

(1959) 12 CAL CK 0031
In the Calcutta High Court
Case No : A.F.O.D. No. 145 of 1954

State of West Bengal

APPELLANT

Vs

Jiwanmall Babu and Another

RESPONDENT

Date of Decision : 18-12-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1960 Cal 673

Hon'ble Judges : Renupada Mukherjee, J;K.C. Sen, J

Bench : Division Bench

Advocate : Nirmal Chandra Chakravarti, Govt. Pleader and Sibakali Bagchi, for the Appellant;Ganga Narayan Chandra and Samarendra Nath Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Renupada Mukherjee, J.

1 The State of West Bengal is appellant in this appeal, and the two respondents are the two plaintiffs of the Trial Court who have sued both in their personal capacity and also as Kartas of a joint Hindu family consisting of themselves and their sons. The suit was instituted by the respondents in the Trial Court for recovery of a sum of Rs. 6535/8/6 pies as damages on a certain contract to which we shall presently refer.

2. The suit was contested by the appellant State on the ground that the notice u/s 80 of the CPC purporting to have been served upon the Government was not a legal and valid notice and the suit was barred by limitation. A further plea was taken that the amount claimed by way of damages was excessive.

3. The Trial Court overruled the legal objections taken on behalf of the State and decreed the claim of the plaintiff in part for Rs. 5901/6as, with corresponding costs. This appeal has been preferred by the State of West Bengal from the above judgment and decree passed by the Trial Court.

4. The genesis of this suit is contained in an agreement for purchase of paddy and supply of rice by a rice mill known as Mahabir Rice Mill of which the respondents are the proprietors. An agreement was entered into between the Government and the said rice mill on 17-5-1948, when rice was a controlled commodity. The gist of the agreement is that the Assistant Regional Controller of procurement would sell paddy to the mill at a certain rate, and the mill would convert the paddy into rice and sell the same to the former according to the terms and conditions laid down in the agreement. In the present suit we are concerned with clause 7 of the agreement which runs in the following terms ;

"7. That the mill undertakes to hand over a minimum quantity of Nineteen hundred and twenty five maunds of rice from the particular lot of paddy purchased. This quantity has been fixed by the A. R. C. P. as based on the calculations made in fixing the price of paddy representing an out turn of 381/2 seers of rice per 60 seers of amon paddy, subject to the final milling test. The mills also agree that the total weight of paddy purchased by the mills and delivered by Government, will be accepted along with 3 p. c. of refraction consisting of dust and other foreign matters and any excess retraction is to be refunded by Government or deducted from the total quantity delivered".

4a. From the above mentioned clause in the agreement it would appear that the mill agreed to make an allowance upto three per cent, on account of refraction which means the presence of dust and other foreign matters in the paddy. If there was any refraction in excess of that percentage then the mill was entitled to get the value thereof from Government. Admittedly, large quantities of paddy were delivered by Government to Mahabir Rice Mill, and the mill also delivered back the resultant paddy to Government. It was the case of the plaintiffs in the Trial Court that after conducting milling tests, it was found that the refraction was much higher than three per cent, in respect of a large quantity of paddy. The annexures to the plaint set forth the total quantity of refraction, and in a schedule to the plaint the value of the refraction has been stated to be Rs. 6535/8/6 pies. After a consideration of the oral and documentary evidence adduced by the parties, the Trial Court held that the value of excess refraction to which the plaintiffs are entitled is Rs. 5901/6as. In the present appeal, Mr. Chakravarti, learned Government Pleader, was not in a position to question the correctness of this figure seriously.

5. The Trial Court examined the question of excess refraction in some detail. It prepared a chart in a tabular form and came to the conclusion that in respect of eight deliveries the total value of excess refraction was Rs. 5901/6 as. This conclusion was arrived at by the Trial Court not only on a consideration of the account books of the mill, but also on a consideration of some reports of local Government officers who were in charge of procurement of paddy. These reports were marked exhibit E series in the Trial Court. This being the position, we must say that the value of excess refraction has been correctly determined by the Trial Court, and if the appeal does not succeed on the points of law raised by Mr.

Chakravarti, then it would fail.

6. We now turn our attention to the questions of law raised by Mr. Chakravarti on behalf of the appellant State. He contended, in the first place, that the notice served u/s 80 of the CPC upon Government is not legal or valid. The relevant portion of Section 80 of the CPC may be quoted here:

"No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of --

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice, has been so delivered or left",

7. A notice u/s 80 of the Code must contain three essential particulars. In the first place, it must state the cause of action; secondly, the name, description and place of residence of the plaintiff must be given; and thirdly, the relief which the plaintiff claims must also be mentioned.

8. In the present case the notice u/s 30 of the CPC was issued on 3-10-1950. The notice was marked exhibit 1 in the Trial Court. The notice contains, among other statements, a statement that the cause of action had arisen on 20-7-1948, when some challans for an amount of Rs. 6535/8/6 pies were submitted to A. R. C. P., Burdwan.

