

(1970) 02 KL CK 0017

In the High Court Of Kerala

Case No : Civil Revision Petition No. 406 of 1969

Naseema Textiles, Azhikode

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-02-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1971 Ker 192

Hon'ble Judges : Sadasivan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sadasivan, J.—The only point arising in this revision petition is whether the requirement of a suit notice u/s 80, Civil P. C. has strictly been complied with before instituting the suit. The suit is one brought against the Union of India. for damages for non-delivery of one bale of handloom piece goods booked from Cannanore Camp Bazar town booking office, on the southern railway to Ahamadagarh railway station on the northern railway. The suit notice was issued by the lawyer on behalf of M/s. Nazeema Textiles, Azhikode; but later the suit was filed by Nazeema Textiles. Azhikode through its proprietor T. P. Ebrahimkutty. From the notice, it would appear that the notice was issued on behalf of a firm; but from the suit it would appear that it was instituted by one T. P. Ebrahimkutty as proprietor of the concern. It is mandatory that there should be identity of the person who issues the notice with the person who brings the suit. On identical facts the Supreme Court in S.N. Dutt Vs. Union of India (UOI), . has held :

"Section 80, according to its plain meaning, requires that there should be identity of the person who issues the notice with the person who brings the suit. Where an individual carries on business in some name and style the notice has to be given by the individual in his own name, for the suit can only be filed in the name of the individual. Where the notice u/s 80 was given by Messrs. S. N. Dutt

and Co., and the suit was filed by S. N. Dutt sole proprietor of a business carried on under the name and style of S. N. Dutt and Co. Held that the person giving the notice was not the same as the person suing and that, therefore. Section 80 was not complied with,"

All prior authorities were reviewed in the above decision and I think the facts of the present case are so identical that the ruling is on all fours in the present case. Learned counsel relying on the observations of the Privy Council in AIR 1927 176 (Privy Council) . contended that the notice should not be scrutinised in a pedantic manner or in a manner completely divorced from common sense. We must import a little common sense into notice of this kind. But all these aspects have been considered by the Supreme Court in the above decision S.N. Dutt Vs. Union of India (UOI), & their Lordships have taken the view that in a case where there is no identity of the person who issues the notice with the person who institutes the suit, it must be held that there is no proper notice as contemplated in Section 80, Civil P. C. In the present case also, the person on whose behalf the notice was sent does not appear to be the person who Instituted the suit.

2. The view of the learned Munsiff therefore, is correct and in confirmation, of his order this revision is dismissed.