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(1959) 01 MP CK 0014

In the Madhya Pradesh High Court

Case No : First Appeal No. 63 of 1959

Samrathmal and Another — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 30-01-1959

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5, 80
Evidence Act, 1872 — Section 115
Partnership Act, 1932 — Section 69
Railways Act, 1890 — Section 77

Citation : AIR 1959 MP 305 : (1959) ILR (MP) 18 : (1960) JLJ 1008 : (1959) 4 MPLJ 605

Hon'ble Judges : G.P. Bhutt, C.J;T.P. Naik, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; J.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Naik, J.

This is a first appeal by the plaintiff, a joint Hindu family firm, whose suit for damages, amounting to Rs. 11,301-3-6, for the lass suffered by it on account of late delivery of goods as also their deli-very in a deteriorated condition has been dismissed by the Additional District Judge, Balaghat, on the sole ground that the notices served by it on the respondent railway companies u/s 77 of the Indian Railways Act and u/s 80 of the CPC were not legal and valid for the purposes. of the claim in suit.

Seth Samrathmal and Seth Ratanchand are real brothers and they constitute the plaintiff joint Hindu family firm which is carrying on business at Balaghat under the name and style of ''Firm Dhanraj Samrathmal, Balaghat''.

On 3-3-1950, one Maganlal Sualal booked a consignment of 123 bags of chillies, weighing 85 maunds, at Mandsaur, a railway station on what is now known as

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the Western Railway (then known as the Bombay Baroda and Central India Railway) under invoice No. 1, and railway receipt No. Q/1-32496, to Lamta, a railway station on what is now known as the Eastern Railway (then the Bengal Nag-pur Railway). The consignment was booked to self, but the railway receipt was sent to the plaintiff firm, through a bank. The plaintiff firm duly got possession of the receipt on making the required payment to the bank. The railway receipt also contained on it an unsigned endorsement, ''Please deliver to Dhanraj Samavthmalji, Balaghat'' (see Ex. D-1). Out of the aforesaid consignment, 11 bags of chillies arrived at Lamta railway station on or about 3-4-1950. The remaining 112 bags were missent to Allahabad from Ujjain, and those bags ultimately arrived at Lamta railway station on or about 16-9-1950. The defendant-respondent railways did not adduce any evidence of the circumstances under which the 112 bags of chillies were missent to Allahabad - while under transhipment at Ujjain.

On the strength of the railway receipt in its possession, the plaintiff firm claimed delivery of the consignment from the railway authorities at Lamta railway station, but, as the consignment on inspection was found to be considerably damaged, and as the contents of all the 123 bags were found by the plaintiff firm to be partly caked, discoloured, powdered and wet, it insisted on an open delivery. On on about 5-11-1950, the Chief Commercial Inspector, Calcutta, gave an open delivery of the whole consignment to the plaintiff firm on collection from it of the freight and wharfage charges due on the consignment. As per copy of the Inward Foreign Delivery Rook of Lamta (Ex. P-28), the Chief Commercial Inspector certified that, on the basis of percentage, 11 bags were damaged to the extent of 85 per cent and 112 bags to the extent of 72 per cent. It was further stated that the certificate was ''without prejudice''.

Before receiving the aforesaid delivery, the plaintiff firm, on the basis of its estimate that the consignment should have arrived at Lamta railway station within fifteen days of its despatch from Mandsaur railway station, had demanded delivery of the consignment from the railway authorities at Lamta railway station on 18-3-1950 and onwards, but it was informed that the goods had not arrived. As regards the 11 bags, which, according to the written statement of the defendants-respondents had reached Lamta railway station in the month of April 1950, Gendmal (P.W. 1) states that he had gone to the railway station Lamta for the purpose of taking delivery of the goods in April 1950, but was not informed that the 11 bags had already arrived. He, however, admits that no endorsement of non-arrival was obtained on the railway receipt in the month of April 1950. A. perusal of the railway receipt (Ex. D-1), however, shows that an endorsement ''Not received'' was made on it by the railway authorities at Lamta on 1-5-50) and again on 25-8-50.

