

(1967) 01 DEL CK 0012

In the Delhi High Court

Case No : Regular First Appeal No. 6D of 1957

L. Harish Chandra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-01-1967

Acts Referred:

Citation : AIR 1967 Delhi 65 : (1967) 3 DLT 337

Hon'ble Judges : Hardayal Hardy, J;H.R. Khanna, J

Bench : Division Bench

Advocate : R.L. Aggarwal, S.N. Anand, R.B. Nanak Chand and S.N. Kumar, for the Appellant;

Judgement

Khanna and Hardy, JJ.

(1) The short question, which arises for determination in this Regular First appeal filed by Hasish Chandcrp a ntily appellant against Union of India, is whether the appellant served a valid notice u/s 80 of the Code of Civil Procedure. The Court below answered the question in the negative and dismissed the plaintiffs suit on that ground alone.

(2) The brief facts of the case are that in December 1948 the Assistant Controller. Printing and Stationary, Estern Punjab Railway, placed an order wi(h thJ plaintiff for the Binding of 23000 Guard Limp Cover Piles. The files were to be stitched in books with three patches of cltoh parted inside. The plaintiff carried out the work and delivered the files after doing the needful. A dispute then arose between the parties with regard the rate at which the plaintiff was to be paid for the work done by him. According to the plaintiff, the payment for the work done was to be made at the rate of eight annas per file, whereas the railway authorities allege that the Payment was to be made in accordance with the rate- mentioned in the Government Schedule. The railway authorities paid Rs. 4,076.00/ 3.00 to the plaintiff in accordance with the rates mentioned in the Government Schedule. The plaintiff on the other hand claimed that he was entitled to a sum of Rs.

11,500.00 at the rate of eight annas per file. After giving credit for the amount already received, the plaintiff filed a suit for the recovery of Rs. 7.42/13.00 against the defendant. According to the plaintiff, before filing the suit he served a notice through his counsel Mr. Radhey Mohan Lal, Advocate on 22nd May 1950 on the competent officers and the Government under the section 80 of the Code of Civil Procedure.

(3) The defendant in the written statement admitted the receipt of notice u/s 80 of the CPC but challenged the validity of the same. A number of other pleas were raised, but we are not concerned with them. Issue No. 1, as framed in the case was :-

1st, Is the notice u/s 80 of the Code of Civil Procedure invalid ? (4) The trial Court decided issues other than issue No. 1 in favor of the plaintiff. It was held that the railway authorities had specifically agreed to make payment to the plaintiff at the rate of eight Annas per file and that the plaintiff was entitled to receive Rs. 11,500.00. Issue No. 1 was, however, decided against the plaintiff, and in view of the finding on issue No. 1 the suit was dismissed.

(5) In appeal Mr. Aggarwal on behalf of the appellant has assailed the finding of the Court below on issue No. 1 and has contended that the notice, original of which has been produced by the defendant and has been marked as Exhibit D6, was valid and in accordance with law. As against that, Mr. Nanak Chand on behalf of the respondent has canvassed for the correctness of the view of the Court below. After hearing the learned counsel we are of the view that the contention advanced on behalf of the appellant must prevail.

(6) notice Exhibit D-6, which was sent by Mr. Radhey Mohan Lal on behalf of the plaintiff on 22nd May 1950, was according to its heading, addressed to (!) the Central Government of India through the Ministry of Railway, New Delhi and (2) the Administrative Officer, Eastern Punjab Railway, New Delhi. At the foot of the notice, the following words were added:-

"The above notice is being sent to the Chief Administrative Officer, E. P. R. Delhi under the Indian Railways Act." According to section 80 of the CPC notice in the case of suit against the Central Government where it relates to a railway, has to be addressed to the General Manager of the railway. It would, however, appear that so far as the Eastern Punjab Railway is concerned there was, at the relevant time, no General Manager of that railway. As it was a small railway its administrative organization was retained on a lower level and instead of a General Manager it had a Chief Administrative Office. This is clear from the following observations on page 12 of the memorandum on the formation of Northern, North Eastern and Eastern Zones : -

