
(1930) 03 AHC CK 0026
In the Allahabad High Court

Ali Asmat Shakur

APPELLANT

Vs

G.I.P. Ry. and Another

RESPONDENT

Date of Decision : 12-03-1930

Acts Referred:

Citation : (1930) 03 AHC CK 0026

Hon'ble Judges : Banerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Banerji, J.—This is a plaintiff's appeal under the following circumstances. Firm Ishwar Das and Company, sent to the firm Ali Asmat Shakur in the district of Azamgarh certain artificial silk goods which was carried over the G.I.P. Ry., E.I.R. and B. and N.W. Rail-ways. The goods were not delivered and the plaintiff instituted a suit for recovery of the price of the goods on the ground of "non-delivery."

2. Various defences were raised on behalf of the three railways, but we are now concerned only with the defence of the Secretary of State for India in Council, as admittedly the G.I.P. Railway and the E.I. Railway are owned by the Secretary of State for India in Council. The suit was dismissed by the trial Court on the ground that the plaintiff not having served a notice which complied with the provisions of Section 80, Civil P. C, the suit was not maintainable. The decree of the trial Court was confirmed by the Additional Subordinate Judge on appeal. The plaintiff has come up in appeal to this Court.

3. The learned advocate for the plaintiff has submitted that no notice u/s 80, Civil P. C, was necessary in this case, and even if such a notice was necessary the fact that the plaintiff had made a claim to the Agent of the G.I.P. Railway within six months as provided by Section 77, Railways Act, that notice must be deemed to be one as u/s 80, Civil P.C.

4. The contention of the learned advocate is that u/s 4, Civil P. C, it is laid down

that where there is a specific provision to the contrary the Code shall be deemed to be so limited, and inasmuch as the Railways Act provides by Section 77 that no person shall be entitled to a refund of an overcharge or compensation for loss unless his claim has been preferred in writing to the railway administration, which had been done by his client, it was unnecessary; in fact the law did not require another notice before actually filing the suit. The learned advocate contends that the word "claim" must be treated as an equivalent to the word "suit." We are unable to accept that contention. It appears to us clear that what was provided for by Section 77 was that a person would not be entitled to claim anything unless he brought to the notice of the railway authorities that there has been loss or destruction or deterioration of goods delivery to be carried by the railway. That does not appear to us in any way to indicate to have anything to do with the institution of a suit by a party against the Secretary of State.

5. The words of Section 80, Civil P. C, in our opinion are imperative and it prescribes the mode in which notice is to be delivered and the person to whom or at whose office notice is to be delivered, and the notice has also to furnish certain particulars. This in our opinion is a different procedure and was intended for a different purpose than Section 77, Railways Act. We agree with the view expressed in the case of *Hirachand Succaram Gandhi Vs. G.I.P. Railway Company*, that a notice u/s 77 would not dispense with the necessity of a notice u/s 80, Civil P.C.

6. We are therefore of opinion that there is no force in this appeal and we dismiss it with costs.