9. Mr. Chakravarti submitted on behalf of the appellant State that the date of the accrual of the cause of action given in the notice is 20-7-1948. In the plaint this date has been given as 29-11-1951, in paragraph 11. Mr. Chakravarti contended that the plaint should be taken at its face value, and if, according to the plaint, the cause of action arose on 29-11-1951, then no valid notice u/s 80 of the CPC could be given before the accrual of the cause of action. In the submission of Mr. Chakravarti, the cart should not have been put before the horse, and the very fact that the requisite notice was given prior to the accrual of the cause of action shows that the notice was an illegal and invalid notice. In this connection Mr. Chakravarti drew our attention to some observations of Mahajan, J. quoted by Ray, J. in a case reported in Jaharlal Pagalia Vs. Union of India (UOI), . The observations were quoted by Ray J. at pp. 275 and 276 of the report from the judgment of Mahajan, J. in the case of State of Seraikella Vs. Union of India (UOI) and Another, . The observations are as follows:

"It seems to me that what is enacted in Section 80 is, the first step for litigation between the parties when the cause of action is complete. Section 80 in effect provides that an advance copy of the plaint should be served on the defendant and no suit should be instituted in Court until the expiry of two months after such service. Section 80 does not define the rights of the parties or confer any

right on the parties. It only provides a mode of procedure for getting the relief in respect of a cause of action. It is a part of the machinery for obtaining legal rights, i.e., machinery as distinguished from its products, Vide *Poyser v. Minors* (1881) 50 Ex. 555".

10. Mr. Chakravarti submitted before us that, according to Mahajan, J., Section 80 of the CPC in effect provides that an advance copy of the plaint should be served on the defendant. Mr. Chakravarti further argued that if a notice u/s 80 of the Code be regarded as an advance copy of the plaint, then the present notice should not be regarded as a legal or valid notice because of the disparity between the notice and the plaint regarding the date when the cause of action for the present suit arose. Let us now examine if there is any substance in this contention of Mr. Chakravarti.

11. In the above connection we may refer to paragraphs 2 and 3 of the notice u/s 80 of the CPC which are in the following terms:

"2. That as there were excess refractions above 3 p.c. (the maximum percentage allowable according to the terms of the contract) in the paddy sold under the delivery orders mentioned below as tested and sanctioned by your officers we submitted three bills Nos. 741, 742 and 743 dated 20-7-1948, to the A. R. C. P. Burdwan for the costs of the excess refractions amounting to Rs. 6535-8-6p. in all as detailed in the challans and mentioned in the schedule below".

"3. That in spite of repeated requests and demand the A. R. C. P., Burdwan has not paid the amounts due under the challans and amounting to Rs. 6535-8-6p. only".

Paragraphs 2 and 3 of the plaint are exact replica of the above mentioned two paragraphs of the notice. The schedule given in the present plaint regarding the three challans is also an exact reproduction of the three challans mentioned in the notice. The entire substance of the claim of the respondents is to be found in the above mentioned paragraphs of the plaint and its schedule. The claim of the plaintiffs is, therefore, given in effect and substance in the notice. There is, no doubt, a serious disparity about the date of the accrual of the cause of action. In the notice u/s 80 of the CPC this date, as we have already mentioned, has been given as 20-7-1948. This was the date when the challans were submitted to the A. R. C. P., Burdwan. We have previously stated that in paragraph 11 of the plaint, it has been stated that the cause of action for this suit arose when the R. C. P. of Calcutta was last written to on 29-11-1951, and no reply was received from him. The question, therefore, which falls for our determination is whether this discrepancy between the two dates makes the notice an invalid and illegal notice.

12. The expression "cause of action" has not been defined in the Code of Civil Procedure. The expression has, however, been judicially defined in several cases. We may refer to one such case which is reported in *Peoples Insurance Co., Ltd. Vs. Benoy Bhusan Bhowmik and Others*, , where it has been defined as follows:

""Cause of action" has not been defined in the Code of Civil Procedure, 1908. Cause of Action, however, means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but it comprises every fact which is necessary to be proved. Cause of action has no relation to the defence set up in the case".

13. Regard being had to the above definition of the cause of action, let us now ascertain what was the cause of action for the present suit. According to the plaint case, the cause of action was the detection of excess refraction in the paddy supplied to the respondent mill, the submission of three challans for refund of the price of such excess refraction, and refusal of Government to pay the price. This was also exactly the case made in the notice u/s 80 of the Code of Civil Procedure. In the notice, the date of the accrual of the cause of action has been given as 20-7-1948, on which date the challans were submitted to the A. R. G. P.

