
(1931) 07 PAT CK 0019
In the Patna High Court

N.W. Ry. Co. and Others

APPELLANT

Vs

Dwarka Ram Srikishun Ram

RESPONDENT

Date of Decision : 07-07-1931

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 79, 80
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1931 Patna 393

Hon'ble Judges : Scroope, J;Kulwant Sahay, J

Bench : Full Bench

Judgement

Kulwant Sahay, J.—This is an application in revision u/s 25, Provincial Small Cause Courts Act, by the defendants in the suit. The suit was instituted against three Railway administrations, namely, the N.W. Ry. Co., through their Chief Operating Superintendent, Lahore; E.I. Ry. Co., through their Chief Commercial Manager, Calcutta; and the B. & N.W. Ry. Co., through their Agent at Gorakhpur. The suit was for recovery of the price of a consignment of five bags of raisins-consigned at the railway station at Chaman on the line of the N.W. Ry. Co., to be delivered to the consignee at Siwan on the line of the B. & N.W. Ry. Co. The consignment was made on 30th November 1929, but the goods were not received at Siwan up to 27th March 1930 on which date notices were given by the plaintiff to the Chief Operating Superintendent of the N.W. Ry. Co., to the Chief Commercial Manager of the E.I. Ry. Co., and to the Agent of the B. & N.W. Ry. Co. The suit was instituted on 2nd June 1930. One of the questions raised was that the frame of the suit was bad and that the suit was not maintainable for want of a notice u/s 80, Civil P.C. It is conceded that the first two defendants, namely, the N.W. Ry. Co., and the E.I. Ry. Co., are State railways belonging to Government. u/s 79, Civil P.C., suits against Government have to be instituted against the Secretary of State for India in Council. The present suit, so far as the first two defendants were concerned, was instituted not against the Secretary of State for India in Council, but against the Chief Operating Superintendent of one of the railways and the Chief Commercial Manager of the other railway. Objection

was taken to this effect in the trial Court, but the plaintiff instead of amending the plaint, elected to proceed with the suit in the manner in which it had been framed. The Court below has held that the frame of the suit was not bad, but having regard to the clear provisions of Section 79, Civil P.C., it must be held that the suit as framed was not maintainable.

2. The second objection on behalf of the defendants was that notice u/s 80, Civil P.C., was not served. It is conceded that such a notice was not given; but it is contended on behalf of the plaintiff that u/s 3, Sub-section (6), Railways Act, the railway administration means the Manager of the railway and therefore the notice under the Railways Act, served upon the respective Managers of the different railway administrations was a good notice. Sub-section (6), Section 3, however expressly provides that "Manager" includes the Government and if the suit is instituted against the railway administration which is owned by Government, then the operation of Section 30, Civil P.C., is at once attracted and the notice u/s 80 becomes indispensable. As such a notice was not admittedly given, the suit was not maintainable. Upon these two grounds it is clear that the decree made by the Court below was erroneous and it is not; necessary to go into the other points raised by the learned advocate for the petitioners.

3. So far as the B. & N.W. Ry., is concerned the finding is that the goods were not made over to them until 20th July 1930 and so far as this railway is concerned there was no delay because the goods arrived at Siwan on 22nd July, but the suit had already been instituted on 2nd June 1930, on which date the goods had not reached the line of the B. & N.W. Ry. Under the circumstances no decree could be made as against this defendant.

4. The decree of the lower Court must be set aside and the suit dismissed. But having regard to the circumstances of the case and to the fact that the plaintiff has suffered a loss and that the goods were not tendered to the plaintiffs until after the expiry of eight months from the date of the consignment, each party will bear its own costs.

5. Scroope, J.

5. I agree.