On 28-6-1950, the plaintiff firm served notices on the railways concerned, viz., the Great Indian Peninsula Railway, the Bombay Baroda and Central India Railway and the Bengal Nagpur Railway,. u/s 77 of the Indian Railways Act :

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(Exhibits F-3 to P-5). On 18-7-1950, it served notices (Exhibits P-9, P-ll and P-13) on the defendants respondents, under S, 80 of the Code of Civil Procedure,

In both sets of notices, the plaintiff firm alleged that, in the ordinary course, the goods booked at Mandsaur ought to have reached Lamta within a fortnight; that it had gone to the railway authorities at Lamta to take delivery of the goods on or about 18-3-1950 and many a time thereafter but was always told that the goods had not reached Lamta and that they were not consequently delivered to it; that the non-delivery was owing to the negligence and misconduct on the part of the railway authorities in charge of the goods during transit, who did not take proper care of the goods; and that, in view of the non-delivery of the goods, it was entitled to recover their price, which, according to the prevailing market rate at the time at Lamta was Rs. 140/- per maund. The plaintiff firm accordingly claimed that it was entitled to recover from the defendants-respondents Rs. 11, 900/- plus interest at 1 per cent per mensem on that amount from 18-3-1950 till the date of payment.

After taking delivery of the goods on 5-11-1950, on a certificate regarding the percentage of damage from the Chief Commercial Inspector, the plaintiff firm did not give any further notices to the defendants-respondents either u/s 77 of the Indian Railways Act or u/s 80 of the CPC and filed the present suit for damages on 3-3-1951, claiming Rs. 11,301/3/6 from them. The claim in suit was constituted of the following items :

Rs.

10,071/6/6

...

Damages due to late delivery (the market having fallen from Rs. 140/- per maund to Rs. 80/-per maund on the date of delivery) and due to delivery of the goods in damaged condition.

Rs.

892/8/-

...

Interest on Rs. 11,900/- (the price which it would have realized if delivery had been in the ordinary course) at 1% per mensem.

Rs.

327/5/-

...

Interest on the amount of damages claimed (Rupees 10,071/6/6) for the period from 6-11-1850 to 2-1-1951, at the rate of 1% per mensem.

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Rs.

10/--/--

...

Expenses incurred in letters and notices.

Rs.

11,301/3/6

...

Total.

The defendants-respondents, though they appeared to contest the suit through their pleader on 9-7-1951, did not file their written statement till 14-11-1952, when the Court had by its order, dated 11-7-1952, directed that the case wa,s to proceed ex parte. By their written statement, they disputed the claim of the plaintiff firm. They denied that it had any right of suit; that the 123 bags of chillies booked at Mandsaur were not offered for delivery to it until a5-9-1950; that the market rate of chillies at Lamta during the month of April 1950 was Rs. 140/- per maund and that it had fallen at the rate of delivery of the consignment to Rs. 80/- per inaund.

According to the defendants-respondents, the claim of the plaintiff firm was exaggerated and was liable to fail, inter alia, on the grounds that it had no cause of action for the! suit against them, that the suit was not maintainable in its present form, that it was bad for want of valid and proper notices u/s 77 of the Indian Railways Act and u/s 80 of the Code of Civil Procedure, that it was barred by limitation and that it was not maintainable on the ground that the plaintiff firm was not registered u/s 69 of the Indian Partnership Act.

The trial Court held that the plaintiff firm was entitled to sue as assignee of the consignor ''Man-gilal Sualal'' of Mandsaur; that the suit, being a suit on behalf of a joint Hindu family firm, the provisions of Section 69(2) of the Indian Partnership Act were nofl artplicable; and that the plaintiff firm had suffered damages due to late delivery and delivery in a damaged condition, amounting to Rs. 10,071/6/6. It, however, held that the suit failed on account of the failure of the plaintiff firm to give notices of the claim in suit to the defendants-respondents as required by Section 77 of the Indian Railways Act and Section 80 of the Code of Civil Procedure.

The notices under these sections, which are dated 28-6-1950 and 18-7-1950, were held to be invalid and not proper on the ground that they related to a claim for non-delivery of the consignment, whereas the suit was for damages on account of late delivery and delivery of the goods in a damaged condition.

