
(1968) 03 PAT CK 0008
In the Patna High Court
Case No : S.A. No. 947 of 1965

Jagdish Prasad Agarwala

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-03-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1968) 16 BLJR 301

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raj Kishore Prasad, J.—This is an appeal by the plaintiff from the judgment of the court of appeal below affirming the decision of the trial court dismissing his suit for compensation for non-delivery of goods on the ground that no notice u/s 77 of the Indian Railways Act, 1890, (hereinafter referred to as "the Act"), was served on the railway authorities.

2. The sole point for determination, in this appeal, is whether the Proviso to the amended Section 78-B of the Act, applies ?

3. In order to appreciate the arguments presented by Mr. Hari Lal Agarwal, who appeared for the appellant, and, of Mr. Brishketu Saran Sinha, who appeared for the respondents, I may mention briefly the material facts of the case, which are as below:

On 18-10-1960, the plaintiff despatched 463 bags of cement from Sindri on the Eastern Railway to Jogbani on the North Frontier Railway. The consignments did not reach and were never delivered to the consignee. The plaintiff, therefore, on 2-3-1961, sent a letter to the District Traffic Superintendent, North Frontier Railway, Katihar, Ext. 3/d, drawing his attention to the fact that the goods in question have not reached the destination, although a long time has elapsed, and therefore, prompt action was requested. Later on, a combined notice u/s 77

of the Act and Section 80 of the Code of Civil Procedure, 1908, (hereinafter referred to as "the Code"), on behalf of the plaintiff, was sent by his lawyer to the General Manager, Eastern Railway, Calcutta, Ext. 3; another notice with the same contents to the General Manager, North Frontier Railway, Pandu, Ext. 3/a, and a third notice to the General Manager, North Eastern Railway, Gorakhpur, with the same contents, Ext. 3/b. The above combined notices u/s 77 of the Act and Section 80 of the Code, Exts. 3 to 3/b, were sent on 20-7-1961, after the expiry of six months from the date of despatch of the goods on 18-10-1960. The present suit was instituted on 15-1-1962 for compensation for non-delivery of the goods.

4. The courts below took the view that the combined notices-Exts. 3 to 3/b having admittedly been sent after the expiry of six months from the date of delivery were not sufficient in law to save the suit from the bar of the Old Section 77 of the Act. It was further held that notice under Old Section 77 of the Act was essential and it had to be served on the defendants within six months from the date on which the goods were delivered for carriage by the Railway, and as, in the present case, no such notice was admittedly sent within the period of limitation, therefore, prima facie the suit was barred for non-compliance of the statutory provision of Old Section 77 of the Act. On this ground, therefore, the plaintiff's suit was dismissed, although the defendants by a letter dated 26-7-1961, Ext. 4/f, admitted the claim of the plaintiff.

5. It was contended by Mr. Agarwal that the old Section 77 of the Act has been amended and replaced by Section 78-B of the Act, which came into force on 1-1-1962, and, therefore, the plaintiff's suit having been instituted on 15-1-1962, the Proviso to this new Section 78-B would apply and if that be so, then the suit because of the Proviso to the amended Section 78-B of the Act, was saved from the mischief of the Old Section 77 of the Act, and, as such, the suit should be decreed. He further contended that the Old Section 77 of the Act like Section 80 of the CPC was a law of procedure, and, therefore, the question of the Proviso to Section 78-B applying retrospectively does not arise.

6. In support of his contention that the giving of notice under-Section 80 of the CPC is a mode of procedure for getting the relief and as such a law of procedure, he relied on the Full Bench decision of the Punjab High Court in *Union of India and Another Vs. Landra Engineering and Foundry Works and Another*, where it was held that Section 80 of the CPC does not define the rights of parties or confer any rights on the parties; but it only provides a mode of procedure for getting the relief in respect of a cause of action. It was further held that it is a part of the machinery for obtaining legal rights, i.e., machinery as distinguished from its products; and the provisions of notice u/s 80 are not intended to be used as a trap for defeating the claimant's suits against the Government.