14. Mr. Chandra submitted on behalf of the plaintiffs respondents that a notice u/s 80 of the CPC simply requires, among other things, a statement of the cause of action, and it is not necessary to mention the date of its accrual. Mr. Chandra further submitted that the date of accrual of the cause of action, as given in the notice, was clearly wrong, because no cause of action for the suit could have arisen merely upon the submission of the bills. According to Mr. Chandra, the cause of action would arise after Government had expressed its unwillingness to pay the price of excess refraction. We are in agreement with this contention of Mr. Chandra. In any view of the case, it cannot be said that the cause of action for the present suit arose on the very date of the submission of the bills. Because that would be inconsistent with paragraph 3 of the notice where it has been stated that in spite of repeated requests and demands, A. R. C. P., Burdwan, was not paying the amounts due under the challans. A notice u/s 80 of the CPC does not require that the date of the accrual of the cause of action should be given. Rule 1 of Order VII of the Code requires, among other things, that the plaint must state the facts constituting the cause of action, and when it arose. In the present case, as we have already indicated, the same cause of action has been stated in the notice u/s 80 of the CPC as in the plaint. We have shown this by a comparison of the material portions of the notice and the plaint. That being the case, it cannot be properly contended that the notice in question is an invalid and inoperative notice.

15. In the above connection Mr. Chakravarti contended on behalf of the appellant State that the maintainability of a suit is to be judged by the statements made in the plaint and not by any other extraneous circumstance. He submitted that according to the statement of the plaintiffs themselves, the cause of action had arisen on 29-11-1951. Mr. Chakravarti, therefore, contended that as the notice u/s 80 of the CPC was given prior to that date, the notice was premature, and such notice should not be held to be a valid notice. This argument of Mr. Chakravarti

would have been accepted by us, if we could agree with him that the cause of action for the present suit had not arisen earlier than 29-11-1951. On an examination of the plaint, we must hold that the the cause of action had arisen after the date of the submission of the challans, namely, 20-7-1948 and it was continuing thereafter until Government finally refused to accede to the demand of the respondents. In this connection, we may refer to a letter from the Deputy A. R. G. P. Burdwan, written to Mahabir Rice Mill on 29-11-1950. This letter was marked exhibit 3 in the Trial Court it is quoted below:

"Office of the Asst. Regional Controller of Procurement Burdwan.

Memo. No. 7926/X-15/50, dated 29th November, 1950.

To M/s. Mahabir Rice Mill, Burdwan.

Ref: Your notice u/s 80 C. P. C. dated 3rd October, 1950, to State of West Bengal with regard to compensation for refraction of paddy claimed by you. I am directed by the A. R. C. P. Burdwan to request you to attend either personally or by an authorised agent with all the papers in support of your claim referred to above on 4-12-1950. You are hereby informed that your claim is under examination.

Illegible Dy. A. R. C. P., Burdwan. 29-11".

16. The above letter would show that on receipt of the notice u/s 80 of the Code of Civil Procedure, Government was writing to the rice mill to attend the office of A. R. C. P. either personally or by an authorised agent with all necessary papers tor supporting the claim of the mill. It is then clear that until 29-11-1950, there was no refusal on the part of Government to pay the demand of the mill. In the plaint, the plaintiffs respondents have chosen to show that the cause of action arose on 29-11-1951, when a final letter was written to R. C. P. which remained unanswered. In our opinion, it does not mean that the cause of action had arisen on the writing of the letter and not on any previous date. In our opinion, the cause of action had really arisen before the date and it was continuing, and the plaintiffs chose the particular date of 29-11-1951, in the plaint for the purpose of computing the period of limitation. This being our view, we are not prepared to say that the notice in question is defective. It is, no doubt, true that the terms of Section 80 of the CPC are to be strictly complied with, but it does not mean that the terms of the notice should be scrutinised in a pedantic manner, or in a manner completely divorced from common sense. A little common sense must be imported in the notice u/s 80 of the Code of Civil Procedure. Vide Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), .

17. On a consideration of these facts and circumstances, we are of opinion that the notice u/s 80 of the CPC which was served in this case was neither premature nor illegal. The first contention urged on behalf of the appellant, therefore, fails.

18. The other objection urged by Mr. Chakravarti on behalf of the appellant State

was that the claim of the plaintiffs respondents is barred by limitation. Mr. Chakravarti contended that according to the admission of the respondents themselves as made in the notice the starting point of limitation would be 20-7-1948. The suit was instituted more than three years after that date. The claim of the respondents would, no doubt, be barred by limitation, if the above mentioned date is taken as the starting point for limitation. But from what we have already stated in the foregoing part of this judgment, it would be clear that limitation could not have run from that date. On that date, the respondents merely represented the bills to the A. R. C. P. Until Government declined to pay the amount of the bills, either expressly or by implication, it could not be said that the contract on the basis of which the claim was made had been broken by Government. In our opinion, such a breach of contract must have taken place after 29-11-1950, when the Deputy A. R. C. P. wrote to the Rice Mill that the claim of the respondents was under examination. The present suit was instituted within three years of 29-11-1950. The claim is not barred by limitation. The second contention urged on behalf of the appellant therefore, fails.

19. All the contentions urged on behalf of the appellant having failed this appeal is dismissed with costs to the respondents.

20. The decretal amount must be paid by the appellant to the respondents within two months from this date if they have not already been deposited in the Court below.

K.C. Sen, J.

21. I agree.