The learned counsel for the plaintiff firm contended that the notices dated 28-6-1950 (Exhibits p-3 to p-5) and those dated 18-7-1950 (Exhibits P-9, P-11

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and P-13). the first set u/s 77 of the Indian Railways Act and the second set u/s 80 of the Code of Civil Procedure, amply satisfied the requirements of law and that no fresh notices of the claim in suit were necessary.

Under Section 77 of the Indian Railways Act, a person shall not be entitled to compensation for the loss, destruction or deterioration of goods delivered to a railway to be carried, unless his claim for compensation had been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the goods for carriage by the railway''.

It would be seen that this section prescribes no particular form of notice. All that it requires is that a claim for compensation shall be preferred to the railway administration in writing and that the said claim shall be preferred within six months from the date of delivery of the goods for carnage by the railway.

In the instant case, admittedly the goods were delivered for carriage by the railway at the Mandsaur railway station on 3-3-1950. The requisite notice u/s 77 of the Railways Act had, therefore, to be given to the railway administration in writing on or before 3-9-1950. Eleven bags out of the consignment were received at Lamta railway station on 3-4-1950, while the rest of the bags arrived there on 16-9-1950. The plaintiff firm, however, was never apprised of the arrival of the eleven bags on 3-3-1950, till the total consignment had arrived, us the endorsements, ''Not received'', dated 1-5-1950 and 25-8-1950, on the railway receipt (Ex. D-l) clearly show.

It was under the circumstances not possible for the plaintiff firm to have complied in terms with the requirements of Section 77 of the Railways Act, if it were to give the notice of its claim for compensation as laid in the suit after 16-9-1950, when alone it became aware both of the fact of late delivery and of the damaged condition of the goods. So far as the extent of the damage was concerned, that became known on 5-11-1950, when open delivery was effected and certificate of damage without prejudice was given to the agent of the plaintiff firm. If, therefore, the contention of the respondents were to be accepted, the result w.ould be that, in the instant case, no suit for damages could at all be filed because no notice u/s 77 of the Railways Act could possibly be given,

We will, therefore, examine whether it is permissible u/s 77 of the Act to prefer a claim for compensation to the railway administration, even before the goods arrived at their destination and the fact of their late arrival and in deteriorated condition became known to the plaintiff firm.

Though the provisions of Section 77 of the Act are mandatory and a suit for compensation for loss destruction or deterioration of goods'' is liable to fail if no notice is given, the object of the section is stated to be to prevent stale and possible dishonest claims for loss, destruction or deterioration being made against the railway administration, when, owing to delay, it might be impossible to trace the transaction or to check the allegations made, and when evidence to rebut a dishonest claim might''. no longer be available. It is intended as a

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weapon of defence against fraud and not as a means to enable the railway authorities to deprive their customers of their just dues; see Shamsul Huq Vs. Secy. of State, Another important object of the section, as stated by lenkins, C.J. in East Indian Rly. Co. v, Jethmnll ILR 20 Bom 669 is the necessity of protecting the railways from groundless litigation. In that case it is also laid down that notices of claims are not to be cons-trued with extreme strictness; there must be a substantial compliance with the terms of the Act by which they are prescribed.

No form of notice having been prescribed it will be a matter to be considered, on the facts of each case, whether the particular notice or notices satisfied the requirements of law. In the instant case, the goods had not arrived at their destination within the usual period in which they should have ordinarily arrived. The plaintiff firm could have no idea whether the goods had been lost or destroyed. The only endorsement the railway administration was making on the railway receipt (Ex. D-1) was ''Not received''. Realizing that the period of six months was manda-tory, the plaintiff firm rightly preferred a claim for compensation u/s 77 of the Railways Act on or about 28-6-1950.

The requirement of law is that a claim for compensation shall be preferred. It does not require the money value of the claim to be stated, nor does it require the exact and detailed computation regarding the compensation claimed. As stated earlier, the notices served their purpose of preventing stale and possibly dishonest claims and of. putting the railway administrations on enquiry, so that they could trace the consignment and check the allegations made by the plaintiff firm. As, thereafter, the railway administrations took time to trace the consignment and offer it for delivery, no further notices in respect of that consignment were necessary, as the purpose of Section 77 of the Railways Act had been served.

