
(1950) 08 MAD CK 0011

In the Madras High Court

Case No : Civil Revision Petition No. 247 of 1948

The Governor-General of India in Council

APPELLANT

Vs

G. Krishna Shenoy

RESPONDENT

Date of Decision : 10-08-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Evidence Act, 1872 — Section 106

Railways Act, 1890 — Section 77

Citation : AIR 1951 Mad 327 : (1942) 55 LW 1173 : (1950) 2 MLJ 506

Hon'ble Judges : Horwill, J

Bench : Single Bench

Advocate : S.S. Ramachandra Iyer, for the Appellant; T.A. Anantha Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Horwill, J.—The plaintiff entrusted on 11-12-1943 a parcel of iron screws to the South Indian Railway, Ernakulam, and consigned it to a

client at Vishakapatnam. To Vishakapatnam the parcel would have had to travel over the lines of the South Indian Railway up to Jalarpet, on the

M. & S. M. Railway from Jalarpet Waltair, and on the B. N. Railway from Waltair to Vishakapatnam. The South Indian Railway were able to

satisfy the plaintiff that the parcel had been safely handed over to the M. & S. M. Railway authorities, Jalarpet. In answer to interrogatories, the M.

& S. M. Railway stated that they had entrusted the goods to the B. N. Railway at Waltair, but they produced no evidence in support of this, and

the case proceeded on the basis that the parcel was in the custody of the M. & S. M. Railway, who are the petitioners here, at all relevant dates.

After much correspondence the plaintiff sent a notice on 29-9-1945 purporting to

be a suit notice addressed to the Secretary of State for India. At that time, the proper authority to whom notice should have been given was the Governor-General in-Council. It was however received by the authority empowered to receive notices addressed to the Governor-in Council and was dealt with as if it had been a notice to the Governor-General. A suit was filed against the Governor-General-in-Council on 20-3-1946, and on account of an objection raised in the written statement, a formal notice addressed to the Governor-General was given on 14-11-1946.

2. Various issues were taken in the suit, the principal ones being that no proper suit notice was given such as was required u/s 80, Civil P. C. and that the suit was barred by limitation, in that Section 77, Railways Act, requiring that a person shall prefer his claim within six months of the loss, destruction or deterioration of his goods, has not been complied with. The issues were decided against the Governor-General-in-Council and a decree passed in favour of the plaintiff. The Governor-General-in Council or his successor-in-interest has filed this civil revision petition.

3. The question as to whether the claim lies against the M. & S. M. Railway or against the B. N Railway has not been seriously pressed here. The contention that the goods were lost after being entrusted to the B. N. Railway was mentioned in answer to certain interrogatories by the plaintiff ; but no attempt was made to prove this. The matter was not seriously pressed even in the lower Court. I hold this point against the petitioner.

4. The contention based on the requirements (of Section 80 Civil P. C., need not detain us long. Although the name of the Secretary of State was inadvertently given at the head of the notice yet it was treated by the Governor General-in-Council as a notice to him, and action was taken on the notice in the same way as if the notice had been addressed to the Governor General-in-Council. In my opinion, this is sufficient compliance with the requirements of Section 80, because the Governor-General-in-Council was in fact given notice. The learned counsel for the Railways strongly relies upon an obiter dicta in the judgment of Leach C. J. in The Governor-General in Council Vs. T.M. Krishnaswami Pillai, . Being unnecessary for the disposal of the appeal before the learned Judges, the learned Chief Justice did not find it necessary to say very much on this head. He referred to the mandatory nature of the provisions contained in Section 60 and

considered that in the case before him and his colleague a proper notice such as was required by Section 60 was not given. That case can however be distinguished from the present case on the facts, in that the notice here sent to the Secretary of State for India was accepted by the Governor-General-in-Council and treated by him as notice to himself. Moreover, the suit there was actually filed against the Secretary of State for India and not, as here, against the Governor-General-in-Council. It seems to me that notice was given to the Governor-General-in-Council, notwithstanding an error in the matter of designation.

5. The issue regarding the effect of not making a formal claim within six months of the despatch of the goods is one that deserves more

consideration, in that, as has been pointed out in several cases, the object of Section 77, Railways Act, is that the Railways should not be liable for

goods that had been lost long before, on a claim made at a time when an enquiry and examination of records would not be easy, on account of

lapse of time. However, we have to construe the section as it is ; and it purports to relate only to compensation for loss, destruction or

deterioration of goods, and would not therefore seem to apply in cases where there was, for example, a detention by the railway. Supposing, for

example, the railway administration had conducted only a very perfunctory enquiry upon the plaintiff's claim and, in fact, the goods were lying at

one of their stations, could it be said that the goods had been lost ? In my opinion, it could not, and Section 77 would not apply to a case like that.

