

(1961) 10 AHC CK 0033
In the Allahabad High Court
Case No : Civil Revision No. 1481 of 1956

Harish Chand

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-10-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1962 All 307 : (1962) 32 AWR 210

Hon'ble Judges : B. Dayal, J;A.P. Srivastava, J

Bench : Division Bench

Advocate : Radha Krishna and Virendra Swarup, for the Appellant; Jagdish Swarup, for the Respondent

Final Decision : Allowed

Judgement

Srivastava, J.

This revision application has come to us on a reference made by Mr. Justice V.D. Bhargava. The question involved is a short one. The plaintiff is the applicant. He filed a suit in the Small Cause Court at Aligarh against the Union of India claiming Rs. 254/10/- on account of two consignments which had been booked by the plaintiff but one of them had not been delivered at all and there was short delivery in respect of the other. Before filing the suit, the applicant served a notice u/s 80, C. P. C. The two consignments in dispute had been booked as per railway receipt Nos. 912866 and 569967. The latter was booked for Bangalore. The former had originally been booked from Aligarh to Koka but had been rebucked from Koka to Aligarh. The consignment relating to railway receipt No. 912869 is no longer in dispute. In respect of the other consignment to which railway receipt No. 569976 related, the plaintiff's suit has been dismissed on the ground that the notice served u/s 80 C. P. C. was defective.

The defect in the, notice was that the number of the railway receipt had been mentioned wrongly. Instead of 569967 the number mentioned in the notice was

56997. The name of the station at which the consignment was booked and the date of the booking had been mentioned correctly. The explanation which the applicant offered for the mistake was that in the certificate of short delivery that was issued by the railway authorities in respect of the consignment the number of the railway receipt was given incorrectly as 56997. The explanation was not accepted by the learned Judge Small Cause Court and relying on the case of *Dominion of India v. Roop Chand* 1950 All WR 657, he held that the notice was defective and the suit in respect of that consignment could not succeed.

2. The view of the learned Judge was challenged by this application in revision. When it came up for disposal before Hon. Mr. Justice V.D. Bhargava, he noticed that there were two conflicting decisions on the point. The one on which the learned Judge Small Cause Court had relied upon was reported in 1950 ALJ 595 and the other was a decision of Mr. Justice V.D. Bhargava himself reported in *Ahmad Hasan v. Union of India*. In order to resolve the conflict the learned Judge referred the application in revision to a Division Bench.

3. Three other decisions in *Allahabad Iron Syndicate Ltd. v. Union of India*, C. R. No. 880 of 1956, C. R. No. 441 of 1957 and C. R. No. 811 of 1957 have been mentioned by the learned Judge in his referring order. We are informed that these cases were also decided by Mr. Justice V.D. Bhargava and we proceed on the assumption that the view he took in them was in consonance with the view taken in the case of *Ahmad Hasan Vs. The Union of India (UOI)*, . Another decision of one of us in C. R. No. 748 of 1956, D/- 23-12-1960 has also been brought to our notice. In that case the decision in *Ahmad Hasan Vs. The Union of India (UOI)*, was followed.

4. The question to be decided is whether the defect in the notice issued by the plaintiff u/s 80 C. P. C. was such as made the notice invalid.

5. How a notice u/s 80 of the C. P. C, is to be interpreted has been considered recently by the Supreme Court in several cases. In *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, a claim for damages for conversion and detention had been made. In the notice served u/s 80 of the C. P. C. the plaintiffs had claimed along with other items return of two trucks in good running order, or in the alternative Rs. 3,500/- being the price of the said two trucks. The notice was not complied with, and the plaintiffs had to file a suit. By the time the case came up for decision, the price of the trucks had increased. At the trial, therefore, the plaintiffs claimed a larger amount in respect of the two trucks in case they were not re-burned.

It was held by the trial court as well as by the High Court that the plaintiffs could not claim for the two trucks more than Rs. 3,500/- the amount mentioned by them in the notice even though the value of the trucks had increased. The Supreme Court did not agree and observed at page 281 of the report :

"We are constrained to observe that the approach of the High Court to this question was not well founded. The Privy Council no doubt laid down in AIR 1927

176 (Privy Council) that the terms of this section should be strictly complied with. That does not however mean that the forms of the notice should be scrutinised in a pedantic manner or in a manner completely divorced from common sense. As was stated by Pollock C.B. in *Jones v. Nicholls* (1844) 13 M&W 361. "We must import a little common sense into, notices of this kind." Beaumont C. J. also observed in *Chandulal Vadilal Vs. Government of The Province of Bombay*, "One must construe Section 80 with some regard to common sense and to the object with which it appears to have been passed.

If the terms of the notice in question be scrutinized in this manner it is abundantly clear that the relief claimed by the appellants was the redelivery of the said two trucks or in the alternative payment of Rs. 3,500/- being the value thereof. The value which was placed by the appellants on the trucks was the then value according to them--a value as on August 1, 1942, the date on which the delivery of the trucks ought to have been given by the respondent to the appellants. The appellants could only have demanded that sum as on the date of that notice. They could not sensibly enough have demanded any other sum. If the respondent had complied with the terms of that notice then and there and redelivered the trucks to the appellants, nothing further needed to be done. If on the other hand instead of re-delivering the trucks it paid to the appellants the value, thereof then also it need not have paid anything more than Rs. 3,500/- to the appellants, on that alternative.

