

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR RECOVERY

RFA No.80/1995

Date of decision: 03rd December, 2008

**M/S. ECONOMIC TRANSPORT
ORGANIZATION**

**Through : Appellant
Mr. Vivek Singh, Adv.**

versus

SHRI RAJIV KHANNA

**Through : Respondent
None.**

CORAM :-

**THE HON'BLE MR.JUSTICE PRADEEP NANDRAJOG
THE HON'BLE MR. JUSTICE J.R. MIDHA**

Pradeep Nandrajog, J. (Oral)

1. The appellant does not dispute having received 240 cases of KrunchyA Cream Wafers vide consignment No.9871 dated 02.01.1987 for carriage from Delhi to Calcutta.
2. Admittedly the consignment was not delivered at Calcutta being seized at the Duburdih Check Post, West Bengal. The reason was that the West Bengal Import Permit was not produced at the check post by the driver of the vehicle.
3. The appellant was admittedly the transporter.
4. For the loss of the consignment the consignor filed a suit for recovery of Rs.61,854/-. The defence of the appellant was that the West Bengal Import Permit was never handed over by the consignor to it.
5. The respondent, i.e. the plaintiff relied upon the photocopy of a goods receipt which was stated to be issued by the appellant when goods were delivered for carriage. The appellant denied authenticity of the photocopy of the goods receipt. The appellant stated that the goods receipt was lost when transmitted to the consignee at Calcutta. Reliance was placed upon the goods receipt book of the appellant. A notice under Order 12 Rule 8 was served. The appellant did not produce its office copy of the goods receipt.

6. The plaintiff was permitted to lead secondary evidence and prove the photocopy of the goods receipt as Ex.PW1/8.

7. Two reasons have been given by the Learned Trial Judge against the appellant. First is that the goods receipt, Ex.PW1/8, records the particular of the West Bengal Import Permit. Inference drawn is that he who issued the goods receipt had obviously before him the said permit. Now, the broking clerk of a transporter or any other person acting on behalf of the transporter issues the goods receipt has not denied.

8. Learned Trial Judge has accordingly held that this shows that the West Bengal Import Permit was handed over to the transporter. As a limb of his reasoning, Learned Trial Judge has noted that the appellant failed to produce the goods receipt book which would have contained the office copy of the goods receipt of the appellant and thus, an adverse inference has to be drawn.

9. The second reasoning given by the Learned Trial Judge is that a transporter would be presumed to take all necessary precautions, which in the facts of the instant case would require the transporter to be in possession of the West Bengal Import Permit for the reason without the same the goods could not have entered the territory of the State of West Bengal.

10. Learned counsel for the appellant urges that the plaintiff had to prove that the West Bengal Import Permit was handed over to the appellant and could be discharged only if the plaintiff produced evidence showing acknowledgement by the appellant of being handed over the West Bengal Import Permit.

11. We disagree. The fact that the appellant failed to produce the goods receipt booklet is enough to draw an adverse inference against the appellant. It is settled law that where a party fails to produce the best evidence a presumption can be raised against the party that if produced the same would have gone against the party.

12. We also concur with the second reason of the Learned Trial Judge, being that, the transporter would presumably know that the goods could not have entered the territory of State West Bengal without the import permit being in the custody of the driver of the vehicle. That delivery of goods is presumed to be with a delivery of the West Bengal Import Permit.

13. We find no infirmity in the impugned judgment which we note has disallowed the pendente lite interest. Only future interest has been awarded @ 12% per annum.

14. Since the respondent has chosen not to appear at the hearing, there shall be no order as to cost.

Sd./-
PRADEEP NANDRAJOG, J

Sd./-
J.R. MIDHA, J

DECEMBER 03, 2008