7. In reply, it was urged by Mr. Sinha, relying on a decision of the Supreme Court in *Governor General in Council Vs. Musaddi Lal*, that the giving of notice under the Old Section 77 of the Act was not a matter of procedure, in that, it imposes a

restriction on the enforcement of liability declared by Old Section 72 of the Railways Act. He further argued, relying again on a decision of the Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, that in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to the claim in litigation at the time when the Act was amended. He., therefore, contended that old Section 77 would apply to the case and the present suit would not be governed by the Proviso to the new amended Section 78-B of the Act and, therefore, the suit has rightly been dismissed.

8. In order to resolve the controversy, it would, be better to read, at. this very stage, old Section 77 of the Act as also the new Section 78-B with Proviso of the Act.

Old Section 77 is in these terms:

77. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

Amended Section 78-B with the Proviso is to the following effect:

78-B. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf-

(a) to the railway administration to which the animals or goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred, within six months from the date of the delivery of the animals or goods for carriage by railway:

Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this Section, be deemed to be a claim to the refund or compensation.

9. Old Section 77 of the Railway Act was interpreted and construed by Their Lordships of the Supreme Court in Governor General in Council Vs. Musaddi Lal, referred to above, and, therefore, it would be appropriate to reproduce what His

Lordship Mr. Justice Shah, who Spoke for the Court, observed in paragraph 5 of the judgment. His Lordship said:

Section 77 of the Railways Act is enacted with a view to enable the railway administration to make enquiries and if possible to recover the goods and to deliver them to the consignee and to prevent State claims. It imposes a restriction on the enforcement of liability declared by Section 72. The liability declared by Section 72 is for loss, destruction or deterioration. Failure to deliver is the consequence of loss or destruction of goods; it does not furnish a cause of action on which a suit may lie against the railway administration, distinct from a cause of action for loss or destruction. By the use of the expression, "loss, destruction or deterioration", what is contemplated is loss or destruction or deterioration of the goods and the consequent loss to the owner thereof. If because of negligence or inadvertence or even wrongful act on the part of the employees of the railway administration goods entrusted for carriage are lost, destroyed or deteriorated, the railway administration is guilty of failing to take the degree of care which is prescribed by Section 72 of the Railways Act.

On the above authority of the Supreme Court, I do not think, there can be any doubt that old Section 77 of the Act imposes restriction on the enforcement of liability declared by Section 72 of the Act.

10. The question, however, is whether this giving of notice under the old Section 77 is a mode of procedure for getting the relief in respect of a cause of action, as is the case in respect of a notice u/s 80 of the Code of Civil Procedure, as contended by Mr. Agarwal. It is well settled that it is always dangerous to interpret on to construe a Section of an Act on the analogy of another Section of a different Act, and, therefore, one should confine oneself to the Section as it is in the Act under consideration. It was contended by Mr. Agarwal that in the Supreme Court decision², relied upon by Mr. Sinha, Their Lordships did not say that it is not a mode of procedure, but that does not mean that Their Lordships intended to lay down even impliedly that the giving of notice under the old Section 77 of the Act was only a mode of procedure.

11. It is true that Section 80 of the Code does not define the rights of parties or confer any rights on the parties, but, as observed by Mahajan, J. (as he then was) of the Supreme Court in *State of Seralikellh v. Union of India* AIR 1957 SC 253 referred to by the Full Bench of the Punjab High Court. "It is a part of the machinery for obtaining legal rights, i.e., machinery as distinguished from its products." In the above Full Bench case Old Section 77 of the Act was relied upon for the interpretation of Section 80 of the Code. Mere, the case is reverse. Mr. Agarwal relies on Section 80 of the Code for the interpretation of Old Section 77 of the Act. In the Full Bench case, Dua J., who delivered the judgment of the Full Court, at page 265 of the Reports, observed: "I have not been able to appreciate as to how this Section (i.e. Old Section 77 of the Act) can throw any helpful light on the interpretation of Section 80 Civil Procedure Code." Here, I also have not been able to appreciate as to how Section 80 of the Code can

throw any helpful light on the interpretation of the Old Section 77 of the Act.

