
(1980) 02 AHC CK 0039
In the Allahabad High Court
Case No : S.A. No. 1286 of 1968

Baij Nath Prasad	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 06-02-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1890 — Section 80

Citation : (1980) AWC 226

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : B.N. Misra and K.N. Tripathi, for the Appellant; Gur Pratap Singh, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is Plaintiff's second appeal arising out of a suit filed by the Plaintiff-Appellant for recovery of Rs. 3054/16 paise comprising of two sets of transactions, Rs. 1848/- as the price of 308 pieces of wheel guards, Rs. 870/- as price of 145 pieces of wheel guards. Both these sets of wheel-guards were sent by railway receipt No. G-388040 dated 20th July, 1962 from Chu-nar in the district of Mirzapur to the Executive Engineer, PWD, Purnea. Further a sum of Rs. 326/16 p. was claimed as interest at the rate of 12% per annum and Rs. 10/- as costs of notice and incidental charges.

2. The suit was filed against the Union of India representing the Northern, Eastern, North Eastern and North Frontier Railway Administration, New Delhi. Before filing the suit, notices u/s 80 CPC were sent to all the above mentioned four railway administration. Notice on the Northern Railway was served on 17th July, 1963, Eastern Railway on 21st July, 1963, North Frontier Railway on 18th July, 1963 and North Eastern Railway on 18th July, 1963. The suit was filed on; 8th September, 1963.

3. The trial court dismissed the suit on 23rd May, 1967 holding that the suit was

pre-mature and also on the ground that the Plaintiff-Appellant had no right to sue. Against the said judgment an appeal was filed by the Plaintiff-Respondent before the lower appellate court. The lower appellate court set aside the finding of the trial court in regard to the price of the wheel guards and held that the Appellant was entitled to Rs. 2,508/- as price of the wheel guards. The lower appellate court further held that the Appellant had a right to sue. The lower appellate court, however, affirmed the finding that the suit of the Plaintiff-Appellant was pre-mature and as such the decree of the trial court was maintained and the appeal was dismissed by the lower appellate court by its judgment dated 30th January, 1968. Against the said judgment the present appeal has been filed in this court.

4. Learned Counsel for the Appellant has urged that the view taken by the lower appellate court that the suit is pre-mature is a view manifestly erroneous. He has submitted that the notice on the Northern Railway was served on 17th July, 1963 and the suit having been filed on 18th September, 1963 was well within time and was not pre-mature as two months." period of notice expired on 17th September, 1963.

5. Section 80 of the Indian Railways Act, 1890 lays down the procedure to be adopted by a person for filing a suit for compensation against the railways. The relevant portion of Section 80 is as follows:

* * * *

6. From the above Section 80 it is clear that the Plaintiff-Appellant should have filed a suit against the railway administration where the goods were delivered for carriage.

7. In the instant case it is admitted on the record that the goods were booked from Chunar in the district of Mirzapur which comes under the jurisdiction of Northern Railway. Therefore, the suit of the Plaintiff-Appellant was clearly maintainable against the Northern Railway and the question which has to be seen is as to whether the suit against the said Northern Railway was pre-mature or not.

8. The notice u/s 80 CPC was served on the Northern Railway as stated above on 17th July, 1963. The suit was filed on 18th September, 1963. The question therefore, which arises for consideration is whether the suit has been filed within time, viz., after the expiry of two months after the notice has been delivered or whether the suit is pre-mature.

9. The lower appellate court has held that the suit is pre-mature because of the decision of this Court in Dominion of India Vs. L. Badu Lal, . This decision is an opinion given by Mukerji, J. (as he then was) on a difference of opinion between N.U. Beg and D.S. Mathur, JJ. in an appeal which came up for hearing before them. Only three questions were referred by the Bench for opinion of a Single Judge of this Court. The three questions which were referred to the learned

Single Judge were as follows:

1. Is the notice relied upon by the Plaintiff as complying with the provisions of Section 80, CPC invalid on the ground that it does not state the cause of action?

2. The Plaintiff having sent notices Ext. 3 dated 8-11-1947 and Exhibit 8 PW 4 dated 18-12-1947, was it still necessary for him to send another notice under the provisions of Section 80, CPC as amended by CPC (Amendment) Act, 1948 (Act No. VI of 1948)?

3. Should the entire claim of the Plaintiff for damages be dismissed on the ground that there is no evidence to prove the market value of goods at the place of destination on the date on which such goods ought to have been delivered?

10. During the course of arguments in regard to these three questions a cursory argument was raised that the Plaintiff had already served the notice on the General Manager of the Oudh Tirhut Railway on the 14th September, 1948 and the suit was filed on 15th November, 1948 and as such the suit was within time. An observation was made that the suit was filed a day earlier than, the expiry of period of two months fixed by Section 80 CPC for the institution of the suit. These observations of Hon-ble Mukerji, J. were merely obiter. The question of maintainability of the suit in relation to the notice dated 14th September, 1948 was not a question which was referred to Hon"ble Mukerji, J. for decision nor such a question primarily arose in the case.

11. In any case subsequent in State of Maharashtra Vs. Dr. M.N. Kaul (Deceased by his Legal Representatives) and Another, , their Lordships of the Supreme Court were considering the effect of the expression "one month after the pronouncement of the judgment". The judgment of the Supreme Court was pronounced on 15th March, 1965. The Supreme Court held that one month would expire on 15th April, 1965. Similarly it was held in the same case while interpreting the expression "a period of 12 months from the date of execution of the guarantee" where the date of execution of the guarantee was 23rd March, 1962 that one year would expire on March 23, 1963. This case fully applies to the facts of the present case. In view of the decision of the Supreme Court, in any case the observations made in the case of Dominion of India (Supra) is no longer good law.

12. In the instant case the notice on the Northern Railway Administration was served on 17th July, 1963. In the circumstances, even if that date is excluded, two months would expire on the midnight of 17th September, 1963. The suit admittedly was filed on 18th September, 1963 after expiry of 2 months. In the circumstances the suit was not pre-mature and the view taken by the lower appellate court is manifestly erroneous.

13. In the result, the appeal is allowed. The judgment of the lower appellate court as well as the trial court are set aside. The suit is decreed for a sum of Rs. 1848/- and Rs. 870/- plus a sum of Rs. 10/- as costs of the notice. Since the

Appellant had not claimed interest in the notice u/s 80 CPC he cannot be granted any relief in respect of the claim of interest at the rate of 12% per annum. The suit is accordingly decreed for a sum of Rs. 2728/-with proportionate costs and pendente lite and future interest at the rate of 6% per annum till the date of realisation of the.