

(1956) 07 BOM CK 0007
In the Bombay High Court
Case No : Appeal No. 70 of 1956

Ballabhdas Eshwardas

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 05-07-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 54, 80

Citation : (1956) 58 BOMLR 873

Hon'ble Judges : Bavdekar, J

Bench : Single Bench

Judgement

Bavdekar, J.—The appellants are contractors who have got a contract from the Central Railway to run buffet cars in certain trains running between Bombay and Poona and certain stalls at Victoria Terminus. It appears from the evidence that they have besides 22 other contracts. All these contracts have been terminated by a notice given by the Chief Commercial Superintendent of the Central Railway on January 23, 1956. This notice was admittedly served upon the appellants and called upon them to vacate among others the stalls at V.T. and the carriages in which the appellants run the buffet service between Bombay and Poona by April 1, 1956. It appears that by a subsequent letter dated February 10, 1956, this period was extended upto May 31, 1956. It was the case of the appellants that so far as the contract of buffet cars in certain trains between Bombay and Poona and the stalls at V.T. are concerned, this contract was renewed and was to expire only on March 31, 1957. Whatever may be the ease consequently with regard to the other contracts which the Chief Commercial Superintendent purported to terminate, this contract could not be terminated by the Chief Commercial Superintendent before March 31, 1957. They said besides that the Chief Commercial Superintendent was not the person who was entitled to terminate the contracts, and the notice of termination would have to be worded in a particular manner. The contract could be terminated by the proper authority, which in this case was the President of India. They thereupon first of all carried on certain correspondence: They wrote a letter to the Chief Commercial

Superintendent in which they mentioned that the contract at Bombay V.T. and the buffet cars was upto March 31, 1957, and it could not be terminated before that date. Subsequently they gave a notice to the General Manager of the Central Railway, Bombay, as they were required to do if they wanted to sue the Union of India. Then they filed the suit from which the present appeal arises against both the Union of India and the Chief Commercial Superintendent contending that the contract to run buffet cars and the stalls at V.T. could not be terminated before March 31, 1957, and in any case it was not properly terminated. Pending the suit they made an application to the learned trial Judge for an interim injunction restraining the defendants from interfering with the business which they were carrying on at V.T. and in the buffet cars. The learned trial Judge refused to grant this injunction because in his view the notice which was given to the General Manager, Central Railway, was bad. It was also contended before him that it was necessary to give a notice not only to the General Manager, Central Railway, but also to the Chief Commercial Superintendent, who was also a defendant in the suit. He said, however, that even though no notice was given to him, he was not a necessary party to the suit and consequently the suit would be good as far as the Union of India is concerned. But inasmuch as he came to the conclusion that the notice which was given was prima facie bad, he has not given the appellants the injunction they had prayed for.

2. The appellants have come in appeal, and the first question which arises in the appeal is as to whether the learned trial Judge is correct in holding as he did that prima facie the notice was bad. Now, I do not think it would serve any useful purpose in going into the question of prima facie because I have heard the arguments both on behalf of the appellants and on behalf of the respondents whether the notice was good or bad and I think it would be proper at this stage to go into the question whether the notice was bad finally and not prima facie.

3. Taking first the reason for which the learned trial Judge held that the notice was bad, he held that the notice was bad because after stating the cause of action it did not mention what reliefs the plaintiffs were going to sue the defendants for. Section 80 requires that the notice must state the reliefs for which the plaintiff is going to sue. It has been well established now that it is necessary to import a certain amount of common sense in the interpretation of these notices, and if the reliefs for which the plaintiff was suing could be found from the notice, it is not necessary to hold the notice bad merely because in terms it does not state what the reliefs which the plaintiff would ask for were. Taking up an illustration, if a person gave a notice to the Union of India that it owed him Rs. 500 and he would file a suit if he was not paid, the failure to mention that the suit which would be filed would be for recovery of Rs. 500 from the Union of India ought not to make the notice bad. The learned trial Judge appears to have had this consideration in mind; but he says the difficulty in this case was that upon the cause of action which the plaintiffs had stated in the notices it was quite possible that the plaintiffs might have sued for damages.

