
(1960) 11 PAT CK 0005
In the Patna High Court
Case No : Civil Revision No. 469 of 1959

Bhagwan Lal

APPELLANT

Vs

Union of India(UOI) and Others

RESPONDENT

Date of Decision : 10-11-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 80

Citation : AIR 1961 Patna 200

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Advocate : Birendra Prasad Sinha, for the Appellant; P.K. Bose, for the Respondent

Judgement

Raj Kishore Prasad, J.—This application, in revision, u/s 25 of the Provincial Small Cause Courts Act, is by the plaintiff, from the judgment of the Court below dismissing his suit because of the alleged non-compliance of Section 80 of the Code of Civil Procedure.

2. The facts are these : On 24-6-1957, 111 bags of fresh and green Mosammi were consigned under Railway Receipt No. 7269/63, and, 2 boxes of fresh and green Anars were booked under Railway Receipt No. 7269/65, from Nasik Road for delivery to the plaintiffs firm at Chapra. These two consignments were not delivered to the plaintiff, and, therefore, he brought a suit for damages for nondelivery of the two consignments, against the defendants Railway Companies.

3. Notices u/s 80 of the Code were served on the Railway Companies concerned, as will appear from Exhibits A and A/1. By mistake, however, in the notice u/s 80 of the Code, with regard to 11 bags of Mosammis, the Railway Receipt No., which was mentioned therein, was 7209/65. which was the railway receipt of the consignment of the two baskets of Anars, instead of 7269/63, which was in respect of the consignment of the Mosammis.

Similarly, in the notice u/s 80 of the Code with respect to the consignment of

Anars, instead of giving Railway Receipt No. 7269/65, which was of Anars, it was given as No. 7269/63, which was of Mosammis. The result was that, no doubt, notices u/s 80 of the Code were served, as required by law, but unfortunately, wrong railway receipt number was given in the two notices although, in other respects, they were quite in order.

4. The learned Small Cause Court Judge dismissed the suit because he took the view that due to the mistake in giving the correct railway receipt number in the two notices, they could not be considered to be legal compliance of the mandatory provisions of Section 80 of the Code.

5. It was argued by Mr. Birendra Prasad Sinha, on behalf of the petitioner, that the two notices, Exhibits A and A/1, correctly stated all the facts, which were necessary to give notice to the Railway Companies about the plaintiff's claim, but due to accidental slip and bona fide clerical mistake, there was an error in giving the correct railway receipt numbers in respect of the two consignments, and, in these circumstances, the notices, Exhibits A and A/1, should be held to be sufficient compliance of Section 80 of the Code.

6. In support of the argument, reliance was placed on a decision of Rajmannar J. of the Madras High Court in Konnoth Meenakshi Amma Vs. Province of Madras and Others, , and, of Grille, J., of the Nagpur High Court in AIR 1938 415 (Nagpur) .

7. Section 80 provides (so far as is material) that:

"80. No suit shall be instituted against the Government, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

XX XX X X (b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

XX XX X X stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left".

8. Section 80 enacts only a rule of procedure, and, the object of the Legislature in requiring the notice under this section is to afford the defendant an opportunity to reconsider his position with regard to the claim made, and to make amends or settle the claim, if so advised, without recourse to the trouble and cost of litigation. The terms of the section are imperative and admit of no exception or implications. A suit, not complying with its provisions cannot be entertained by any Court, and if instituted, must be rejected under Order 7 Rule 11 of the Code.

9. The Court, therefore, has to examine the contents of the notice and the pleading in the light of the provisions of Section 80 to see whether the notice complies with its requirements and is a valid notice as required by law.

10. It is not necessary that the notice should be in any particular or technical form. It should not be strictly construed as if it were a pleading and it need not set out all the details and facts of the case. It is not necessary for the plaintiff to state in his notice the full details of his claim. But it must substantially fulfil its object in informing the parties concerned generally of the nature of the suit intended to be filed. Thus, it is essential that the notice should state the cause of action and the relief claimed, and, should also state the names descriptions and places or residence of all the plaintiffs.

11. A notice u/s 80 of the Code, therefore, must contain three essential particulars, namely, (i) It must state the cause of action; (ii) the name, description and place of residence of the plaintiff; and, (iii) the relief which the plaintiff claims.

12. As observed by Mahajan, J., of the Supreme Court, in *State of Seraikella Vs. Union of India (UOI) and Another*, :

"It seems to me that what is enacted in Section 80 is the first step in litigation between the parties when the cause of action is complete. Section 80 in effect provides that an advance copy of the plaint should be served on the defendant and no suit should be instituted in Court until the expiry of two months after such service. Section 80 does not define the rights of parties or confer any rights on the parties. It only provides a mode of procedure for getting the relief in respect of a cause of action. It is a part of the machinery for obtaining legal rights i.e., machinery as distinguished from its products. Vide *Poyser v. Minors*, (1881) 50 LJQB 555".

13. On the question as to how a notice u/s 80 of the Code should be construed, the rule of construction has now been laid down by the Supreme Court in *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, . In this case, N. H. Bhagwati, J., who delivered the unanimous decision of the Supreme Court, at page 281, observed:

"The Privy Council no doubt laid down in AIR 1927 176 (Privy Council) that the terms of this section should be strictly complied with. That does not however mean that the terms of the notice should be scrutinised in a pedantic manner or in a manner completely divorced from common sense. As was stated by Pollock C. B. in *Jones v. Nicholls* (1844) 13 MW 361 (363) : 153 ER 149, at p. 150, "We must import a little common sense into notices of this kind".

