
(1994) 02 MP CK 0002
In the Madhya Pradesh High Court

Pradeep Kumar

APPELLANT

Vs

General Manager, Western Railway and Others

RESPONDENT

Date of Decision : 15-02-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1989 — Section 3

Citation : (1995) 2 ACC 421

Hon'ble Judges : K.M. Aggarwal, J

Bench : Single Bench

Judgement

K.M. Aggarwal, J.—This appeal by the plaintiff is against the dismissal of his suit for damages against the Railway on the ground of non-delivery.

2. Certain books worth Rs. 10,700/- as per bill dated 18.4.1986 (Ex. P.2) were alleged to have been sent from Jaipur by Laxmi Book Binding Centre for being delivered to the appellant at Varanasi. The consignment of books was not delivered and, therefore, a suit for recovery of a sum of Rs. 22,500/- was filed by the plaintiff. The suit was resisted, inter alia, on the ground of non-service of notice u/s 78-B of the repealed Indian Railways Act. The objection prevailed and the suit was dismissed. Being aggrieved, the plaintiff has preferred this appeal.

3. After having heard the learned Counsel for the appellant, I am of the view that this appeal has no substance and deserves to be dismissed. A perusal of railway receipt dated 18.4.1986 (Ex. P. 1) would show that the consignment was booked on 18.4.1986 by Laxmi Book Binding Centre, Jaipur, for being delivered to one Pradeep, i.e., the appellant-plaintiff. One Dr. Bhagchandra Jain of Nagpur, sent a letter dated 24.7.1986 (Ex. P.3) addressed to the Station Master, Jaipur, complaining about non-delivery of the books. This Bhagchandra Jain was neither the consignor nor the consignee of the books. There is nothing on record to show that this letter was sent for and on behalf of the appellant (plaintiff). This letter was addressed to the Station Master instead of being addressed to the Railway Administration as mentioned in Section 78-B of the repealed Indian Railways Act

read with the definition of "Railway Administration" as given in Section 3(6) of the aforesaid. Act and, therefore, this letter dated 24.7.1986 by Dr. Bhagchandra Jain cannot be treated as a notice u/s 78-B of the repealed Indian Railways Act. The plaintiff also did not treat it as a notice u/s 78-B of the Act and, therefore, the subsequent notice which was sent for and on behalf of the appellant on 12.1.1987 was styled as a combined notice u/s 80 CPC and u/s 78-B of the repealed Indian Railways Act. It was not disputed that unless a notice u/s 78-B of the repealed Act was served on the Railways within a period of six months from the date of booking of the consignment, the Railways cannot be held liable for any loss due to non-delivery or short delivery of any consignment. In this view of the matter, I am of the view that the suit of the appellant was rightly dismissed by the Court below.

4. The learned Counsel for the appellant placed reliance in *The Union of India Vs. Punjab State Co-operative Supply and Marketing Federation Ltd.*, ; *Union Northern Railway and Another Vs. Firm Anis Khan and Others*, ; *The Indian Iron and Steel Co. Ltd. Vs. The Union of India (UOI)*, ; *Samrathmal and Another Vs. Union of India (UOI) and Others*, and *Union of India (UOI) and Another Vs. Imperial Tobacco Company of India Ltd.*, in support of his contention that the letter of Bhagchandra Jain could be treated as a notice u/s 78-B of the repealed Indian Railways Act. However, in none of these cases the notice of claim was served on any Station Master. Notice on commercial Superintendent of Railways was held to be sufficient compliance with Section 78-B of the Act in the peculiar facts and circumstances of those cases. I am, therefore, of the view that none of these cases relied for and on behalf of the appellant is of any help to the appellant.

5. In the result, this appeal fails and it is hereby dismissed but without any order as to costs.