
(1968) 05 OHC CK 0001
In the Orissa High Court
Case No : First Appeal No. 14 of 1964

Madanlal Kadia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-05-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 80
Evidence Act, 1872 — Section 114

Citation : AIR 1968 Ori 234 : (1968) 34 CLT 823

Hon'ble Judges : G.K. Misra, J; B.K. Patra, J

Bench : Division Bench

Advocate : S.S. Basu, A.K. Ghosh and S.N. Sinha, for the Appellant; B.K. Pal and Bijoy Pal, for the Respondent

Final Decision : Allowed

Judgement

Patra, J.—This is an appeal by the plaintiff whose suit to recover Rs. 5070 from the Union of India representing the defendant-Railways was dismissed by the Subordinate Judge, Sambalpur. The plaintiff was the endorsed consignee in respect of a consignment of 220 bags of sugar booked from Bhatni to Jharsuguda. When the consignment was delivered there was a total shortage of 4437 kg. or 119 mds. of sugar. The plaintiff obtained a short certificate and served notices u/s 77 of the Railways Act and u/s 80 Civil P. C. Thereafter he filed a suit claiming damages for 4437 kg. of sugar and the cost of 36 gunny bags received in torn condition, amounting to Rs. 5070.

The Union of India denied the title of the plaintiff to the goods and contended that the goods having been booked at owner's risk rate without compliance with the packing conditions and the bags being old and torn the defendant cannot be held liable for the loss. It was further contended that the statutory notices u/s 80 Civil P. C. having not been duly served on the Railways, the suit was not maintainable. The correctness of the rate at which the damages were claimed was also disputed. At the time of hearing, however, the defendants did not press

their contentions regarding shortage and the non-compliance with the packing conditions.

The learned Subordinate Judge held that the rate at which the damages have been claimed is not excessive. A decree for the plaintiff was therefore to follow, but for the finding of the learned Subordinate Judge that the plaintiff failed to prove that notices u/s 80 Civil P. C. have been duly served on the defendants. In the result be dismissed the suit, but without any costs. Hence this appeal by the plaintiff.

2. The only question therefore for consideration in this appeal is whether there was due service of notices u/s 80, Civil P. C. on the defendants,

3. The plaintiff Madanlal Kadia is the sole proprietor of the business "Madanlal Sajan Kumar Kadia" at Jharsuguda. Notices were issued u/s 77 of Railways Act and u/s 80, Civil P. C. in the name of M/s. Madanlal Sajan Kumar Kadia. These notices were dated 20-1-61. Immediately afterwards the plaintiff discovered that the notices were defective obviously in view of the decision in S.N. Dutt Vs. Union of India (UOI), , to the effect that where an individual carries on business in some name and style the notice has to be given by the individual in his own name. Plaintiff's case is that thereafter he served further notices u/s 80, Civil P. C., to the defendants, Ex. 6 is the copy of the notice produced by the plaintiff, and it is dated 8-10-61. Exts. 6 (a) to 6 (e) are the postal receipts which go to show that registered letters were sent to the defendants and they were despatched to the North Eastern Railway and Eastern Railway on 9-10-61 and to the three other Railways on 10-10-61.

P. W. 2 who is plaintiff's claim agent deposes that the receipts Exts. 6 (a) to 6 (e) related to the notice Ext. 6 sent to the defendants. Exts. 6 (f) to 6 (j) are the postal acknowledgments received from the defendant-railways in token of their having accepted certain registered letters and P. W. 2 says that Exts. 6 (f) to Ext. 6 (j) related to the receipts Exts. 6 (a) to 6 (e). D. W. 1 who is a clerk of the office of the General Manager, South Eastern Railway produced 3 registers Exts. A, A/1 and A/2 maintained in General Manager's office in which receipts of all notices in the office of the General Manager are noted. It is with reference to these registers that he said that the General Manager's office did not receive any claim in respect of the suit consignment. But on being confronted with the Ext. 6 (f) the postal acknowledgment, D. W. 1 admitted that the letter relating to Ext 6 (f) had been received in his office. This letter has not been produced to show that the letter received under Ext. 6 (f) does not relate to the present claim. We therefore see no reason to disbelieve the evidence of P. W. 2 that Ext. 6 (f) related to the notice Ext, 6 (e) sent to the General Manager, South Eastern Railway. No employee of any of the other Railways has been examined on the defendant's side to dispute the correctness of the statement made by P. W. 2. Exts. 6 (g) to 6 (j) are acknowledgments received from the General Managers of Eastern Railways, North Eastern Railways, Central Railways and Northern Railways, respectively.

