

(1960) 08 MP CK 0049

In the Madhya Pradesh High Court

Case No : Civil Revision No. 31 of 1960

Bisanchand Lalchand

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-08-1960

Acts Referred:

Railways Act, 1890 — Section 77

Citation : AIR 1961 MP 220 : (1961) ILR (MP) 173 : (1965) JLJ 1097 : (1962) 7 MPLJ 512

Hon'ble Judges : P.K. Tare, J

Bench : Single Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; J.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tare, J.

This is plaintiff's revision u/s 25 of the Provincial Small Cause Courts Act p.gainst the decree dated 28-10-1959, passed by Shri S.M. Afzal, First Additional District Judge, Durg empowered u/s 9 of the Madhya Pradesh Courts Act, 1958, in Small Cause Suit No. 95 of 1958.

The plaintiff-applicant was a consignee under a railway receipt, dated 29-6-1957, in respect of certain goods dispatched from Mathura and intended to be sent to Bhilai Railway Station in the district of Durg. The plaintiff sued for damages for non-delivery of the said consignment.

The non-applicant raised various pleas in defence which wore all negatived by the learned Small Cause Judge. The only plea of the defendants that was upheld by the Small Cause Court was in respect of the defect in the notices u/s 77 of the Indian Railways Act and Section 80 of the Civil Procedure Code. The trial Judge, therefore, dismissed the plaintiff's suit on the sole ground that the notices given by the plaintiff were defective.

All other findings being in favour of the plaintiff-applicant, it is clear that he would be entitled to a decree, in case the conclusion regarding the defective notices is found in his favour. Other findings being questions of fact would not be open to a challenge at the revisional stage, particularly when the findings are not vitiated by any illegality or any misapprehension on the part of the trial Judge.

The learned counsel for the non-applicants, however, did not make any attempt to challenge the findings of the trial Judge, but contended that the plaintiff could not sue as a consignee as there was no endorsement in his favour. This contention is based on a clear misapprehension as the trial Judge found that there was, in fact, an endorsement in favour of the plaintiff on the railway receipt. Therefore, it is clear that the plaintiff could maintain his suit in his capacity as a consignee of the railway receipt.

Whether a notice complies with the requirements of Section 77 of the Indian Railways Act or Section 80 of the CPC would in each case be a question of fact to be decided upon the particular circumstances of each case. So far as the present case is concerned, the only defect in the said notices was that the plaintiff, instead of mentioning the station of destination as Bhilai, mentioned it as Durg. Can it, therefore, be said that the notice was so defective, as being not in compliance with the requirements of Section 77 of the Indian Railways Act and Section 80 of the Civil Procedure Code.

Section 77 of the Indian Railways Act is as follows :--

"A person shall not be entitled to a refund of a overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway."

The requirements of the section, are that a person should make his claim to the refund or compensation in writing, within six months from the date of delivery of the animals or goods. The section requires nothing else.

Similarly, Section 80 of the CPC is as follows :--

"No suit shall be instituted against the Government, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of-

(a) in the case of a suit against the Central Government, except where it relates to a railway, Secretary to that Government;

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

(c) in the case of a suit against a State Government, a Secretary to that

Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, 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."

As to the requirements of notices u/s 77 of the Indian Railways Act and Section 80 of the CPC there have been a series of decisions of this Court. The ratio decidendi of those decisions is that any defect which relates to minor particulars in a notice would not vitiate the notice. If the defect be a major one, which might prejudice the Railway administration or the Government in failing to locate the particulars of the claim, in those cases only the notice might be vitiated.

An exact case on the point similar to the present one came up for consideration before a Division Bench of the Calcutta High Court in Begraj Gadhuram Vs. E.I. Ry. Co. and Another, :

In that case the only defect in the notice u/s 77 of the Indian Railways Act was the mention of a wrong place of dispatch of the consignment Mukherji, J. While negating the defence contention, observed as follows:--

"The appellants" contention is that the learned Subordinate Judge has erred in law in holding against the validity of the notice, and that if this contention be accepted the appellants, on the other findings of the learned Subordinate Court, would be entitled to a decree.

Now as regards the validity of the notice what has been found is this: In the said notice every particular was correctly stated except the name of the station from which the consignment was dispatched, instead of Aserva which was the correct name, Ahmedabad was mentioned. The Subordinate Judge has expressed the view that Section 77 of the Act requires that the notice must be such as would enable the Administration to see at once the identity of the consignment without further enquiry at their other station or stations.

The section, however, prescribes no such thing, and it is always a question of fact to be determined in view of the circumstances of each particular case whether the notice is sufficient or not. The defendants never raised this question in their pleadings and contented themselves with a denial of the service of the notice. In these circumstances it is not possible to say that the notice was not adequate and in view of the pleadings the question of its adequacy can hardly arise. The findings of the Subordinate Judge in respect of this matter must accordingly be reversed".

Therefore, according to Mukherji J. the inadequacy or invalidity of a notice has also to be pleaded. In the present case there is no such plea raised by the defendants regarding inadequacy or invalidity of the notice. In AIR 1949 394 (Nagpur) , a Division Bench of this Court held that it is for the defence to traverse the allegations of the plaintiff, where the plaintiff makes several

allegations of fact. If no traverse is made, the plaintiff will be deemed to have admitted the allegations which are required to be specified and which will not be so traversed by the defendant in his written statement.

