

(1972) 10 BOM CK 0017

In the Bombay High Court

Case No : Civil Revision Application No. 959 of 1967

Harbansingh Ajitsingh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 20-10-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1973 Bom 363 : (1973) 75 BOMLR 559 : (1973) MhLj 949

Hon'ble Judges : Kantawala, J

Bench : Single Bench

Advocate : K.M. Mani, for the Appellant; B.R. Naik, for the Respondent

Judgement

1. This Civil Revision Application arises out of a suit filed by the Petitioners to claim a sum of Rs. 684-95 P. on account of loss suffered by them by reason of short delivery of woollen goods. On April 29, 1958, the goods were consigned under Railway Receipt No. 3374 of 1958 to be carried to Imphal Out Agency, North Eastern Railway. In February, 1959 when the delivery of the goods was given to the Petitioners, a certificate of damage and shortage dated February 7, 1959 was issued to them by the Station Master of the destination Section 77 of the Indian Railways Act and u/s 80 of the Code of Civil Procedure, the Petitioners filed a suit against the Union of India, claiming a sum of Rs. 684.95 on account of damage and shortage. The suit was dismissed by the trial Court on the preliminary objection that the notice u/s in compliance with the provisions thereof. That decision of the trial Court was confirmed by the full Court in Application No. 275 of 1962.

2. Thus, the only ground on which the revision application is filed is that the Subordinate Court was in error in taking the view that the notice given u/s 80 of the CPC was not in compliance with its provisions. The only flaw pointed out in the judgment of the Subordinate Courts is that the notice was addressed to the General Manager, Central Railway, Victoria Terminus, Bombay and the General Manager, North Eastern Railway, Gorakhpur, but it was not addressed to the

Union of India. Now it is well settled that the object of giving notice u/s 80 of the Code to the Government or a public servant is to give an opportunity to the appropriate authority to apply its mind to the claim and see if it was justified and can be settled. Such notices are not required to be construed in a manner to defeat such a claim. The only ground on which the contention of the Union of India has been accepted is that the notice is not in compliance with Section 80 of Code, inasmuch as it is not addressed to the Union of India but is addressed to the General Manager of the Central Railway and the General Manager of the North Eastern Railway. Before the Sub-ordinate Courts, an unreported decision of Gajendragadkar, J. in *Damodar Shivram v. General Manager, M. & S. M. Railway* decided on 28-11-1955 (Bom) has been relied upon. Counsel for both the parties are, however, unable to get a copy of this judgment as the records in this case are transferred to the State of Gujarat upon reorganisation of the States.

3. The manner in which the notice u/s 80 is required to be interpreted is now well settled. It is always appropriate to bear in mind the purpose for which the provisions of Section 80 of the Code are enacted. The object of this Section is to give intimation to the Government by proper notice containing the various matters which are set out in Section 80 so as to enable it to inform the grounds on which justice is asked for. Section 80 of the Code does not prescribe the particular person to whom it should be addressed. In respect of a suit for a claim relating to the Railway Administration, what the section requires is that it should be delivered to or left at the office of the General Manager of the Railway to which it relates. Even upon a liable construction of the provisions of Section 80 there is nothing therein to show that it must be addressed to the Union of India. The notice even though it is addressed to the General Manager Central Railway and the General Manager, North Eastern Railway, clearly states that the Petitioners are entitled to claim from the Union of India the sum of Rs. 684.95 P. This statement in the notice gave no scope for doubt that it is the case of the petitioner that the claim is made against the Union of India but as required by Section 80 it has to be delivered at or left at the place of the General Manager of the Railway concerned.

4. In the *State of Bombay Vs. N.T. Advani, Patel, J.* had occasion to consider the validity of the notice addressed to the Secretary to the Government for the suit intended to be filed against the Government. On behalf of the Government, a plea was taken that the notice u/s 80 was invalid as it was not addressed to the Government but was merely addressed to the Secretary to the Government. This contention was rejected by the learned Judge. It is pointed out that a reference to Section 80 of the Code shows that it is not required to be addressed to the Government. Section 80 required that the notice should contain the cause of action, the name and description and place of residence of the plaintiff and the relief which he claims and that it must be left with the Secretary to the Government. These requirements are complied with. Even otherwise notice must be read in a rational and sensible manner. It is not the function of the Courts to prick holes in the notice in order to invalidate it. If all the requirements of the

Code are substantially complied with then it is impossible to hold that the notice is invalid. Though the notice is addressed to the Secretary to the Government, it has reached the proper quarters and there cannot be the least doubt that in substance the requirements of the section have been complied with. In this view of the matter, Patel. J. was inclined to reject the preliminary contention urged on behalf of the Government on the question of invalidity of notice u/s 80.

5. Each of the observations made by Patel, J. is equally applicable so far as the facts of the present case are concerned. This is a suit against the Union of India in relation to the transaction entered into with the Railway Administration and what Section 80 requires is that such notice must contain the various particulars specified therein and ought to be delivered to or left at the office of the General Manager of the Railway in case of a suit against the Central Government, when it pertains to railway. The petitioners have complied with the requirements of this provision when they served the notice dated December 26, 1959 upon the General Manager, Central Railway, Bombay, and the General Manager, North Eastern Railway, Gorakhpur.

6. In the present case the subordinate Court has failed to exercise the jurisdiction vested in it by taking an erroneous view on the question of validity of notice u/s 80 of the Code.

7. In the result, the petitioner is allowed. Rule is made absolute. Respondent shall pay the costs of the petitioners. As the proceedings in the present case were initiated by the Petitioners as early as in the year 1960, the trial Court is directed to expedite the disposal of this matter upon the papers being received by that Court.

8. Petition allowed.