12. Let us ascertain first the scope and object of old Section 77 of the Act and those of Section 80 of the Code. Under the old Section 77 of the Act, it is a *sine qua non* that the plaintiff should, before instituting a suit against the railway company for *inter alia* compensation, as here, prefer his claim in writing to the railway administration within six months, from the date of the delivery of the things to the railway for carriage. Section 80 of the Code requires, amongst other things, that no suit shall be instituted until the expiration of two months next after notice in writing has been given to the persons mentioned therein. Section 80 of the Code, therefore, provides a period for the notice and the person, who has given such notice, must wait for that full period to elapse before he brings any suit. Obviously the objects of the two provisions are quite distinct and separate. Their Lordships of the Privy Council, in AIR 1927 176 (Privy Council) which was followed by the Privy Council subsequently in *Vellayyan Chattiari v. Government of Province of Madras* AIR 1947 PC 197 and in AIR 1949 143 (Privy Council) observed: "To argue as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while Section 80 is a mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court."

13. No doubt the service of a notice under Old Section 77 of the Act is not a condition precedent to the institution of the suit; but the claim will be held to be unsustainable if no claim be preferred in writing, within six months of booking, to the railway administration and the person who omits to so prefer his claim will not be entitled to the compensation, as here, which he may seek. Old Section 77 of the Act is obviously a limitation Section because it enacts that in order to entitle a person to claim compensation for the loss *inter alia* of goods delivered to be carried by the railway, a claim to compensation must be preferred in writing to the railway administration within six months of the date of delivery of goods for carriage. (vide *Governor-General in Council Vs. Gouri Shanker Mills Ltd.*, . The correct position in law, therefore, is that a plaintiff is entitled to file his suit for compensation for non-delivery without any notice under Old Section 77 of the Act, but if the defendant pleads and proves that the non-delivery is due to loss of the goods the suit will fail for want of notice: *Union of India (UOI) Vs. Jagatpal Darolia and Another*, .

14. For the above considerations the giving of notice is not a mere mode of procedure for getting the relief in respect of a cause of action as contended by Mr. Agarwal.

15. Mr. Agarwal relied on a letter, Ext. 3/d, sent on 2-3-1961 and argued that it was a sufficient compliance with the Proviso to Section 78-B, and, therefore, the suit cannot fail for not giving notice under Old Section 77 of the Act. The effect of the argument of Mr. Agarwal is that the amended Section 78-B of the Act should apply retrospectively. I am afraid I cannot accept this argument as correct in law. It is well settled that the golden rule of construction is that in absence of anything in the enactment to show that it is to have retrospective operation, it

cannot be so construed as to have the effect of altering the law applicable to the claim in litigation at the time when the old Section 77 was amended and replaced by Section 78-B of the Act. In the absence of any intention anywhere in the Act, therefore, I do not think I can hold that the amended Section 78-B would apply retrospectively to cause of action which arose before the amendment. It is true that in this case the suit was instituted after the amendment came into effect on 1-1-1962 but that fact, in my opinion, is immaterial. The crucial date is the date when the consignments were despatched and one has to count six months required by Old Section 77 of the Act from that date and admittedly six months expired much before the suit for compensation for non-delivery of the consignment was instituted on 15-1-1962. If the Proviso to the new Section 78-B of the Act would have applied then certainly this letter, Ext. 3/d might have been a sufficient compliance of the notice required in view of the Proviso to the new Section 78-B of the Act. It was conceded by Mr. Agarwal that Ext. 3/d was not a notice and it could not be construed to be a notice under the old Section 77 of the Act. As I am of the view that the giving of the notice under old Section 77 is not a matter of procedure, the present suit without such a notice was not maintainable. I do not think the appellant is entitled to take any advantage of the Proviso to the amended Section 78-R of the Act.

16. For the reasons given above, I hold that the new Section 78-B of the Act is not retrospective and, therefore, it does not apply to the present suit. I, therefore, answer the question posed by me in the negative and affirm the judgments of the courts below dismissing the suit. The fact that the defendants admitted the claim of the plaintiff cannot, in my opinion, have any effect on the interpretation of the amended Section 78-B or of old Section 77 of the Act.

17. The result therefore, is that the appeal fails and is dismissed; but because the claim of the plaintiff was admitted by the defendants, I do not allow costs either of this Court or of the court of appeal below to the respondents.