
(2000) 07 P&H CK 0184
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1792 of 1983

Union of India

APPELLANT

Vs

M/s. Fibre Processors Pvt. Ltd.

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 79, 80
Railways Act, 1890 — Section 73

Citation : (2001) 1 RCR(Civil) 141

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Judgement

Swatanter Kumar, J.—These two revisions have been on the regular board of this Court since 18.7.2000. Despite the fact that the cases have been called out on various occasions, nobody appeared for the petitioner. This Court is left with no choice, but to decide the matter in accordance with law.

2. By this order I propose to dispose of two revisions being Civil Revision No. 1792 of 1983 and Civil Revision No. 1793 of 1983 both titled as Union of India v. M/s Fibre Processors Pvt. Limited.

3. M/s Fibre Processors Pvt. Limited filed two suits on 12.9.1980 for recovery of Rs. 45,000/- and Rs. 45,810/- against invoices bearing Nos. 7 and 8, respectively. According to the plaintiff, it had handed over the consignment of Raw Jute weighing 21,775 and 21,674 kilograms vide receipts No. 786159 and 786163, dated 21.10.1977, respectively. The consignments were involved in fire while in custody of the Railways. For the damaged goods and for receipt of the goods in good condition, the plaintiff filed the above two suits for recovery of Rs. 36,570/- and Rs. 35,336.28 with Central Sales Tax @ 4% and proportionate freight charges with interest @ 12% totalling to Rs. 45,000/- and Rs. 45,810/- respectively. The plaintiffs had served a notice u/s 80 of the CPC prior to the institution of suit. As the defendants failed to appear despite service, they were ordered to be proceeded against ex parte and finally the ex parte decrees were

passed by the learned trial Court against the defendant on 28.4.1981. The trial Court specifically noticed that the view of the defendants in rejecting the claim of the plaintiff on the basis of Section 73 exception (i) of the India Railways Act, 1890 was not satisfied as the defendant failed to show that the fire was for a reason beyond the control of the carrier or foresight. After being fully satisfied and mainly relying upon Ex. P3, decrees for the amount afore-noticed were passed. The defendants filed an application under Order 13 read with Section 151 of the CPC for setting aside the ex parte decree dated 28.4.1981. It was stated that the General Manager of the concerned Railway was not served in accordance with law and they came to know of the ex parte decree only on 9.9.1981 and thereafter they filed the applications for setting aside ex parte decrees. Upon notice, the plaintiff filed reply to the applications and the learned trial Court framed the following issues :

" 1. Whether there are sufficient grounds for setting aside the ex parte decree ?
OPA

2. Whether the application is within limitation ? OPA

3. Relief."

4. After considering the said issues the learned trial Court dismissed the application by coming to the conclusion that neither sufficient cause has been shown for setting aside the ex parte decrees nor the applications were within time. In fact, the learned Court also dealt with the merits of the contentions raised in regard to suits including legality of the service of notice on railways. The observations of the learned trial Court in this regard read as under:

"He admitted in his cross-examination that the summons Ex. RI sent in the suit was received in the office of the Secretary Railway Board. There is also stamp of the said office with the initials of the concerned clerk regarding the receipt of the said summons. It was argued that the suit was filed against the Union of India, through Secretary, Ministry of Railways, Government of India, New Delhi. However, there is no post of the Secretary, Ministry of Railways, Government of India as also admitted by the plaintiffs counsel. However, the summons were served in the office of the Secretary Railways Board. There is admittedly a post of Secretary Railways Board as also admitted by K.D. Misrani AW1. So, the summons in the suit were duly served on a proper person for the defendant. Order 27 CPC which provides for suits by or against the Government etc. does not make any specific provision in this respect. Section 79 CPC also simply provides that in a suit by or against the Government the authority to be named as plaintiff or defendant shall be the Union of India in a suit by or against the Central Government. The present suit was rightly filed against the Union of India. But it has not been mentioned in Section 79 CPC as to on whom the service is to be effected. Learned counsel for the applicant also could not point out any specific provision in this respect. However, learned counsel for the applicant referred to Section 80 CPC which lays down that in the case of a suit against the

Central Government where it relates to a railway, notice u/s 80 CPC should be served on the General Manager of that railway. The present suit also related to railway and so notice u/s 80 CPC should have been served on General Manager of that Railway. Perusal of the suit file shows that notice, copy Ex. P.8, u/s 80 CPC was served by the plaintiff on the defendant through General Manager, Central Railway, Bombay. So notice u/s 80 CPC was validly served by the plaintiff on (he defendant through General Manager of the concerned railway."

5. In addition to the above findings while relying upon the judgments of different High Courts including this Court in the case of Rattan Singh v. Hari Bilas 1970 PLK 926, the learned trial Court also held that the applications were barred by time as defendants acquired the knowledge of decrees as back as on 23.7.1981 through letter written in this regard by the plaintiff.

6. The Union of India preferred appeals against the order dated 30.3.1982. The learned 1st Appellate Court by detailed judgment affirmed the findings recorded by the learned trial Court and gave additional reasons for sustaining the view by the learned Court below, which read as under:

"An additional circumstance which goes against the arguments of the learned counsel for the appellant is that the present appeal has been filed by the Union of India through Additional Chief Claims Officer and not through the General Manager, who according to the learned counsel for the appellant was the competent person to be impleaded as a defendant in the case and on whom summons ought to have been served. The very fact that the appeal has been filed through the Additional Chief Claims Officer goes against the argument of the learned counsel for the appellant and supports the view that service of summons of the suit on the Secretary Railway Board was a valid and due service on the defendant in this case."

As the applications of the Union of India against the two decrees passed by the learned trial Court were dismissed and the appeals preferred, as afore- noticed, were also dismissed, the Union of India has filed the present two revisions.

7. In the recent years the Courts may have been taking a little lenient view in regard to setting aside the ex parte decree, but one fact which cannot be overlooked by this Court is that 17 years earlier the law governing the subject was different and was rigid in its application. Further, various judgments of the Hon"ble Apex Court as well as High Courts have been holding that the plea of limitation must apply with all its consequences. Therefore, setting aside of an ex parte decree coupled with the deficiency of limitation could not be done in a mechanical manner. The applicant is required to show specific and sufficient cause(s) for its absence before the Court. In the present case both Courts have come to a concurrent finding of fact that the Union of India had been served in accordance with law and it had the knowledge of the proceedings before the Court through letter written in this regard dated 18.7.1981, admittedly received by them on 23.7.1981. The knowledge of the decrees was also admitted by the

officials of the concerned department. It will hardly be fair to set aside decrees and the others impugned, now, after a period of 17 years especially when the impugned orders under revision do not suffer from any error of evidence produced before the Courts. The approach of the Courts below was fully in consonance with the settled principles of law prevailing at the relevant time. It may also be noticed that the High Court while admitting these revisions, did not grant any stay except the amount could be withdrawn by furnishing security.

I see no reason to interfere in the impugned orders. Resultantly, both these revisions are dismissed, however, without any order as to cost.

8. Revisions dismissed.