

(1951) 05 CAL CK 0008
In the Calcutta High Court
Case No : Civil Revision Case No. 1028 of 1950

Dharamsi Liladhar Vora

APPELLANT

Vs

Manager, Bengal Nagpur Railway

RESPONDENT

Date of Decision : 02-05-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1890 — Section 77

Citation : (1952) 2 ILR (Cal) 205

Hon'ble Judges : Roxburgh, J

Bench : Single Bench

Advocate : Nilkantha Chatterjea, for the Appellant; Ajoy Kumar Basu, for the Respondent

Judgement

Roxburgh, J.—This is a Rule against an order of the Full Bench of the Calcutta Court of Small Causes upholding a decree of the trial Judge dismissing the Plaintiff's suit. The Plaintiff's suit was filed on December 2.1, 1948, against the Governor-General of the Dominion of India. His claim is in respect of loss, non-delivery, or destruction of two consignments valued at Rs. 187-8. The goods were dispatched from a station, on the Bombay Baroda and Central India Railway, to Calcutta to be delivered by the Bengal Nagpur Railway.

2. Both the lower courts have dismissed the suit on the ground that no notice u/s 80 of the CPC has been served. The only notices proved are Ex. 4; copy of notices sent by registered post to the General Managers of each of the two Railways, dated July 21, 1948, with the accompanying acknowledgment due from the General Manager of each Railway. Besides these notices another notice was sent on August 12, 1948, addressed to the Governor-General of India in Council, through the Secretary to the Government of India, Railway Department (Railway Board), New Delhi. In the trial court, the last notice was referred to as a notice u/s 80, and the others as notices u/s 77 of the Indian Railways Act. The former has been rejected as not being a valid notice u/s 80, on the ground that it was sent

to the Governor-General through the Secretary to the Government of India in New Delhi, whereas u/s 80 as it stood at the date when the notice was sent, the notice was required to be delivered to the General Manager of each Railway. In the trial, court it was urged that the other notice, which was served on both the General Managers, could be accepted both as a notice u/s 77 of the Railways Act, as well as a notice u/s 80 of the Code of Civil Procedure. So far as the question of limitation is concerned, the notice was timely under both the sections. In other words, it was served within six months of the date when the goods could have been expected to be delivered, and was thus within time u/s 77, and the suit was brought on December 21, 1948, well over two months after the notices were served.

3. The lower courts have not accepted the contention that this notice can be accepted both as a notice u/s 80 and also as a notice u/s 77 of the Railways Act. Even as a notice u/s 77 it is open to comment, in that the wording of the notice is to the effect that it appears to make a reference to some previous notice u/s 77. It runs:

We hereby beg to draw your attention to the notice u/s 77 of the Indian railways Act of the loss, non-delivery and destruction of the above consignment putting us to loss and damages amounting to Rs. 187-8 altogether.

4. Details of the railway receipts and the stations are given above at the heading of the notice. However, it seems to me that the courts are right in holding that the paper does comply with all the requirements of Section 77 of the Railways Act, giving notice of the claim and being made within six months of the operative date.

5. The question then is -whether the same notice also complies with the requirement of Section 80. The notice specifically goes on to say,

Please take particular notice that unless the said goods or the value thereof is delivered or paid to us within 7 days from the receipt of this notice we shall...legal proceedings...without further reference and hold you liable for the above-mentioned amount plus all charges on it (the carbon copy is not clearly legible in part).

6. Now, this notice includes, in my opinion, all the elements required by Section 80 of the Civil Procedure Code. The cause of action is clearly stated. The name and address of the Plaintiff are stated and intimation is given that a suit will be filed. The Full Bench has rejected the paper on the ground that the name and address of the Plaintiff are not given. The record shows that, in fact, the Bengal Nagpur Railway replied to the notice in question on January 28, referring specifically to the letter, dated July 21, and giving the various particulars contained therein, incidentally stating that the goods were at Howrah lying undelivered. Only the Plaintiff's carbon copy of the document in question is proved. This contains the name of the Plaintiff firm and address. The Railways have not produced their copies. It is quite patent that the copies received by the

Railway must have included the Plaintiff's firm name and address, and the reason given by the Full Bench for their rejection of them is quite untenable.

7. It is suggested before me that, because the notice contains a threat to bring proceedings unless the claim is made good within seven, days, it was not a good notice u/s 80. I do not think that a statement, in a notice u/s 80, implying that proceedings would not be brought if the claim was satisfied, can in any way detract from its value as a notice u/s 80. A part of the object of the provisions of the section is to give the recipient of a notice, an opportunity to consider whether to accept the claim or not.

8. The only question then that remains is whether it is essential that notices u/s 77 of the Railways Act, and Section 80 of the CPC must be written on separate pieces of paper, and must be specifically labeled with their description. I do not think that this is essential. The Full Bench has disposed of the argument by saying that the purpose of the two sections are quite different. The main difference between the two sections of course is that, u/s 77 of the Railways Act, the party is barred from ever being able to recover the claim unless notice is given to the Railway within a certain period of the occurrence in connection with which the claim is made, whereas the service of notice u/s 80 fixes a period of two months within which no suit on the claim mentioned in the notice can be brought. If the notice given is within the limits of time taken from either end it may well comply, therefore, in this respect, with the purposes both of Section 77 of the Railways Act and Section 80 of the Civil Procedure Code. The notice u/s 80 must of course be a notice indicating that a suit will be brought. The cause of action is to be stated. It may be, in some cases, that a notice u/s 77 could not, by any reading of its contents, be said to comply with the requirements of Section 80. But in the present case, as T have indicated, the terms of the notice sent do comply with the requirement of Section 80, and if in fact it had been labelled as a notice u/s 80, I do not think there would have been any argument that it was not a proper notice under the section. That one paper may serve the purpose of both the sections in certain circumstances, has been held in the case of *Radha Shyam Basah v. Secretary of State for India* (1916) ILR 44 Cal. 16, though in that case it was held that the notice served as a notice u/s 80 also could be treated as a notice u/s 77 of the Railways Act.

9. As a result of the amendment to Section 80 of the CPC it so happens that notices under each of the sections are required to be served on, or delivered to, in the case of claims in respect of loss on a State railway, the same person, namely, the General Manager of the Railway. Hence, if the contents of the paper giving notice fulfil the requirements of both sections, as is the case here, and are correctly delivered, I consider that due notice has been given thereby under both the sections.

10. The result is that I make the Rule absolute and return the case to the trial Judge for disposal on the merits. The Petitioner is entitled to his costs of this Rule.