
(1921) 06 PAT CK 0017
In the Patna High Court

Sinehi Ram Bihari Lall

APPELLANT

Vs

The Agent East Indian Railway Co.

RESPONDENT

Date of Decision : 01-06-1921

Acts Referred:

Railways Act, 1890 — Section 140, 141

Citation : AIR 1921 Patna 485 : 64 Ind. Cas. 125

Hon'ble Judges : Ross, J

Bench : Single Bench

Judgement

Ross, J.—This is an application for revision of the decree passed by the Small Cause Court Judge of Monghyr in a suit brought by the petitioner against the opposite party, claiming Rs. 445-4-0 On account of damage done to certain bags of rice conveyed on the Railway of the defendant Company. The plaintiff issued his writ against the Agent, East Indian Railway, Fairlie Place, Calcutta, The East Indian Railway appeared and filed a written statement pleading to the merits of the case. When the case came up for trial, the Pleader of the defendant Company took the objection that the suit was not maintainable inasmuch as the East Indian Railway Company had not been sued but their Agent, and the learned Small Cause Court Judge gave effect to that objection and dismissed the suit.

2. There can be no doubt, on the decisions in Ram Dass Sein v. Cecil Stephenson 10 W.R. 366. Nubeen Chunder Paul v. Cecil Stephenson 15 W.R. 534 and India General Steam Navigation and Railway Company Ltd. v. Lal Mohan Saha 31 Ind. Cas. 35 : 43 C. 441 : 22 C.L.J. 241. that the suit is not maintainable against the Agent of the Company, The form under which a Company should be sued is given in Appendix A to the First Schedule to the CPC in the words:--

The A. B, Company Ltd. having its registered office at...

3. The learned Vakil for the petitioner contends that having regard to Sections 140 and 141 of the Indian Railways Act, 1890, and Order XXIX of the Civil Procedure Code, the frame of the suit is not bad. This argument is not well

founded. Sections 140 and 141 of the Indian Railways Act merely set forth the manner in which notices may be served on a Railway Administration. Order XXIX of the CPC deals with the subscription and verification of pleadings in suits by or against a Corporation and with service on a Corporation. They say nothing about the manner in which the suit itself is to be framed. Then it is contended that there is no prejudice, that defence was taken on the merits, and that it is only a matter of amending the description of the defendant Company in the cause of title, and that in fact the East Indian Railway Company appeared through their Pleader. The learned Vakil for the opposite party has no objection to the amendment of the writ subject to limitation, but the petitioner will not accept this, for the obvious reason that if amendment is allowed now the suit is barred. It is objected by the petitioner that he does not propose to add any new party, the party being already before the Court, but merely seeks to correct a name. In my opinion, this is not the true effect of the application. This is not a case of mere misnomer, which could have been made a basis of defence. The suit was brought against the Agent of the East Indian Railway Company and the Company was not impleaded according to law. In law the Company is not a defendant to the suit and is not before the Court as defendant. The frame of the suit can only be amended by substituting the Company as defendant in place of the Agent, and it is a well-recognised principle that, however liberal the Court may be in allowing amendments in the interest of justice, an amendment will not be allowed which would prejudice the rights of the opposite party existing at the date when the proposed amendment is to be made. At this stage the East Indian Railway Company has acquired a right by virtue of the Statute of Limitation and this right should not be prejudiced by any amendment at this stage.

4. The result is that the application must be dismissed with costs. Hearing fee two gold mohurs.