"Thirdly, after the partition, the setting up of the Eastern Punjab Railway was, right from the outset, considered only a temporary arrangement pending its absorption into one of the northern railways as a part of a larger system. It was too small a railway and had no workshop facilities. The administrative

organisation has for this reason been intentionally retained on a lower level under a Chief Administrative Officer and not a General Manager as with other main systems." As the Chief Administrative officer had taken the place of General Manager in the case of Eastern Punjab Railway it is obvious that a notice served on the Chief Administrative officer of the Eastern Punjab Railway would constitute substantial compliance with law.

(7) Mr. Nanak Chand has argued that the notice in the present case was addressed to the Administrative Officer of the Eastern Punjab Railway and not to the Chief Administrative Officer of that railway, and Therefore, it was an invalid notice. In this respect we find that it was specifically mentioned on the notice, as stated above, that it was being sent to the Chief Administrative Officer of the Eastern Punjab Railway. The fact that the words "Chief Administrative Officer" were not mentioned on the top of the notice but were mentioned at its bottom would not affect the validity of the notice. The postal acknowledgement Exhibit P. I) shows that the notice was received in the headquarter office of Eastern Punjab Railway, Delhi, because the acknowledgement bears the seal of the office. The object of giving a notice u/s 80 of the CPC is manifestly to give the government or that 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 or 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 reliefs asked for. See in this connection the State of Madras versus C. P. Agencies Das C J., speaking for the Court in that case. observed that though the terms of this section are to be strictly complied with, that does not mean that the terms of the notice should be scrutinized in a pedantic manner or in a manner completely divorced from common sense. In Union of India v. The Landra Engineering and Foundry Works Phillaur a Full Bench of the Punjab High Court held that the provisions of notice under section 80 of the CPC are not intended to be used as a trap for defeating the claimants' suits against the Government. The principle, which should guide in such cases, in our opinion is that though the service of notice u/s 80 is imperative and cannot be dispensed with, the Courts should not take a hypertechnical or over-pedantic view in deciding about the validity of the notice. There has to be a broad commonsense approach to the problem and once the Courts find that there has been a substantial compliance with law, they would be chary to non-suit plaintiff, having a just claim, because of some fanciful breach, insignificant omission or minor infraction of a technical nature. Keeping the above principle in view, we have not doubt in our mind that the notice Exhibit D. 6, which was sent on behalf of the plaintiff, was valid and substantially in conformity with law.

(8) Mr. Nanak Chand on behalf of the respondent has referred to *Saudhya Trading Co. v. Governor-General Dominion of India*, but the Facts of that case are clearly distinguishable. In that case the notice, which was held to be invalid, was

addressed to the Secretary, of the Railway Board and not to the General Manager of the Railway concerned. In *Union of India v. M/s. Shamsuddin Waizuddin*, the notice, which was held to be invalid, was sent to the Secretary Union of India Railway Department. Only a copy of that notice was sent to the General Manager, Eastern India Railway. In *S. N. Dutt v. Union of India*, a notice was given by M/s S. N. Dutt and Company, and the suit was filed by S. N. Dutt, sole proprietor of the business carried on under the name and style of S. N. Dutt & Company. It was held that there should be identity of the person who issued the notice with the person who brings the suit. As the person giving the notice was not the same as the person suing, the provisions of section 80 of the CPC were not complied with. All the above mentioned authorities were decided on their own facts which were substantially different from those of the present case. and, in our opinion, the respondent cannot derive much assistance from those authorities. So far as the present case is concerned, the notice, sent on behalf of the plaintiff, was, as observed earlier, substantially in conformity with law.

(9) We, accordingly, reverse the finding of the Court below on issue No. 1 and award a decree for recovery of Rs. 7,423/13- in favor of the plaintiff-appellant against the defendant-respondent with costs of both the Courts.