Therefore, I am of opinion that where the defence alleges inadequacy of notice or invalidity of notice u/s 77 of the Indian Railways Act or Section 80 of the Civil Procedure Code, which might depend on certain facts to be proved, the Court would not be justified in considering the invalidity of the defect suo motu, unless those facts are established. If the defendant fails to plead the necessary facts, much less to establish them, he will be deemed to have waived his objection regarding inadequacy of notice or regarding invalidity of the notice.

As regards the question regarding a defective notice and the legal effect thereof, a Division Bench of this Court consisting of Mangalmurti and Deo JJ. in *State of Madras v. C. P. Agencies* ILR (1955) Nag. 62 : (AIR 1954 Nag. 342), held that a notice would not be invalidated merely because the place of residence was given in the notice and not the address. The full address of the party was given in the plaint.

Therefore, an objection was taken by the defendant regarding, the variation in the notice and the cause title of the plaint. The learned Judges, considering all the case law exhaustively, held that it is not every minor defect in a notice that would be material, so as to vitiate the same. If I may observe it is not every omission or an incorrect mention of a comma or dash that would be material for the purpose of deciding the validity or otherwise of a notice.

In each case it would have to be seen whether the defect is so material as to prejudice the otherside on account of which the Railway administration was prevented from making any enquiry or taking any further action. This view of the learned Judges of the said Division Bench was followed by a Division Bench of the Calcutta High Court in *Gobind Ram Tilokchand Vs. Union of India* (UOI), .

Another Division Bench of this Court in *Union of India (UOI) and Another Vs. Imperial Tobacco Company of India Ltd.*, , held that if there be substantial compliance with the requirements of Section 77 of the Indian Railways Act and Section 80 of the Civil Procedure Code, it would be sufficient notice under the said provision. The notice in that case had been sent to the Chief Traffic Manager instead of the Manager. In those circumstances, the Division Bench considered the notice to be sufficient.

The notice u/s 80 of the CPC had actually been received by the General Manager, which was addressed to the Union of India. Under the amended provision, the notice ought to have been addressed to the General Manager. In spite of that the Division Bench held that it was (sic) the defect in notice would not invalidate it, unless it be such a material defect as to amount to no notice at all.

Another Division Bench of this Court, consisting of Bhutt C.J. and Naik J. in *Samrathmal and Another Vs. Union of India (UOI) and Others*, , considered the

question relating to the object of and contents of a notice u/s 77 of the Indian Railways Act and Section 80 of the Civil Procedure Code. The learned Judges took the same view as the earlier Division Bench" consisting of Mangalmurti and Deo JJ. It is, therefore, clear that the notice is not invalidated merely because the plaintiff mentions a wrong place of destination. It may be pertinent; to note that the plaintiff had mentioned all other particulars correctly, namely, the number of railway receipt, the place of dispatch. Therefore, there was nothing which would prevent the defendants, from making enquiries about the location of the consignment.

The learned counsel for the non-applicants invited attention to a Single Bench decision of the Madras High Court in Konnoth Meenakshi Amma Vs. Province of Madras and Others, . In that case the defect in the notice u/s 80 was about a wrong mention of a sale. Therefore, under those circumstances, Rajamannar J. expressed the opinion that the notice was defective regarding the subject matter of the suit.

It is true that if a plaintiff mentions a wrong subject matter of the suit in his notice and files a suit regarding a different subject matter, the defect would be a major one and very material. But mentioning a wrong place of destination while giving other particulars correctly, would not be a major defect, which would affect the plaintiff's claim as such.

The learned counsel for the non-applicant further invited attention to another Single Bench case of the Allahabad High Court in Dominion of India now the Union of India (UOI) Vs. L. Ram Kumar, . In the said case, Mukerji J. held that the notice did not mention the place of dispatch. Therefore, relying on the view of Rajamannar J., Mukerji J. held that the notice was defective.

It may be that under certain circumstances the notice might be vitiated due to a wrong mention of the place of dispatch, which might prevent the Railway administration from making enquiry or from taking any further action in regard to the notice of a claim made by a plaintiff. But, it is not that in every case a notice would be vitiated. Such cases might be exceptional ones, but, then each case would have to be decided upon its own facts.

At any rate, I am bound by the view of the different Division Benches of this Court, which have adopted the same view as the earlier Division Bench of Mangalmurti and Deo JJ. Therefore, I am of opinion that the learned Small Cause Judge acted erroneously and illegally in failing to follow the Division Bench case of this Court in Samrathmal and Another Vs. Union of India (UOI) and Others, and in relying on the cases of other High Courts. It may be noted that the decisions of this High Court are binding on all subordinate Courts, unless they are distinguishable on facts. The subordinate Courts have no choice to refuse to follow the decisions of this High Court. Therefore, I am of opinion that the judgment of the learned Small Cause Judge cannot be sustained.

The question of invalidity of the notices being decided in favour of the plaintiff, it

is clear that the plaintiff would be entitled to a decree in view of the fact that all other points, which have been decided in his favour, are not open to a challenge in the present revision. Moreover, they have been correctly decided by the Small Cause Court.

As a result, this revision succeeds and is allowed. The decree of the Small Cause Court is set aside and in its place the plaintiff-applicant's claim for Rs. 458/9/, as rightly found by the Court below, is decreed. Counsel's fee Rs. 40/- if certified.