If, however, the respondent failed and neglected to comply with the requisitions contained in that notice the appellants would certainly be entitled to recover from the respondent the value of the said trucks in the alternative on the failure of the respondent to redeliver the same to the appellants in accordance with the terms of the decree ultimately passed by the court in their favour. That, date could certainly not be foreseen by the appellant and it is contrary to all reason and common sense to expect the appellants to have made a claim for the alternative value of the said two trucks as of that date A common sense reading of the notice u/s 80 would lead any court to the conclusion that the strict requirements of that section had been complied with and that there was no defect in the same such as to disentitle the, appellants from recovering from the respondent the appreciated value of the said two trucks as at the date of the judgment."

6. In another case of *Union of India (UOI) Vs. Jeewan Ram*, the claim made in the notice u/s 80 of the CPC was as follows :

"That my said client is entitled to be reinstated on his former post, and to be paid the amount due to him on the basis of his being treated as if he was not discharged upto the date of re-instatement."

7. In the plaint the main relief claimed was a declaration that the order of discharge or removal of the respondent was illegal and arbitrary.

8. It was contended before the Supreme Court that the relief claimed in the,

plaint could not be granted because it was different from one claimed in the notice. The contention was, however, rejected on the ground that there was no substantial difference between the two.

9. In *The State of Madras Vs. C.P. Agencies and Another*, , the State which was the appellant relied upon some difference between the notice issued u/s 80 and the plaint that was subsequently filed. In that connection the object of Section 80 had to be considered. Their Lordships observed at page 1310:

"The object of section is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself of himself, whether the claim of the plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise relief's asked for."

10. They referred to the earlier case in *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, , and reiterated the view that the allegation in the notice in the suit about the cause of action should be interpreted with common sense and not in a pedantic manner.

11. In *S.N. Dutt Vs. Union of India (UOI)*, notice u/s 80 had been served on behalf of S.N. Dutt and Company at Krishnagore. The suit had subsequently been filed by Surendra Dutt, sale proprietor carrying on the business in the name and style of S.N. Dutt and Company of Krishnagore. The question was whether the notice, was defective and on account of which the suit could fail. Answering the question in the affirmative, their Lordships observed:-

"Where the matter (for example) concerns the relief or the cause of action, it may be necessary to use common sense to find out whether Section 80 has been complied with. But where it is a question of the name of the plaintiff, there is in our opinion little scope for the use of common sense, for either the name of the person suing is there in the notice or it is not. No amount of common sense will put the name of the plaintiff inhere, if it is not there."

They treated the suit as analogous to the case of trustees. When the suit could not be filed in the name of a trust and could only be filed in the name of trustees, they pointed out, that notice had to be issued in the name of trustees. They rejected the claim on the ground that the person who had served the notice was not identical with the person who had filed the suit.

12. If we approach the present case bearing in mind the observations of the Supreme Court in the cases already referred to, we will find that the present is not a case in which identity of any of the parties was in dispute the defect in the notice relied upon in the present case related to the cause of action. The only defect in the notice was that the number of the railway receipt had been given

incorrectly. The date of the booking and the name of the railway station were correct. It was not suggested on behalf of the railway authorities that on account of incorrect number of the railway receipt they were not able to trace the consignment. They themselves traced the rail way receipt and the forwarding note and filed the same in Court.

It is also not disputed that in the short delivery certificate that was issued at the time of delivery the number of the railway receipt was mentioned wrongly and that led to the wrong number being mentioned in the notice u/s 80. In these circumstances the object of the notice was in our opinion, fulfilled and the defendant could not take refuge behind the highly technical objection that in the notice u/s 80 the number of the railway receipt had been mentioned incorrectly. The notice had to be interpreted keeping in view the other facts alleged in it, viz., number of packages in the consignment, nature of the goods booked, the date of booking, the station of booking and the station of delivery. No importance could in the circumstances be attached to the incorrectness in the number of the railway receipt and on account of that incorrectness the notice could not be held to have become invalid altogether.

13. In the case of 1950 ALJ 595, the plaintiff's claim was based on the ground that a certain railway receipt had been endorsed in his favour. The railway receipt on which his claim was based bore No. 760664 but in the notice u/s 80 C. P. C. he had stated that the railway receipt which had been endorsed in his favour was No. 460064. It was held that the endorsement of the railway receipt was a part of the cause of action alleged in the notice and if that was wrong, the cause of action in the plaint became different from the cause of action in the notice. The claim, was therefore rejected. The case is thus distinguishable, on facts. In the case before us, the plaintiff was the consignee and had himself booked the goods. There was no question of his making any claim on the basis of any endorsement in his favour.

It cannot therefore be said in the present case that the cause of action which was alleged in the notice was different from the cause of action which was set up in the plaint. In the present case there could be no doubt about the identity of the cause of action mentioned in the notice and the plaint. Simply because of the incorrectness of the number of the railway receipt, the cause of action could not be held to be different. We are, therefore, of opinion that if the learned Judge Small Cause Court had interpreted the notice sent by the plaintiff with the common sense needed according to the decisions of the Supreme Court, he would not have held the notice to be defective so as to non-suit the plaintiff in respect of this part of the claim. His view about the invalidity of the notice cannot, therefore, be upheld.

14. The application in revision in the result succeeds. It is allowed. The decree of the learned Judge Small Cause Court is modified. The suit of the plaintiff shall stand decreed as prayed. The amount of the decree must be paid within two months. The applicant shall get costs of the present application from the

opposite parties.