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**(1949) 09 AHC CK 0025**

**In the Allahabad High Court**

**Case No : Civil Revision Application No. 81 of 1944**

Dominion of India

APPELLANT

Vs

Modi Sugar Mills Ltd. and Another

RESPONDENT

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**Date of Decision : 27-09-1949**

**Acts Referred:**

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

**Citation : AIR 1959 All 732**

**Hon'ble Judges : L.S. Misra, J**

**Bench : Single Bench**

**Advocate : R.K. Bose, for the Appellant; Ramapat Ram, for Opposite Parties  
Nos. 1 and 2, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

L.S. Mishra, J.—This is a revision u/s 25 of the Small Cause Courts Act. It arises out of a suit instituted by Messrs. Modi Sugar Mills Ltd. proprietors of the Modi Vanspati Manufacturing Co., Begama-bad, district Meerut, and firm Gheesa Ram Shiv Narain of Lucknow. The claim was for recovery of Rs. 135/- as compensation in respect of a few missing tins of vanaspati oil from two consignments sent from Begamabad on the North Western Railway to Lucknow on the East Indian Railway.

The suit was filed against the Governor-Gene-ral-in-Council through the General Managers, North Western and East Indian Railways. The Governor-General and the North Western Railway are now represented respectively by the Dominion of India and by the Eastern Punjab Railway. The alteration of names is due to the new state of affairs which has come to prevail in consequence of the Indian Independence (Rights, Liabilities and Properties) Order of 1947 and the partition of the country between the Dominion of India and the Dominion of Pakistan.

2. The goods were despatched in two sealed wagons to the consignors. The railway receipts were endorsed in favour of the Lucknow firm. The plaintiffs

alleged that at the time of delivery of the first consignment which was sent on 1-11-1942, there was a shortage of two tins and that there was likewise a shortage of four tins on delivery of the second consignment despatched from Begarnabad on 8-3-1943. The sum of Rs. 135/- comprises the price of six tins amounting to Rs. 127/- and interest at the rate of -/8/- per cent per month amounting to Rs. 8/-.

3. The two railway managements filed separate defences. We are not concerned with the defence set up by the East Indian Railway because the plaintiff's claim against it was dismissed and the decision in that behalf has not been challenged. For the same reasons it is unnecessary to make any further reference to the alleged loss of two tins out of the consignment of 1-9-1942.

4. The North Western Railway defendant No. 2, denied the loss. They alleged that this could not be possible in view of the fact that the consignors themselves loaded and sealed the wagons and at the time of the delivery, the seals were found intact. There were two other defences, one aimed at questioning the maintainability of the suit against, defendant No. 2 for want of notice u/s 77 of the Indian Railways Act and Section 80 of the CPC and the other pleading the bar of limitation. The latter defence was rejected by the trial Court and has not been persisted in any longer.

5. The learned Judge. Small Cause Court, found that there was in fact a shortage in the delivery of the second consignment and that the shortage was due to theft committed by one of the railway employees either singly or in collusion with some mill employee after the wagon was sealed by Din Dayal P.W. 12. He accordingly decreed the suit for Rs. 97/12/9 against the North Western Railway and dismissed it against the East Indian Railway administration.

6. The finding regarding misconduct on the part of the N. W. Railway employee at Begamabad is based upon evidence and I am not prepared to reconsider it in revision. I am however, in favour of the defendant's contention based on Section 77 of the Indian Railways Act. The plaintiffs at one time attempted to prove that notices u/s 77 (Exts. 21 and 22) were sent to the North Western Railway by the plaintiffs but that attempt failed and is not pressed in this Court by the opposite party. The learned Judge held, however, that a communication dated 16-7-1943, from the East Indian Railway addressed to the Chief Commercial Manager, North Western Railway (Ex. A-11) intimating that the consignment despatched by the first plaintiff on 8-3-1943, was received at Lucknow on 15-3-1943, and when unloaded, there was a deficiency of four tins constituted sufficient notice u/s 77.

