente lite and future interest @ 18% p.a.

3. The suit was decreed ex-parte for an amount of Rs.1,80,000/- on 18.07.2016, however the application of the defendant U/O 9 Rule 13 r/w Section 151 CPC, was allowed vide order dt. 17.08.2017 and he was granted the opportunity to contest the present suit.

4. The defendant filed his WS, wherein the averments made in the plaint were denied. On merits, defendant has made the following

submissions:

a. The plaintiff has no cause of action to file the present suit as the consignee i.e. LIC of India, Jeewan Prakash, Mehepur, Silchar, Assam, has issued and handed over the letters dt. 29.08.2014, whereby it is acknowledged that the goods booked with the defendant had no commercial value and the same were for free distribution and not for sale.

b. The goods were not received by the consignee i.e. LIC and to keep the goods safe, the defendant kept the same in his godown and the fact was duly informed to the plaintiff. Due to the conduct of the consignee, the defendant had lost transportation charges for bringing back the goods to Delhi and on the other hand, incurred loss by keeping and preserving the same till date. It was informed to the plaintiff that the defendant has incurred the transportation charges and also Rs.5,000/- p.m. for the preservation of the consignment.

c. The legal notice was sent by the plaintiff at a wrong address and the defendant never received the same.

The defendants prays for the dismissal of the present suit.

5. After the completion of pleadings, issues were framed by the Ld. Predecessor of this court vide order dated 02.05.2018, which are as under:

(i) Whether the plaintiff is entitled to decree for recovery of Rs.1,97,550/- against the defendant alongwith pendente lite and future interest @ 18% p.a. and costs of the suit?OPP”

(ii) Whether the plaint discloses no cause of action?OPD

6. Plaintiff in support of its case has placed on record affidavit in evidence Ex. PW-1/A, of Sh. Vijay Gupta, Proprietor of the Plaintiff and relied upon the following documents:

Sl. No.	Exhibit/Mark	Nature of Documents
1.	Ex. PW-1/1 and Ex. PW-1/2	Two Freight Slips/Biltis
2.	Ex. PW-1/3	Consignor details.
3.	Ex PW-1/4	Copy of Legal notice dated 28.11.2014.
4.	Ex. PW-1/5	Postal receipt
5.	Ex. PW-1/6	Carbon copy of freight slip/bilty bearing no. 1367.

7. He was cross examined by Id. Counsel for the defendant. Thereafter, vide separate statement of counsel for plaintiff recorded on 17.01.2019, PE was closed. Matter was then put up for DE.

8. Sh. Kishan Yadav tendered his evidence by way of affidavit Ex.DW1/A. He was cross examined by Id. Counsel for the plaintiff. Thereafter, vide separate statement of Proprietor of the defendant,

recorded on 17.12.2019, DE was closed.

9. Matter was then put up for final arguments. Final arguments heard.

My issue-wise finding are as under:

Issue no.1:

“Whether the plaintiff is entitled to decree for recovery of Rs.1,97,550/- against the defendant alongwith pendente lite and future interest @ 18% p.a. and costs of the suit?OPP”

10. The onus of proving this issue is upon the plaintiff. The case of the plaintiff is that he has booked consignment with the defendant vide bilti/C No.1702 and 1703 for delivery of 1200 and 800 (total 2000) ready recknors, to be delivered to LIC at Silchar and Agartala. The defendant failed to deliver the same and therefore, the plaintiff was constrained to deliver the said items again and consequently, suffered a loss of Rs.1,80,000/- i.e. Rs.90/- for each ready recknor. The booking of consignment has been admitted by the defendant, but he submits that LIC refused to take the delivery and it was duly informed to the plaintiff. He further submits that the plaintiff has not suffered any loss as the goods have no commercial value and infact, it is the defendant who has suffered loss for the transportation and preservation of the said goods.

11. The plaintiff has failed to bring any evidence to show that he has again delivered the said items to the consignee, due to the failure of the defendant. The freight slip Ex. PW1/6, neither mentions any date, nor the details of the goods consigned. Further, the plaintiff has submitted that he has suffered damages at the rate of Rs.90/- for each of the ready recknors, however no evidence has been led in respect of the value of the ready recknors. Instead, the plaintiff, during his cross-examination has admitted Ex.PW1/D1 and Ex. PW1/D2, wherein it has been stated that the consigned goods do not carry any commercial value. The plaintiff in his cross-examination has stated that although the goods were having no commercial value, but as a publisher it has a chargeable value for him, which was to be paid by the LIC. The defendant has also failed to lead evidence in respect of the any such chargeable value.

In view of the above, the present issue is decided in favour of the defendant and against the plaintiff.

Issue no.2:

“Whether the plaint discloses no cause of action?OPD”

12. The onus of proving this issue is upon the defendant. The defendant submits that as per the letters Ex. PW1/D1 and Ex. PW1/D2, the consigned goods i.e. ready recknors had no commercial value and

therefore, the plaintiff has no occasion to file the present suit. As discussed above, the plaintiff has admitted that the consigned goods has no commercial value. Further, the plaintiff has failed to discharge his onus of proving that he has suffered loss due to the conduct of the defendant, therefore the present issue is decided in favour of the defendant and against the plaintiff.

Relief

13. The suit of the plaintiff is hereby dismissed. No order as to costs.
14. Decree Sheet be prepared accordingly.
15. File be consigned to record room after due compliance.

**Announced in the open court
on 20.02.2020.**

**(Vinod Joshi)
Civil Judge-05, Central District
Tis Hazari Courts, Delhi**

Present judgment consists of 08 pages and each page is signed by me.