Now, that must be conceded. What has got to be seen, however, in this case is the plaintiffs were suing for specific relief, and in a suit for specific relief damages are often claimed as an alternative relief and sometimes they may be granted when they are not claimed. On the other hand, it is obvious in the case of a contract like the one which the appellants hold that it would be much more profitable for them to sue for specific relief, upon getting which they would be able to go on with their business than to sue the Union for damages. In my opinion, in these circumstances, it did not make any difference that upon the cause of action which the appellants had they might have sued either for specific relief or for damages. It can be understood from the notice that the relief for which the Union of India would be sued would be for an injunction restraining the Union of India from acting upon the notices terminating the contract. The notice specifically stated that the Union of India as well as the Chief Commercial Superintendent could not possibly act upon the notices which had been given to the appellants terminating the contracts in their favour. The logical conclusion from that was that the suit which would be filed would be a suit restraining the Union of India from acting upon the notice.

4. Mr. Kolah, who appears for the Union of India, argues however that in this case the plaintiffs' cause of action really was not confined to the irregularity of the notices terminating the appellants' contract. The plaintiffs claimed by their plaint that in the first instance the contract for the running of buffet cars in certain trains between Bombay and Poona and the stalls at V.T. could not be terminated before March 31, 1957, and even if it could be terminated, the notices which were given by the Chief Commercial Superintendent were not valid. He says that the causes of action which were a bundle of facts consequently comprised the fact that the contract for running buffet cars between Bombay and Poona and the stalls at V.T. was a contract upto March 31, 1957. He says that the notice does not anywhere refer to this fact or that this so-called contract renewing the original contract upto March 31, 1957, was the difficulty in the way of the termination of the contracts by the Union. Now, it has got to be remembered that in terms the notice which had been given by the appellants nowhere refers to the fact that the original agreement in regard to the contract to run buffet cars between Bombay and Poona and the stalls at V.T. had been renewed upto March 31, 1957, and inasmuch as the cause of action is a bundle of facts the fact that the contract had been renewed upto March 31, 1957, would be a part of the cause of action. But in para 11 of the notice the plaintiffs did refer to the correspondence which they had carried on with the Chief Commercial Superintendent. They said that they had by means of such correspondence brought to the notice of the railway that the notices which had been given resulted in stoppage of the plaintiffs' business and trade on the various stations detailed in the agreements and were illegal and invalid and were a serious encroachment upon the fundamental rights guaranteed to them under Part III of the Constitution of India. Now, I have already mentioned the letter which was written by the appellants to the Chief Commercial Superintendent

mentioning that the notice was invalid because the contract at Bombay V.T. and buffet cars was upto March 31, 1957. It is argued, however, on behalf of the Union of India that reference in para 11 of the notice cannot be to this letter for the reason that the letter nowhere mentions anything about fundamental rights. It has got to be remembered however that para. 11 does not refer to only one letter. It refers to several registered letters. "When therefore the paragraph mentions that it was brought to the notice of the railway authorities that the notices were illegal and invalid and were a serious encroachment upon the fundamental rights guaranteed to the appellants under Part III of the Constitution of India, the reference is not to one letter but to more, and it cannot be said that this paragraph does not refer to the letter to the Chief Commercial Superintendent wherein it was mentioned that the contract at Bombay V.T. and in respect of buffet cars was upto March 31, 1957, because the letter makes no reference to fundamental rights. The whole correspondence has been referred to, and what para. 11 mentions is that the notices were illegal and invalid and were a serious encroachment upon the fundamental rights guaranteed to the appellants under Part III of the Constitution of India. Inasmuch as a number of letters are referred to some may merely mention that the notices were illegal and invalid and some may mention that there were serious encroachments upon the fundamental rights guaranteed to the appellants under Part III of the Constitution of India. The words "they are a serious encroachment upon the fundamental rights guaranteed to the appellants under Part III of the Constitution of India", do not consequently show that the reference in para. 11 was not to this letter. The learned trial Judge was quite right in trying to import commonsense into the construction of the notices and to import the letter of March 17, 1956, into para. 11 as having been incorporated by reference. In that case the Union of India had been given sufficient notice about the cause of action upon which the plaintiffs relied in the plaint.