The letter purported to be a notice under Conference Rule 31. It mentioned that a claim for Rs. 92/- was preferred in respect of the loss and recommended that the liability should be accepted. Section 77 of the Indian Railways Act provides that a person shall not be entitled to claim compensation for loss, destruction or deterioration of the goods entrusted for carriage to a Railway unless such claim is made in writing by the claimant or someone on his behalf to the Railway

administration within six months of the delivery of the goods for carriage by the Railway.

From the contents of the letter I find it somewhat difficult to hold that Ex. A-11 could constitute a claim preferred to the North Western Railway administration by the East Indian Railway acting on plaintiffs" behalf. Indeed it does not even mention the name of the claimants or the fact that a notice was recieved from the firm u/s 77. I may in this connection also refer to the decision in firm Duni Chand Ram Saran Das Chopra Vs. Secy. of State and Others, which lays down that sending a copy of the notice of claim preferred to one Railway administration to another is not sufficient compliance with Section 77 to make the latter liable. The principle underlying that case is clearly applicable to the present case.

7. The plaintiffs" learned counsel, however, contends in the first place that notice u/s 77 was unnecessary because the claim for damages in the present case was not in respect of "loss" but of "non-delivery" and in the second place that notice given to the North Western Railway on 27-7-1947, by the plaintiffs u/s 80 of the CPC (Ex. 14) was in any event sufficient notice for the purpose of Section 77 of the Indian Railways Act also. The first contention does not appeal to me, for the plaintiffs" pleadings do not set up any case of wrongful detention. They indicate that compensation was being claimed for the loss of tins and proof was adduced to establish that case.

The word "loss", it seems, covers both loss by the Railway and loss to the owner and notice u/s 77 is essential in all cases of claims against a Railway Company for compensation except where the suit is for recovery of specific goods or for recovery of money in consequence of the sale of the goods u/s 55 or 56, of the Act. I am aware that a narrower view of the word "loss" occurring in Section 77 has been taken in some cases on the ground that a strict construction should be adopted in cases where a provision constitutes a limitation on the general right of suit and operates to confer exemption or privilege on a specified person.

I prefer however, the wider view taken in : The East Indian Railway Company Vs. Fazal Elahi ; Sheo Dayal Nirajan Lal Vs. Great Indian Peninsula Railway Company ; Agent of the Agent of the Bengal Nagpur Railway Co. Ltd. Vs. Hamir Mull Chagan Mull and Another, ; The Assam Bengal Railway Co., Ltd. Vs. Radhica Mohan Nath ; Duni Chand Ram Saran Das Chopra Vs. Secy. of State and Others, and AIR 1925 419 (Oudh) and AIR 1925 615 (Oudh) .

8. The second point namely, whether notice u/s 80 C. P. C. should or should not be regarded as sufficient for the purposes of Section 77 is covered by the decision in (Firm) Balakram-Atma Ram Vs. Secy. of State, . I respectfully agree with the reasoning adopted by the learned Judges there for the rule that two separate notices are necessary before a plaintiff can sue a Railway Company for compensation for loss, destruction or deterioration.

9. The applicants" learned Counsel further urged that the notice u/s 80, C. P. C. (Ex.14) was defective inasmuch as it was only on behalf of plaintiff No. 2,

namely, Gheesa Ram Shiv Narain and not on behalf of plaintiff No. 1. He supported the contention by reference to the decisions of their Lordships" Board in Vellayan Chettiar v. Government of the Province of Madras AIR 1947 PC 197 and AIR 1949 143 (Privy Council) . As I have already held that there was omission to serve the requisite notice u/s 77 of the Railways Act, it does not seem necessary to examine the argument urging the further bar imposed by Section 80 C. P. C.

10. I set aside the decree passed by the learned Judge, Small Cause Court Lucknow, and dismiss the plaintiffs" suit with costs.