The further facts, that ultimately a delivery was made possible, even though late, because the consignment could be traced and redirected to the station of delivery and that the traced consignment had suffered damage due to deterioration, are all matters of detail going to the assessment of exact compensation payable to the owner, with which the no-tice u/s 77 of the Railways Act is not concern-ed. We are therefore, of opinion, that the notices, dated 28-6-1950, (Exs. P-3 to P-5) amply complied with the provisions of Section 77 of the Railways Act.

Next come the notices u/s 80 of the Code of Civil Procedure, dated 18-7-1950, (Exs. P-9, P-11 and P-13). These are in terms similar to the notices u/s 77 of the Railways Act (Exs. P-3 to P-5). Section 80 of the CPC requires that before instituting a suit against the Union Government representing the Railways, a notice in writing be delivered to the prescribed officer, stating--

(a) the cause of action,

(b) the name, description and place of residence of the plaintiff, and

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(c) the relief which he claims.

It is not disputed that the name, description and place of residence of the plaintiff had been mentioned in the notices. The only question is whether they had stated the cause of action and the relief claimed so as to satisfy the requirements of Section 80, Code of Civil Procedure.

The notice should not be construed as if it were pleading. It need not set out all the details and facts of the case : See Secretary of State v. Na-gorao ILR (1939) Nag 206 at p. 212 : (AIR 1938 Nag 415 at p, 418) . On the other band, it is necessary to import a little common sense into notices of this kind : Jones v. Nicholl* H.844) 1.3 M and W 361 : 153 ER 149. See also Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), at p. 281. The object of the notice is to give a sufficient warning to the defendant if a case which is about to be brought against it, so that it may, if it wishes, compromise the case, or after restitution, if it considers that restitution is due without recourse being had to a Court of law in which the Government might be mulcted in costs ILR (1939) Nag 206 : (AIR 1938 Nag 415) (supra).

If, therefore, the notice substantially satisfied its object in informing the parties concerned generally of the nature of the suit intended to be filed, the requirements of the provisions of Section 80 of the CPC would be amply satisfied. ''Cause of action'', though it ordinarily means a bundle of all those facts which it is necessary for the plaintiff to allege in order to enable him to the relief claimed, need not, in the context in which it has been used here, be construed in any narrow or pedantic sense. The expression must he construed rather with reference to substance than to the form of the action: See Krishna Behari v. Rrojeswari Chowdranee 2 Ind App 283 (PC) and Tekait Doorga Prasad Singh v. Tekaitni Doorga Konwari 5 Ind App 149 at p. 157 (PC). If it substantially informs the defendant of the grounds of complaint, the ''cause of action'' would have been amply stated within the meaning of this section.

In the instant case, in our opinion, the notices substantially stated the cause of action and the relief claimed, and they could not be held to be invalid or improper on that account. It is true that the chum as disclosed in the notices was one in respect of compensation for non-delivery, but merely because after the services of the notices, the respondents were able to trace the consignment and effect delivery (though late and in a deteriorated condition) and for that reason the plaintiff firm could reduce its claim for non-delivery to one for late delivery and deterioration of the goods, it does not follow that the earlier notices became ineffective or invalid. Furthermore, in the instant case, the respondents were fully aware of the claim, and the reason therefor, which they had to meet; and, as stated by them in paragraph 12 of their written statement, they could not redress the grievances of the plaintiff firm because

"the defendants asked the plaintiffs several times to supply them with the beejnk to ascertain the exact amount of the damage, but the plaintiffs did not care to

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send the same or to show his khata book to them."

The object of the notice had, therefore, been amply achieved, and, in our opinion, there is no merit in the contention that the plaintiff firm had not served on tbe respondents proper notices u/s 80 of the Code of Civil Procedure.