5. Coming next to the second contention that in this case the notice ought to be given to the Chief Commercial Superintendent also, it is contended before me that in this case notice to the Chief Commercial Superintendent had been given because the letter of March 17, 1956, is such a notice. It has got to be remembered, however, that what has got to be given u/s 80 of the CPC is a notice of a suit. The notice must tell therefore the person to whom, it is given that the person who gives the notice intends to sue him in a Court of law. Now, it is quite true that the letter of March 17, 1956, calls upon the Chief Commercial Superintendent to withdraw the notices which it characterises as illegal, void and ineffective, and goes on further to say in the last paragraph: "failing which you will be responsible for all consequences." But I fail to understand by this that the Chief Commercial Superintendent was told that otherwise a suit would be filed against him. It has got to be remembered next that the plaint has got to state that the notice to a person to whom it has got to be given has been given. The plaintiffs in the present case do not state in the plaint that notice to the Chief Commercial Superintendent had been given. I am not at present on the question

what is the effect of failure to say that in the plaint. But it is obvious from the absence of any reference to the letter of March 17 as a sort of a notice in the plaint or for the matter of that any reference in the plaint that notice had been given to the Chief Commercial Superintendent that the appellants themselves did not understand this letter was a notice. Then again no attempt appears to have been made even to persuade the learned trial Judge to hold that this letter of March 17, 1956, was a notice of a suit given to the Chief Commercial Superintendent. Now, the whole object of requiring by Section 80 a notice to be given to the person to be sued is that he should understand that a suit is likely to be filed against him so that he should make reparations after examining his prior acts and finding out if there was any illegality committed. If the appellants themselves could not understand the letter of March 17 as a notice which was given by them, it is obvious that the Chief Commercial Superintendent would have found some difficulty in treating this letter as one. The law requires a proper notice to be given. There is no reason why a dubious letter should be treated as an adequate notice to the Chief Commercial Superintendent that failing his withdrawing the notices a suit would be filed against him.

6. No notice to the Chief Commercial Superintendent was given and the only question which arises is what the effect of failure to give notice is; was the suit instituted bad so far as both the Union of India and the Chief Commercial Superintendent are concerned or was it bad so far as only the Chief Commercial Superintendent is concerned, and what is the proper order to pass.

7. Now, my attention has been drawn to three cases, of Madras, Patna and Calcutta High Courts in which the view appears to have been taken that if a notice has not been given to one of the defendants when a notice ought to be given to him, the whole suit is bad, or in the alternative when a notice has been given by one of the plaintiffs, the plaint must be rejected wholly. Now, if we look at the section itself the section does not say about the plaint being bad in part or as a whole. The section says that no suit shall be instituted against the Government or against a public officer. That means that if a suit is to be instituted against Government, notice must be given to it, and if it is to be instituted against a public officer, notice must be given to him, and the result undoubtedly is that if such notice is not given either to the Central Government or to the public officer, they cannot be sued. The question whether the suit is bad against both appears to have been considered from the point of view of what action is to be taken subsequently, and whenever a question like this has arisen reliance was placed upon the case of the Allahabad High Court in *Baghubans Puri v. Jyotis Swarupa* I.L.R.(1907) All. 325 which mentioned in the circumstances to be detailed below that plaint should not be rejected in part. The argument seems to be that if notice has not been given to one of the defendants, the plaint will have to be rejected, and if the plaint could not be rejected in part, then in that case the only thing to do is to reject it wholly because allowing it to be retained would allow the suit to proceed, even against the person against whom it could not proceed.

8. Now, I shall go first to the ease of Rabhubans Puri v. Jyotis Swarupa. In that case it appears that the plaintiff sued for possession of certain property which consisted of both land and buildings and prayed in the alternative that if he was not entitled to possession of buildings upon the land a decree for possession of the land itself may be passed in his favour and the defendants ordered to remove the materials of the buildings which were lying thereon. It appears next that certain land was leased by the predecessor in title of the plaintiff to the predecessor in title of the defendant and when he was called upon to define the lands in the lease he expressed himself unable to state its boundaries. He said that they were 12 Kachha bighas in extent. Even this was denied by the defendants. In the circumstances the trial Court passed an order (p. 326) :

The plaint so far as it claims this alternative relief in the general terms of paragraph 11(d) will be held to be rejected u/s 54, Code of Civil Procedure.