When the plaintiff applied for compensation for goods that had not been delivered to the consignee or that had not been redelivered to him, he was

not in a position to know what had happened to the goods. If the railway authorities wished to oppose his suit and have him non-suited, on the

grounds that he had submitted his claim beyond six months of the date of delivery of the goods for carriage by the railway, then it would be

incumbent on them to show that his claim was beyond six months from the date of entrustment of the goods and also that the goods had been lost,

destroyed, or deteriorated.

6. In the many cases that have come up before the Patna High Court from *G.I.P. Ry. Co. Vs. Gopi Ram Gouri Sankar*, , onwards, there has been

a clear and consistent authority that Section 77 does not apply except where the

property has been lost, destroyed or deteriorated and in particular

it does not apply to mere non-delivery. The Allahabad High Court seems to be of like opinion, the leading authority of that High Court on this

matter being Secretary of State Vs. Firm Daulat Ram-Makhan Lal, . That was a case of misdelivery of steel sleepers, in which it was held that

where there was misdelivery there was no loss and that Section 77 did not therefore apply. My attention has not been directed to any authority of

the Allahabad High Court subsequent to this where a contrary opinion has been held. In the Assam Bengal Rly. Co., Ltd. v. Radhica Mohan Nath.

28 C. W. N. 488 : A. I. R. 1923 Cal. 397, the learned Judges were prepared to place a very wide meaning on the word "loss" in Section 77.

They seemed to dissent from a decision of Jwala Prasad J., in an earlier Patna case, East Indian Rly., Co. v. Kahcharan Ram Prasad, 69 I. C. 103

: A. I. R. 192 Pat. 106. They were inclined to hold that in any case where a person sought compensation for goods not delivered Section 77

would apply. Even there however they left open the question whether in a case where goods had been wrongly obtained by the railway authorities

Section 77 would have any application. In Shamsul Huq Vs. Secy. of State, , in which on account of the wrong action of the railway authorities in

detaining the goods, the goods perished, the learned Judge held that Section 77 would have no application. He specifically referred to the earlier

Calcutta case quoted above, and said that in the Radhakanta Pal Vs. Manomohinee Pal, , the learned Judges had clearly appreciated the

distinction between loss, destruction or deterioration of goods on the one hand and detention or conversion on the other.

7. The only other case which in any way helps the petitioner is M. & S. M. Rly. Co. Ltd. v. Haridass Banmali Dass, 41 Mad. 871: AIR 1919

Mad. 140, in which there was a wilful delivery of goods to a person who was not in possession of a railway receipt. It was held that such a case

was covered by Section 77; and the learned Judges there, like the learned Judges in the Assam Bengal Rly. Co. Ltd. v. Radhica Mohan Nath, 28

C. W. N. 438 : A. I. R. 1923 Cal. 397, were inclined to place a very wide meaning on the word "loss." What was however said in that case must

be read in the context as applying to the facts of that case. Where the fate of the goods is known and loss had been irretrievably caused to the

consignor by delivery to a wrong person, I would have no hesitation, even I had no support from *M. & S. M Rly. Co. Ltd. v. Handoss*

Banmalidass, 41 Mad. 871: AIR 1919 Mad. 140, in saying that there was a loss to which Section 77 would have applied. I do not however find

anything in that judgment which would lead me to conclude that, had the learned Judge had to consider the possibility that the goods had been

detained by the railway authorities and were still in their possession, Section 77 would have applied. We do not know in this case what happened

to the goods ; but judging from the answers given in the interrogatories it would have been a simple matter for the railway authorities to have

proved, if they had so minded, that the goods had been lost; if so, then the suit would have had to be dismissed. The fate of the goods was

specially within the knowledge of the railway authorities. They had documents and records which would have enabled them to trace the progress

of the goods from Jalarpur onwards; but they adduced no evidence of what had become of them. It seems to me that the learned Subordinate

Judge was justified in holding that since the railway authorities had failed to show that the goods had been lost, he could not apply Section 77.

8. The civil revision petition is dismissed with costs.