That apart if a letter is properly directed and is proved to have been put into the post office it is presumed that the letter reached the destination in proper time according to the regular course of business of the post office and was received by the person to whom it was addressed. AIR 1918 PC 102, Harihar Banerjee v. Ramshashi Roy. P. W. 2 has deposed that he himself had despatched the notices referred to above. He has no doubt stated that all these notices were despatched on the same day from Jharsuguda. Our attention was drawn by the learned Advocate for respondent to the fact that notices relating to Ext. 6 (c) and Ext. 6 (d) were despatched on 9-10-61 from Barabazar post office and Exts. 6 (a) and 6 (e) were despatched from Khetrajpur post office on 10-10-61. It is well known that Barabazar and Khetrajpur Post Offices are situated within Sambalpur town. It is pointed out that the statement made by P. W. 2 that he had despatched all these notices on the same day from Jharsuguda should not be believed.

P. W. 2's attention was not drawn to the discrepancy. Had that been done he would have had an opportunity to explain the same. It is therefore not permissible for the respondents at this stage to base his criticism on this lacuna which in the circumstances we do not at all consider to be very material. It may be just a case of lapse of memory. On a consideration of the evidence on record we are satisfied that notices u/s 80, Civil P.C. had been served on the different Railways 2 months before 19-1-62 when the suit was instituted in Court. It is not disputed before us that the notice u/s 77 of the Railways Act had been duly served on the defendants.

4. It is next contended that even though notices u/s 80, Civil P.C. might have been served on the defendants, still the suit must fail because the plaint did not contain a statement that such notices have been delivered to the defendants as required u/s 80 Civil P.C. It is stated in Para 6 of the plaint that:--

"Notices of claim u/s 77 of the Railways Act and notices u/s 80 Civil P.C. were duly served upon the defendants on "20-1-61" (underlining (here into ") is ours) in respect of the aforesaid cause of action and it was duly received by them."

It is argued that since on plaintiff's own admission the notices u/s 80 Civil P.C. sent on 20-1-61 (Ext. 3) were defective, the mention of service of such a defective notice does not save the suit and amounts to non-mention in the plaint of the service of the notice u/s 80, Civil P.C. and as such is fatal to the suit.

The plaintiff-appellant has filed in this Court an application for amendment of the plaint. If the amendment is allowed Para 6 would read as follows :--

"Notices of claim u/s 77 of the Railways Act and notices u/s 80, Civil P.C. were duly served upon the defendant on 20-1-61 and again on 8-10-61 in respect of the aforesaid cause of action and they were duly received by them".

It is not disputed that if Para 6 stands thus amended there would be no further defect in the plaint. The question therefore is whether the amendment should be allowed, at this stage. In support of the petition for amendment it is submitted

by the plaintiff appellant that the non-mention of the second date is merely technical and it was due to inadvertence and that in view of the fact that the second notice and the postal receipts and acknowledgments relating thereto have been exhibited in the suit, the defendants cannot contend that they are taken by surprise. This amendment is opposed to by the respondents on the ground that it would introduce a new cause of action and change the nature of the suit and prejudice the defendants inasmuch as if this amendment is allowed it will practically amount to filing a fresh suit and if a fresh suit had been filed on the date the amendment was applied for it would have been barred by limitation.

