
(1931) 04 AHC CK 0004
In the Allahabad High Court

Secy. of State

APPELLANT

Vs

Firm Fazaluddin Badruddin

RESPONDENT

Date of Decision : 02-04-1931

Acts Referred:

Citation : (1931) 04 AHC CK 0004

Hon'ble Judges : Sen, J

Bench : Single Bench

Judgement

Sen, J.—This is an application for revision by the Secretary of State u/s 25, Provincial Small Cause Courts Act. On 16th August 1929 an oil tank was despatched by, A.O. Oil Co. Ltd. from Rawalpindi to Punjab Oil and Machinery Stores, at Jhansi. Rawalpindi is on the N.W. Ry., while Jhansi is on the G.I.P. Ry. When the oil tank reached the Agra Cantonment Station, it was found to be leaking. Plaintiff, who is the endorsee of the railway consignment receipt, applied to the railway authorities at Agra Cantonment Station for the delivery of the oil tank to him, as the oil tank was leaking. On 23rd August 1929, the oil tank was delivered to the plaintiff as requested. The present suit was instituted in the Court of the Judge of Small Causes at Agra for recovery of Rs. 216 together with interest being the difference of of the freight between Rawalpindi and Jhansi the place where the oil tank was stipulated to be delivered and Agra where it was actually delivered. The suit was directed against the Secretary of State upon the ground that he was the owner of the G.I.P. Ry. Co. The N.W.Ry. was not impleaded in the action nor was any relief claimed against that Railway.

2. On 16th July 1930, the defendant applied that two preliminary issues be framed in the case and that the suit be decided on those two issues. It was contended that no notice of the projected suit had been served upon the Secy. of State in the manner provided and prescribed by Section 80, Civil P.C. It was also contended that the non-joinder of the. N.W. Ry. Co. who were the contracting party was a defect which was fatal to the suit. Curiously enough, no order was passed on this application. The case was taken up in the ordinary course of

hearing on 4th November 1930, and the plaintiff's claim was decreed. The learned Judge of the Court below has found that non-compliance of the provisions of Section 80, Civil P.C. does not defeat the suit inasmuch as notice u/s 77, Railways Act (9 of 1890) had been served on the N.W. Ry. Co. The Court observes:

It was contended that the notice should have been served on the District Officer of Agra, as both the railways were State Railways. I do not think it was necessary to do so. For the purposes of the suit, the Agent or the Manager of the Bail-way Companies could be considered as representing the Secretary of State. X decide the issue in the negative.

3. Section 80, Civil P.C. is mandatory and provides that:

no suit shall be instituted against the Secretary of State...until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of a Secretary to the Local Government or the Collector of the district.

4. Exhypothesi the notice of the contemplated suit had not been delivered to, or left at the office of a Secretary to the Local Government or the Collector of Agra. The statutory rule of procedure quoted above is imperative. The Court below is wrong in holding that the delivery or service of a notice u/s 77, Railways Act, obviates the necessity of the compliance of the rule contained in Section 80, Civil P.C. The matter is covered by authority. It has been held by a Division Bench of this Court in *Ali Asmat Shakur Vs. G.I.P. Ry. and Another*, that a notice u/s 77, Railways Act, would not dispense with the necessity of a notice u/s 80, Civil P.C. The lower Court was further not justified in arriving at the conclusion that notice in due compliance with Section 77, Railways Act, had been served upon the Railway authority concerned. No such notice either in the original or in the shape of an officially certified copy has been produced in the case. The finding of the Court below rests upon very slender data. Because a certain postal receipt of acknowledgment has been filed by the plaintiff which purports to be with reference to some document transmitted to a railway authority, it cannot be predicated with certainty that the document in question was a notice which fulfilled the requirements of Section 77, Railways Act. No notice u/s 80, Civil P.C., having been tendered or delivered as required by Section 80, Civil P.C., the suit against the Secretary of State was bound to fail. I accordingly allow this application, set aside the order of the Court below and dismiss the suit with costs.