The Allahabad High Court held that Section 54 did not permit rejection of a portion of the plaintiff's claim. They also remarked that the plaintiff should have been given an opportunity at the trial of proving his case. They, therefore, remanded the case. What they held, therefore, obviously was that it was only if sufficient reason was shown for rejecting the plaint as a whole that the plaint should be rejected. This decision could hardly be made a ground for supporting the conclusion that if the suit was not properly instituted against one of the parties to the suit the plaint would have to be rejected as against him, and if the plaint could not be retained as against him, then upon the principle that the plaint cannot be rejected in part it must be rejected as a whole. Their Lordships of the Allahabad High Court implied that the objection that the plaint could not be rejected in part compelled the result that the plaintiff should proceed though the Court might not later on give the plaintiff part of the relief which he had claimed.

9. Then I go to the case of the Madras High Court in Appa Rao v. Secretary of State for India ILR (1930) Mad. 416. That was a case in which a suit was filed against the Secretary of State by two men one of whom had purchased the property in suit from the other. The notice which was given of the suit was only by one of the plaintiffs. Their Lordships of the Madras High Court took the view, following the case of the Allahabad High Court referred to above, that the plain meaning of Order VII, Rule 11, was that if any of the defects mentioned therein was found to exist in any case, the plaint shall be rejected as a whole. Now, Clause (d) of the rule upon which reliance has been placed says that the plaint shall be rejected if it is found that the suit appears to be barred by any law. Before it could be said therefore that Order VII, Rule 11 (d), has application, it must be shown that the suit is barred which necessarily means the whole suit is barred. The suit may be barred for various reasons; it may for example be barred by the law of limitation. Now, if the whole suit appears to be barred by the law of limitation, undoubtedly the plaint could be rejected under Order VII, Rule 11. But if, on the other hand, it appears that only part of the claim is

barred, it is obvious that no action can be taken under 6. VII, Rule 11, because it cannot be said that the whole of the suit was barred by the law of limitation, and no doubt the same argument could be applied to other bars; for example there may be a bar of *res judicata* to part of the suit obvious upon the plaint itself. If the other part of the suit is not barred by *res judicata*, even if it appears from the plaint that part of the suit is barred by *res judicata* the plaint could not be rejected. Besides in the case before the Madras High Court two persons had joined as plaintiffs in order to meet a possible defence if the suit was filed by one only that only the other was entitled to sue. Such a suit is distinguishable from a suit in which one plaintiff has a cause of action entitling him to relief severally against two defendants.

10. Then I go to the case of the Calcutta High Court in *Jagadishchandra Deo Dhabal Deb v. Debendraprasad Bagchi* I.L.R.(1930) Cal. 850. That was not a case in which there was before their Lordships of the Calcutta High Court the same question as I have before me. It appears that in that case notice to a receiver appointed under Order XL, Rule 1, was not given and the only question to which their Lordships of the Calcutta High Court applied their mind was what was to be done when it was found that there was failure to comply with the provisions of Section 80 which was mandatory. They said that considering the view which was taken in *Bachchu Singh v. The Secretary of State for India in Council* I.L.R. (1902) All. 187 was that the proper course was to reject the plaint and the fact that Section 80 itself requires that the plaint shall mention that the notice required by the section has been given the correct course was to reject the plaint.

11. Then there is the case of the Patna High Court in *Noor Mohammad v. Abdul Fateh* [1941] AIR Pat. 461. It is in this case that the point which specifically arises before me was dealt with, and it was held that considering that the provisions of the operative portion of Section 80 "no suit shall be instituted against," etc. and the consequence of instituting a suit in face of a statutory prohibition is that under Order VII, Rule 11, of the CPC the plaint should be rejected and it had been held by the Allahabad High Court in *Baghubans Puri v. Jyotis Swarupa*, that a Court cannot reject a plaint in part, the plaint would have to be rejected as a whole.

12. It seems to me, however, that even if the correct thing to do when you find in any particular case that the suit is barred by the provisions of Section 80 is to reject the plaint, when it cannot be said that the whole suit is barred under Order VII, Rule 11, there is nothing which compels the Court to reject the plaint. Even if inasmuch as the whole suit is not barred by the law the plaint cannot be rejected, that does not mean that it cannot do anything else. The Court had, actually as a matter of fact in the present case, not rejected the plaint but issued a summons to the defendants. Subsequently when the defendants appeared and argued that the suit is bad as against both it was open to the Court as in the ease of other bars to say that the suit did not lie against the Chief Commercial Superintendent as no notice was given to him. But in so far as notice has been

given to the General Manager, Central Railway, the suit can proceed against the Union of India.