5. Where a notice u/s 80, Civil P.C. is issued, the question whether its service is a part of the cause of action itself has been considered in several decisions of High Courts in India. This question came up in the Bombay High Court in *Bata Shoe Co. Ltd. Vs. Union of India*, , in the context of the Court within whose jurisdiction the cause of action arose. It was contended in that case that since notice u/s 80, Civil P.C. was delivered to B. B. and C. I. Railways having its head office at Bombay the Court of small causes at Bombay had jurisdiction to entertain the suit. *Gajendragadkar, J.*, held that:

"A statutory notice required by the provisions of the Railways Act as well as the CPC is no doubt an essential preliminary step for the valid institution of a suit; but that would not make such a notice part of the cause of action for the suit itself. The notice follows the cause of action and it merely paves the way for the institution of the suit itself".

It was held that the small causes Court at Bombay had no jurisdiction to entertain the suit. This observation has been quoted with approval in a decision of the Madras High Court in *AIR 1955 Mad 345, Azizuddin and Co. v. Union of India*. In the Calcutta High Court in *Jaharlal Pagalia Vs. Union of India (UOI)*, , it was held that the statement in the plaint that notice u/s 80, Civil P.C. has been delivered is something apart from the cause of action and to treat such notice, its issue or its service as a part of the cause of action would be to enlarge the content of Section 80 itself. This decision was followed in the subsequent case of the Calcutta High Court reported in *Niranjan Agarwalla Vs. Union of India (UOI)*, . In view of these decisions it is idle for respondents to contend that if the proposed amendment is allowed it would change the cause of action and would amount to substitution of a new plaint in the suit. In *Jaharlal Pagalia Vs. Union of India (UOI)*, referred to above, the plaint did not at all contain the averment that due notice u/s 80, C.P.C., was served on Union of India prior to the institution of the suit and the application was made in the trial Court to amend the plaint to introduce such an averment. It was opposed on the ground that the application was a belated one and that it introduced a new cause of action. After examination of the various authorities on the question as to whether service of a notice u/s 80, C.P.C., is a part of the cause of action. *Ray, J.*, held that--

"Section 80 merely puts a legislative bar to the institution of a suit when the cause of action is complete and that it is not part of the cause of action."

His Lordship proceeded further and observed:

"A statement in the plaint that notice has been delivered does not in any manner introduce a cause of action nor does it change the cause of action, inasmuch as cause of action as ripened before the notice has been delivered."

He, therefore, allowed the amendment and also condoned the delay in applying for the amendment on the ground that it would not cause any harm to other side.

6. In the case before us no objection could have been taken to the averment in para 6 of the plaint if it had been merely stated that notices of claim u/s 77 of the Railways Act and notices u/s 80, Civil P.C., were duly served upon the defendants without mentioning the date of the notice. What has actually happened is that a date also has been given which relates only to the notice u/s 77 of the Railways Act. No date was mentioned in respect of the Section 80 notice. The averment in para 6 of the plaint would have been without flaw if no date at all would have been given. We feel that the defendants will in no way be prejudiced if the plaintiff at this stage, obviously with a view to clarify the position, wants to supply the date on which notices u/s 80, C.P.C., were served, and especially when the substituted notices sent u/s 80, C.P.C., had been filed in the trial Court and the defendants had ample opportunity to cross-examine the plaintiffs witnesses on this point and to let in such rebutting evidence as they would have considered necessary. We would accordingly allow the amendment prayed for.

7. For the reasons stated above we are satisfied that the notices under Sections 77 of the Railways Act and 80, C.P.C., had been duly served upon the defendant 2 months before the institution of the suit. We would accordingly allow this appeal, set aside the decree passed by the learned Subordinate Judge and decree the plaintiff's suit with costs throughout.

G.K. Misra, J.

8. I agree.