
(1977) 12 PAT CK 0007
In the Patna High Court
Case No : Civil Revision No. 587 of 1969

Bishwanath Prasad

APPELLANT

Vs

North Eastern Railway and Others

RESPONDENT

Date of Decision : 02-12-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1978 Patna 223

Hon'ble Judges : Shambhu Prasad Singh, J

Bench : Single Bench

Advocate : Prabha Shankar Mishra, R.P. Singh and Krishna Murari, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Allowed

Judgement

Shambhu Prasad Singh, J.—This application u/s 25 of the Provincial Small Cause Courts Act is by the plaintiff. His suit for recovery of Rs. 282.03 on account of non-delivery of one basket of betel leaves consigned from Howrah on the Eastern Railway for delivery to him at Chapra on the North Eastern Railway has been dismissed. The Small Cause Court has held in favour of the plaintiff on all the points, but one. After overruling most of the objections raised on behalf of the Railway in its written statement that court has held--

"The claim amounting to Rs. 255/- as price of one basket is allowed. The packing and other charges have been claimed at Rs. 6/- which is rather excessive and it is reduced to Rs. 3/- only, As regards the railway freight Ext. 3 is the Railway receipt which supports the claim of Rs. 13.03 paise. The railway freight is, therefore, allowed. So far as the cost of notice is concerned, it is not legally admissible and this is disallowed."

After having held, so, the learned Small Cause Court Judge proceeded to examine whether the plaintiff had a cause of action for the suit and dismissed the suit relying on a single Judge decision of Allahabad High Court in Dominion of

India v. Roop Chand 1950 All LJ 595) as, in his opinion, the notice u/s 80 of the Civil P. C. (hereinafter referred to as the "Code") was illegal and invalid for it mentioned the number of the railway receipt as 387916 though really the number was 387919.

2. Undoubtedly, the learned Small Cause Court Judge has taken too technical a view and, to use the language of the Supreme Court in the decisions in Union of India (UOI) Vs. Jeewan Ram, ; The State of Madras Vs. C.P. Agencies and Another, and S.N. Dutt Vs. Union of India (UOI), , failed to interpret the notice sent by the plaintiff with the commonsense needed for the purpose. In Harish Chand Vs. The Union of India (UOI) and Others, , a Division Bench of the Allahabad High Court has held that a suit against the railway administration cannot fail merely because a wrong number of the railway receipt is given in the notice and that would not invalidate the notice, The single Judge decision in Dominion of India v. Roop Chand 1950 All LJ 595 (supra), therefore, stands overruled by a bench decision of that very court,

3. Mr. P. K. Bose, learned counsel for the opposite party, has placed reliance on a single Judge decision of this court In Mohammad Farooq Vs. Governor General in Council, and a bench decision in Chaturbhai Bhailalbhai Patel Vs. Union of India(UOI) and Another, . In neither of these decisions the mistake in the notice was as to the number of the receipt. Therefore, they are not relevant for consideration so far the facts of this case are concerned. In the plaint the number of the railway receipt was correctly given and it cannot be said that the defendant-opposite party have been prejudiced in any way by wrong mentioning of the number of the receipt in the notice u/s 80 of the Code. The fact that the defendants-opposite party could not consider the claim of the plaintiff favourably on receipt of the notice before institution of the suit would only be relevant for the purposes of the cost. After the correct railway receipt number was given in the plaint, I would rather say that it was unfair on the part of the railway administration to have contested the suit.

4. In the result, the application is allowed and the plaintiff's suit is decreed to the extent as indicated in the passage of the judgment of the court below quoted earlier, in this judgment. In the circumstances of the case, however, there will be no order as to cost either for the court below or for this court, However, the plaintiff-petitioner will be entitled to interest pendente lite and future at the rate of 6 per cent per annum simple on the amount decreed from the date of the institution of the suit till its realisation.