Beaumont, C. J., also observed in *Chandulal Vadilal Vs. Government of The Province of Bombay*, :

"One must construe Section 80 with some regard to common sense and to the object with which it appears to have been passed....."

14. In the light of the above principles and the rule of construction, let us now examine the two notices u/s 80 of the Code, Exhibits A and A/1, in the instant case.

15. If the terms of the notices, Exhibits A and A/1, are scrutinised in the manner indicated above, it would be reasonably clear that the cause of action and the relief claimed by the petitioner in one case was in respect of non-delivery of 11 bags of Mosammis, and, in the other for non-delivery of the two boxes of Anars. It is not contended, rather admitted, that these two notices do state all the facts which have to be stated in the notice u/s 80 of the Code as required by it.

The object of giving the notice u/s 80 of the Code to the Railway Administration the defendants, was to inform them that a suit is to be brought against them so that they may, if they so desire, compromise the case or compensate the person concerned without letting him have his recourse to a court of law. The defendants knew perfectly well what these two notices were about and what the plaintiff claimed against them.

The railway receipts bore two numbers, namely, first, "7269", which was common in both the railway receipts, and, second, which was upon oblique, "63", in respect of Mosammis and "65" in respect of Anars. The mistake was in mentioning this second descriptive and identifying number, instead of mentioning "63" in respect of Mosammis, it was mentioned as "65", and vice versa.

There is no doubt that this mistake was an accidental slip, purely a clerical mistake, and perfectly bona fide. When all the essential facts, which must be stated, in terms of Section 80, in a notice u/s 80, are admittedly stated in the two notices, simply because of this accidental slip in giving the correct second number of the railway receipts, it cannot be held that these notices do not satisfy all the requirements of Section 80 of the Code, and, therefore, they are invalid.

16. The above conclusion of mine is also supported by several decisions of the different High Courts, which I shall now deal with. I shall notice first the two cases cited by the petitioner.

17. In Konnoth Meenakshi Amma Vs. Province of Madras and Others, , there was an error in describing the subject matter of the suit, which was setting aside a revenue sale. Instead of stating R. S. No. 722/4-A it was mentioned as R. S. No. 722/4-b. It was held by Rajamaimar J., as he then was, sitting singly, that it was not a mere clerical error but a substantial error, which vitiated the notice u/s 80 of the Code. It was found in that case that there was no evidence that the error was bona fide and due to an accidental slip.

Here, however, there is no error in describing the subject matter of the suit, there being only a bona fide error and an accidental slip in mentioning the second descriptive number of the railway receipt under which the subject matter of the suit was booked. Here, therefore, the error cannot be said to be substantial and fundamental. This case, however, supports the view that if the error is not substantial but accidental and bona fide, then the notice on that account is not vitiated. To this extent, this case supports the petitioner, but the actual decision does not apply here.

18. In AIR 1938 Nag 415, there was some vagueness in the relief claimed. The plaintiff did not say that he claimed a declaration of his right or an injunction; but on a construction of the relief claimed it was held that the relief could not be other than a claim for a declaration and an injunction and that the defendant knew perfectly well the nature of the suit that would be brought. It was, therefore, held that the notice u/s 80 of the Code, in that case, was a valid notice.

19. In Union of India v. Jeewan Ram, AIR 195S SC 905 in the notice u/s 80 the relief claimed was

"That my said client is entitled to be re-instated on his former post and to be paid the amount due to him on the basis of his being treated as if he was not discharged from the date of his discharge up to the date of his re-instatement",

but, in the plaint the main relief claimed was a declaration that the order of discharge or removal of the respondent was illegal and arbitrary, still it was held that there was no substantial difference between the relief mentioned in the notice and the plaint and the notice u/s 80 was not invalid on that ground.

20. In State of West Bengal Vs. Jiwanmall Babu and Another, . there was disparity between the notice and the plaint regarding the date when the cause of action for the suit, in that case, arose. It was held by a Division Bench of the Calcutta High Court that a notice u/s 80 of the Code does not require that the date of the accrual of the cause of action should be given. In that case, although the date of cause of action given in the notice was 20-7-48 and in the plaint it was 29-11-51, on a consideration of the evidence it was held that the same cause of action has been stated in the notice u/s 80 of the Code as in the plaint and, therefore, the notice was valid and operative.

21. If the notices, Exhibits A and A/1, are, therefore, scrutinised, in the manner indicated above, for which purpose it is necessary to import a little common sense into them, it is manifest that their object is plain and is achieved and there has been no violation of the spirit and intention of Section 80 of the Code so that, they could be treated as invalid.

22. For these considerations, I hold, in disagreement with the court below, that the plea based u/s 80 of the Code has no validity, and, that the notices, Exhibits A and A/1, are valid and operative, and, the plaintiff's suit cannot be dismissed on that ground.

23. In view of my above decision, it is necessary that the suit should be remitted to the court below for a fresh decision on its merits.

24. In the result, the application succeeds, the rule is made absolute, the judgment and decree of the court below are set aside, and the suit is remanded to the court below. Both parties will be given an opportunity to adduce such further evidence, as they like, and, thereafter, the court below will dispose of the suit on the evidence already on the record and on the further evidence, if any, adduced by the parties in accordance with law. The cost of this case will abide

the result of the suit in the court below. Hearing fee Rs. 32/-.