

(1966) 12 PAT CK 0001

In the Patna High Court

Case No : Civil Revision No. 1515 of 1965

Sahdul Mian Jan Mohammad Mian

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-12-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 80

Citation : AIR 1968 Patna 188

Hon'ble Judges : M.P. Verma, J

Bench : Single Bench

Advocate : Sankat Haran Singh, Devendra Narain Sinha and Adyata Nand Singh, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Allowed

Judgement

M.P. Verma, J.—The plaintiff petitioner had brought Money Suit No. 32/1 of 1961/63 in the Court of the first Additional Munsif, Sasaram, on the allegation that he got a bale of cloth booked from Howrah on 27-7-60 to be delivered at Bhabhua Road railway station, both the stations lying within the jurisdiction of the Eastern Railway. This consignment was not delivered to the petitioner at all and thereby he suffered a loss of Rs. 952.87 Paise. He, therefore, gave a notice u/s 77 of the Indian Railways Act as well as Section 80 of the CPC to the Union of India representing the railway administration. After the expiry of two months from the date of the notice, the above mentioned suit was filed.

2. The Union of India, representing the railway administration, contested the suit and one of the grounds taken was that no valid notice u/s 80 of the CPC had been served on them. As regards the non-delivery of the consignment, it was alleged that it was correctly despatched in a lot of 42 packages, but it was stolen from the running train between Burdwan and Durgapur railway stations and over this accident the railway administration had no control.

3. The learned Additional Munsif(sic) to the conclusion that the non-delivery(sic)

consignment was due to the neg-(sic) misconduct on the part of the railway administration but he dismissed the suit on the ground that no valid notice had been served on the railway administration. It was argued on behalf of the defendant railway administration that the person suing and the the person giving notice were not identical and that was an essential condition required u/s 80 of the Civil Procedure Code. This notice is Ext. 2. It was issued on behalf of Sahudul Mian Jan Mohammad Mian, P.O. Chainpur, district Shahabad, sole proprietor Jan Mohammad Mian

The notice was given by Sri K.P. Verma, B.L. Pleader Sasaram, on behalf of his client. Towards the end of the notice one Sheikh Rahmatullah signed the notice on behalf of Sahdul Mian Jan Mohammad Mian. The money suit was brought by Sahdul Mian Jan Mohammad Mian through the sole proprietor, Jan Mohammad Mian. In the verification portion also Jan Mohammad Mian has signed. The learned Additional Munsif held that the notice was given by Sheikh Rahmatullah, who had no concern with the filing of the money suit. He relied on a decision of the Supreme Court in the case of S.N. Dutt Vs. Union of India (UOI), and dismissed the suit of the plaintiff, but without cost.

4. Against this judgment and decree of dismissal an appeal was filed (Money Appeal No. 4/2 of 1964/65), which was heard by the second Additional Subordinate Judge of Sasaram. He agreed with the findings of the learned Munsif and held that the loss of the consignment was due to the negligence and misconduct on the part of the railway administration, but the suit could not succeed because notice u/s 80 of the CPC was not legally and validly served. He, therefore, dismissed the appeal. Against this order of dismissal of his claim the plaintiff has come to this Court in civil revision.

5. At the outset it is to be noted that both the courts below have concurrently found that the claim of the plaintiff was bona fide and lawful- The plaintiff must have succeeded but for the defective notice. The learned counsel appearing on behalf of the petitioner has argued that there is no defect in the notice and the courts below have misapplied the aforesaid ruling to the facts of the present case. This notice is on a printed form and it has been extensively quoted by the learned Additional Subordinate Judge in paragraph 12 of the judgment.

The case of the plaintiff-petitioner is that he is the sole proprietor of the business which is run in the name of his father. Sahudul Mian and himself, i.e., Jan Mohammad Mian. Both these names appear at the head of the notice as well as the plaint and it is also mentioned in both these documents that Jan Mohammad was the sole proprietor of this business. It is not the case of the plaintiff that there was any partnership business so that it required registration for bringing a suit, as required by Section 69 of the Indian Partnership Act. So, on this point there does not appear to be any controversy between the parties.