We, therefore, set aside the finding of the trial Court that the plaint was liable to be rejected under Sub-rule (2) (Sic Clause d) of Rule 11 of Order VII of the Code of Civil Procedure, because of the non-compliance by the plaintiff firm with the provisions of Section 77 of the Railways Act and Section 80 of tbe Code of Civil Procedure.

The learned counsel for the respondents, however, sought to support the dismissal of the suit on other grounds on which they had failed in the trial Court.

The first contention is that the plaintiff firm had no right of suit as it was not an assignee of the railway receipt, whereby Mangilal Sualal of Mandsore had booked the consignment in question to self.

The case of the plaintiff was that the consignment in question was booked by Mangilal Sualal of Mandsore to Lamta ''to be delivered to the plaintiff''. The respondents in their written statement did not specifically deny this fact. Their plea was : ''The defendants do not know if the plaintiff is the assignee of the consignor, Mangilal. Sualal Jain as alleged in Para 2 of the plaint*. A denial of the- knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the faet in issue. It merely means that the defendants-respondents deny that they have any knowledge of the fact, but a person can admit a fact of which he has no personal knowledge : P.L.N.K.L. Chettyar Firm v. Ko Lu Doke, AIR 1934 Rang 278 aft p. 280 and Lakhmi Chand Vs. B. Ram Lal Kapoor Vakil, .

The question was, however, put in issue and the finding of the trial Court was that the plaintiff firm was the consignor''s assignee of the goods in suit, The finding is based on the oral evidence of Gendmal (P.W. 1) and Maganlal (P.W. 4), and the internal evidence furnished by the documents Exhibits D-l. P-2 and P-28. Gendmal (P.W. 1) has stated that the railway receipt (Exh. D-1) bears an endorsement in the name of the plaintiff, and Maganlal (P.W. 4) who was the consignor of the goods in question, has stated that the railway receipt (Exh. D-1) was handed over to Gendmal (P.W. 1) and thereunder the right to take delivery of the goods accrued to the plaintiff firm.

The railway receipt (Exh. D-D itself shows an endorsement, ''Please deliver to Dhanraj Samratbmal-ji, Balaghat'', and apparently acting on the said endorsement the delivery of the goods was effected to the plaintiff firm by the railway administration after collecting from it the freight and wharfage charges. The copy of the Inward Foreign Delivery Book of Lamta (Exh. P-28) bears an endorsement of the Chief Commercial Inspector, Calcutta: ''Delivered to consignee Gendmul for D. Samrathmal on 5-11-1950''. It is thus clear that the

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railway administration treated the plaintiff firm as the assignee of the railway receipt.

In Shah, Mulji Deoji v. Union of India, AIR 1957 Nag 31 at p. 45 Tambe, J says :

"When there is no particular mode of assignment prescribed by the statute, these rights could be transferred in any manner. The only thing to be considered is whether the intention of the transferor to transfer the rights is made clear by the mode adopted."

Looking to the evidence in the case, we are satisfied that the intention of the consignor to transfer his rights under the railway receipt (Exh. D-1) to the plaintiff firm is amply established by the evidence on record.

It is then contended that the suit was hit by the provisions of Section 69 of the Indian Partnership Act. But, as pointed out by the learned Additional District Judge, there is nothing on record to show that the plaintiff is a partnership firm, and consequently Section 69 of the Act has no application. On the other hand, he ha.s found that the suit was on behalf of a Joint Hindu family firm, and we agree with his finding on this issue.

The quantum of damages which could be awarded to the plaintiff firm is also disputed; but nothing has been shown to us how the figure of compensation arrived at by the learned Additional District Judge is incorrect, if (1) the market price of the goods is accepted to be Rs. 140/- per maund from April to August 1950, and Rs. SO/- per maund at the time of delivery, and (2) the percentage of de-terioration is accepted to be as given by the Chief Commercial Inspector, Calcutta, in Exh. P-28. The plaintiff firm (appellant) is, therefore, entitled to a decree for Rs. 10,090/9/- with proportionate costs throughout. We agree with the figure of compensation arrived at by the Trial Court for the reasons given by it with which we agree.

In the result, the appeal is allowed and the suit of the plaintiff-appellant is decreed for Rs. 10,090/9/- with proportionate costs throughout.

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