

(1907) 11 CAL CK 0005
In the Calcutta High Court
Case No : Rule No. 2751 of 1907

Nadir Chand Shaha

APPELLANT

Vs

Mr. Wood, Agent, Assam Bengal Ry.

RESPONDENT

Date of Decision : 28-11-1907

Acts Referred:

Citation : (1907) 11 CAL CK 0005

Judgement

1. This is an application in a suit instituted in the Court of Small Causes at Chittagong by the Plaintiff for recovery of damages from the Assam Bengal Railway Company for short delivery, on different dates, of goods carried by the Railway Company under risk notes. The plaint is extremely imperfect. It does not state the date or dates on which the notices of non-delivery were given to the defendant; it does not also state to whom the notices were given and when and how they were served. The plaint is also silent as to the dates when the delivery in each case was expected.

2. The Defendant who is the agent of the Assam Bengal Railway Company denied the receipt of proper notices and also denied the liability of the company even if the notices were duly served.

3. The learned Small Cause Court Judge came to the conclusion that the alleged notices of claim were insufficient, they admittedly having been served on the Traffic Manager and not on the agent of the Railway Company.

4. The main question argued before us in this rule is whether the notice to the Traffic Manager was a sufficient compliance with the provisions of secs. 77 and 140 of Act IX (I.C.) of 1890, the Indian Railways Act.

5. Sec. 77 of the act requires that before a person can sue for refund for loss or non-delivery of goods or for short delivery, he must prefer in writing a claim within six months from the due date of delivery by the Railway Company. Sec. 140 speaks of the mode of service of notices and the person to whom the notices are to be directed. It says "any notice or other document required or authorized

by this act to be served on a Railway administration may be served, in the case of a Railway administered by the Government or a Native State, on the manager and, in the case of a Railway administered by a Railway Company, on the agent in India of the Railway Company." The present case is one of a Railway Company not administered by Government or any Native State; and the section requires that the notice shall be served on the agent in India. Admittedly the notice or notices in this case were served on the Traffic Manager.

6. The authorities in this Court as well as in the Bombay High Court are to the effect that the service of notice under sec. 77 of the Act must, in order to be effective, be served in the form and manner indicated in the act itself, i.e., sec. 140 of the act. In the case of *The East Indian Railway Company v. Jethmull Ramanund* ILR 26 Bom. 669(1902), Mr. Justice Tyabji held that sec. 140 of the Act was merely an enabling section and that the service of notice on the Traffic Superintendent or a person of that character would be sufficient. The Court of appeal, however, consisting of Jenkins, C.J. and Crowe, J. held that the formalities acquired by the legislature could not be dispensed with and they came to the conclusion that a notice in strict accordance with the provisions of the Act must be served before an action could be brought. The learned Judges were of opinion that the fact that the East Indian Railway Company knew of the claim of the Plaintiff and that intimation of the notice which in that case was served on the Bengal Nagpur Railway Company had been given to the East Indian Railway Company were not sufficient; and they followed the decision of that Court in *Ganga Persad v. The Agent, Bengal North Western Railway Company* H.C. Ry. Cas. 82.

7. In the case of *The Secretary of State for India in Council v. Dipchand Poddar* ILR 24 Cal. 306 (1896), this Court held that sec. 77 of the Railways Act required that the claim should be preferred to the Railway administration and that the words Railway administration mean, having regard to the provisions of sec. 3 of the Act, the manager in the case of a State Railway and that the service of notice to the Traffic Manager was not sufficient. The case of *The Secretary of State for India in Council v. Dipchand* (3) was one against a State Railway, but the principle of construction adopted by this Court was that the directions in sec. 140 must be strictly followed and the word "may" in that section must be construed as meaning "must" if a Plaintiff desire to make a claim.

8. Similar interpretation has been put on similar clauses in other enactments in which directions are given that notices should be served on a particular person in a particular manner. The case of notices under sec. 424 C.P.C. on the Secretary of State for India in Council may be cited as an illustration of this principle of construction.

9. We cannot agree with Tyabji, J., or the learned Judges of the Madras High Court who decided the case of *Perianan Chetti v. The South Indian Railway Company* ILR 22 Mad. 137 (1898), in the view they have taken as to the effect of the word "may" in sec. 140. In our opinion, the word "may" in this section means

that, if a Plaintiff is desirous of serving an effective notice of claim the notice must be directed to the manager or agent as the case may be. This is also the view taken in *Great Indian Peninsular Railway v. Chandra Bai* ILR 28 All. 552 (1906), in which all the earlier cases have been cited and followed.

10. We are, therefore, of opinion that the judgment of the Small Cause Court Judge is correct and that this rule must be discharged.

11. The learned Vakil for the Petitioner, has contended that the case should be sent back to the lower Court for a finding on the question whether the Traffic Manager was authorized by the agent of the Assam Bengal Railway Company to receive notices, but the question does not arise on the pleadings and there is no evidence in the record on the point. The rule is accordingly discharged with costs, five gold mohurs.