Of course, this notice has been signed by one Sheikh Rahmatullah, who was examined as P.W. 1. He clearly stated that he was a relation (Samdhi) of Jan

Mohammad Mian and he had signed on the notice on behalf of the plaintiff at his instance. Jan Mohammad Mian was too old to come to the Court. Of course, Jan Mohammad Mian had not given him any written Mokhtarnama nor any letter authorising him to sign on his behalf on the notice. So, in the present case there is no confusion at all. The person who gave the notice also brought the suit. Learned counsel appearing on behalf of the Union of India has not been able to place any law before me which required that for issuing a notice the claimant must sign on it himself when he authorises his lawyer to send a notice on his behalf. The lawyer also does not require a written vakalatnama in such cases.

In the aforesaid Supreme Court decision, a notice u/s 80 of the CPC was given by Messrs S.N. Dutta and Company and the suit was filed by S.N. Dutta, the sole proprietor of a business carried on under the name and style of S.N. Dutta and Company. It is clear, therefore, that the notice was issued by the company and the suit was brought by an individual. So, the Supreme Court held that the person giving the notice was not the same as the person suing and so the requirements of Section 80 of the CPC were not complied with.

On behalf of the petitioner another decision of the Supreme Court, in the case of the State of Andhra Pradesh Vs. Gundugola Venkata Suryanarayana Garu, , was cited. It has set forth that the object of the notice u/s 80 of the CPC is to give the Government or the public servant concerned an opportunity to reconsider its or his legal position and if that course is justified to make amends or settle the claim out of court. The wordings of the section are imperative and so they must be strictly construed. Failure to serve a notice complying with the requirements of the statute will entail dismissal of the suit. But at the same time, the notice must be reasonably construed. Every venial error or defect cannot be permitted to be sufficient to defeat a just claim. In other words justice should not be foundered on the rock of mere technicality.

If on a reasonable reading of the notice it can be seen that the plaintiff has given the information which the statute requires him to give, any incidental defects or errors may be ignored. In every such case there are some factors to be taken into account, namely (i) whether the name description and residence of the plaintiff are given so as to enable the authorities to identify the person serving the notice; (ii) whether the cause of action and the relief which the plaintiff claims are set out with sufficient particularity; (iii) whether the notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section and (iv) whether the suit is instituted after the expiration of two months next after notice has been served and the plaint contains a statement that such a notice has been so delivered or left.

As regards the latter three conditions, there is no dispute between the parties. The only bone of contention is about the name of the party which gave notice and the name of the party which brought the suit. In my opinion, no confusion has been created and the notice was given by the same person who brought the suit. In other words, it was Jan Mohammad Mian, the sole proprietor

representing the business carried on in the name and style of Sahdul Mian Jan Mohammad Mian, who brought the suit. He could have very well authorised any person on his behalf to sign this notice. Moreover, Sheikh Rahamatullah has signed not in his independent capacity but on behalf of the aforesaid Sahdul Mian Jan Mohammad Mian. I am, therefore, of the opinion that the courts below were not justified in rejecting the claim which was otherwise bona fide and had been made by the plaintiff-petitioner, on this score.

6. On behalf of the railway administration the learned counsel has raised another point in this Court. He has argued that the High Court cannot, while exercising its jurisdiction u/s 115 of the Civil Procedure Code, correct the errors of fact, however gross they may be or even an error of law. It can only interfere when such errors have relation to the jurisdiction of the court to try dispute itself. In other words, the interference can be allowed only in such cases where the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. So far as the enunciation of the law on this point is concerned, there can be no dispute, but the real question to be determined is whether the courts below have acted in the exercise of their jurisdiction illegally or with material irregularity.

Learned counsel has cited the case of Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, . But, I find that the facts of the case are quite different. There it was held that the findings arrived at by the courts below, which may be erroneous, did not attract the provisions of Section 115 of the CPC because those questions did not relate to any matter of jurisdiction. In the instant case, the tower appellate court has refused to exercise its jurisdiction on account of a ruling of the Supreme Court, which had in fact no application to the facts of the present case. It is of course quite correct to say that it is settled that where a court has jurisdiction to determine a question, it can determine it legally or illegally.

But, in the present case the court has refused to exercise its jurisdiction even when it found that the claim of the plaintiff-petitioner was otherwise valid and bona fide, because of the Supreme Court decision reported in S.N. Dutt Vs. Union of India (UOI), . In my opinion, it is a case where the court has refused to exercise its jurisdiction vested in it by law under a misapprehension or an erroneous construction of the law.

7. In the result, this application is allowed with costs and the judgments and decrees of the courts below are set aside. Hearing fee Rs. 32/-.