13. It is necessary now to notice the argument which has been based upon the case of the Privy Council in *Bhagchand Dagdusa Gujrathi Vs. The Secretary of State for India*, The learned Judge held in this case that if the Chief Superintendent had been a necessary party to the suit, then failure to give notice to him would have been fatal, and as in *Bhagchand's* case the suit could not have gone on but inasmuch as the Chief Commercial Superintendent was not a necessary party to the suit the suit could go on against the Union of India in spite of the fact that no notice had been given to the Chief Commercial Superintendent,

14. Now, the effect of the decision of the Privy Council undoubtedly is that where the suit has been instituted against two persons to both of whom notice has to be given and the suit could not go on in the absence of one against the other then considering first that the plaintiff chose not to institute the suit against one but sued both and in the second instance the suit was a suit which could not go on in the absence of the person to whom notice was not given the failure to give notice to one must prevent the suit from being a good suit against both. It has got to be remembered, however, that the question whether the suit is bad against the other parties because notice was not given to one even when the other parties were not necessary parties was left by their Lordships of the Privy Council quite open. The only thing which they decided was that if the plaintiff chose to come to Court with a suit against two persons against one of whom he had failed to give notice the suit would not go on against either of the two if the person to whom the plaintiff had failed to give notice was a necessary party to the suit. As a matter of fact the suit could, not possibly have gone on when notice had not been given on another ground also and that is that immediately it was found that notice to the party who was a necessary party had not been given he will have to be deleted from the suit and then the suit would remain a suit against the other party alone which could not go on for want of a party who was a necessary party.

15. In this case, however, the learned trial Judge was obviously right in holding that the Chief Commercial Superintendent was not a necessary party to the suit. The plaintiffs' case is that the contract in their favour has been terminated because of a notice which was an invalid notice and also because their contract was renewed upto March 31, 1957. It could not be terminated by a notice at all. Now, the plaintiffs being contractors who have got a contract in their favour in respect of buffet cars in certain trains running between Bombay and Poona and also certain stalls at V.T., they were obviously entitled to sue the Union of India. They were entitled to sue also the person who gave them a notice. But there is no reason for saying that they could not sue the Union of India in the absence of the Chief Commercial Superintendent inasmuch as in this case it must be taken that the Chief Commercial Superintendent was after all an agent of the principal

in this case which is the Union of India and that the plaintiffs were wronged by an act of the agent they were entitled to sue the principal in respect of that act. There is no reason whatever for saying that the plaintiffs could not have sued the Union of India unless in the first instance they sued the Chief Commercial Superintendent. The position in Bhagchand's case was different. What was there challenged principally was a notification of Government. Now, it is obvious that no suit with regard to the notification of Government could be filed against the Collector alone because even if such a suit had been filed and a declaration obtained that the notification was bad Government which was not a party to the suit would not be bound by the decision. The plaintiffs could therefore get a valid declaration with regard to the notification being bad as against Government only after suing the Secretary of State in that particular case. That is not the case in the present case. The plaintiffs are entitled to get the whole relief which they wanted without suing the Chief Commercial Superintendent at all. It may or may not be that the Chief Commercial Superintendent is a proper party, and it would be but fair that if the plaintiffs are going to agitate the question about the validity of the notice or the power of the Chief Commercial Superintendent to give it that they would join the Chief Commercial Superintendent in the suit. They were not however bound to do so. They could get all the relief which they wanted by suing the Union of India alone. The Chief Commercial Superintendent was not consequently a necessary party to the suit.

16. I, therefore, allow the appeal and set aside the order of the learned Judge and remand the application for injunction for further disposal in accordance with the law. The reason for doing so is that it does not appear that the application for injunction has been refused after considering all the various points which were made by the parties before the learned trial Judge. He dismissed the application only holding as a preliminary point that the suit was bad in the absence of a notice. The respondents will pay the appellants' costs of this appeal.

17. The injunction which was granted by this Court has come to an end.