

(1983) 01 DEL CK 0018
In the Delhi High Court
Case No : C.R. No. 545 of 1982

Union of India

APPELLANT

Vs

V.P. Kochhar

RESPONDENT

Date of Decision : 14-01-1983

Acts Referred:

Citation : AIR 1984 Delhi 10

Hon'ble Judges : Yogeshwar Dayal, J

Bench : Single Bench

Advocate : Vijender Jain, for the Appellant; Ishwar Sahai, for the Respondent

Judgement

Yogeshwar Dayal, J.—This revision petition is directed against an order of Additional District Judge. Delhi dated 23rd Feb. 1982 whereby the learned Additional District Judge dismissed an appeal filed by the Union of India against the judgment dated 3rd Dec. 1981 passed by the learned trial Court dismissing an application filed by the petitioner-Union of India under the provisions of O. 9, R. 13 of the Civil P.C.

2. The plaintiff-respondent herein was dismissed from service during 1979. He filed a suit on or about 3rd Dec. 1979. The suit was filed for declaration that the dismissal of the plaintiff was illegal and ultra vires and also there was a claim of money. In the plaint the respondent-plaintiff made the defendants as under :--

1. Union of India (to be served through).

(a) The Secretary,

Ministry of Railway (Railway Board)

Rail Bhavan,

New Delhi.

(b) General Manager,

Northern Railway.

Baroda House,

New Delhi.

3. Two summons were issued to the defendants as detailed above. Summons addressed to authority at 1(a) was served on 24th Dec. 1979 whereas the summons to authority at 1(b) was served on 7th Dec. 1979. In spite of service nobody appeared on behalf of Union of India and after recording ex parte evidence, the learned trial Court passed a decree dated 26th May, 1980.

4. On or about 15th Sept. 1980 the Union of India filed the aforesaid application under O. 9 R. 13 of the Civil P.C. for setting aside the aforesaid ex parte decree. In this application it was inter alia alleged that after the service of the defendants on a clerk of Railway Board, the Railway Board wrote a letter to the Senior Sub-Judge on 18th Dec. 1979 that as the case related to the General Manager, Northern Railway, summons be sent to him for necessary action. A copy of the summons was also sent by the Railway Board to the office of the General Manager, Northern Railway. It was also stated that the summons was also served on the clerk of the office of the General Manager, Northern Railway, directly. It was further averred that the office of the General Manager, Northern Railway, then sent the summons to the office of the Divisional Railway Manager, Northern Railway, New Delhi, as the case did not relate to the headquarters office of the Northern Railway. It was then averred that the summons were misplaced somewhere in the office of the Divisional Railway Manager and consequently they could not reach the concerned official who deals with the legal cases on behalf of the Northern Railway. It was then pleaded that the summons having been misplaced without their having reached the Legal Branch of the Divisional Railway Manager, no date of hearing was noted by anyone and consequently none appeared in the Court on 10-1-1980 when the case was fixed. It was further stated that the plaintiff (respondent herein) wrote a letter dated 25-8-1980 to the Secretary, Railway Board, which was received by the said office on the same date and it was on receipt of that letter that the Railway Board came to know about the ex parte decree having been passed by the Court on account of non-appearance of any of the defendants. It was also stated that thereafter the Railway Board immediately approached the office of the General Manager, Northern Railway and informed him of the passing of the ex parte decree against the Union of India. A copy of the judgment was also sent by the plaintiff (respondent) along with the letter dated 25th Aug. 1980. It was pleaded that the non-appearance of anyone on behalf of the defendants on 10-1-1980 was not intentional and was for the reasons that the summons which (had been sent by the office of the General Manager, Northern Railway, to the office of the Divisional Railway Manager, Northern Railway, New Delhi, was misplaced somewhere and nobody knew about the date of hearing and thus there was sufficient cause for non-appearance of anyone on behalf of the defendants on 10-1-1980. It was in these circumstances that the defendants prayed for setting

aside of the ex parte decree.

5. Along with this application an affidavit was filed by Shri Raja Ram. Superintendent, Legal Branch of the Divisional Railway Manager's office. Northern Railway, New Delhi, stating inter alia that the summons were sent by the office of the General Manager to the office of the Divisional Railway Manager vide entries Nos. 86 and 91 but the same were misplaced in the office of the Divisional Railway Manager and they never reached him. He also stated that he is a concerned official who deals with legal cases in the Divisional Railway Manager's office and neither the summons nor the plaint of the above case reached him. As the summons did not reach him the date of hearing was also not noted by him and consequently none appeared on behalf of the defendants on the date the suit was fixed for hearing.

6. The application was opposed on behalf of the plaintiff and he disputed that there was any sufficient cause for non-appearance of the defendants in spite of service. The plaintiff also pleaded that the application was barred by time.

7. Normally such applications are decided on affidavits but it appears that the matter was set to trial by leading evidence.

8. In support of their case, the Union of India examined as many as seven witnesses.

9. The first witness examined was Shri Birbal (A.W. 1), a clerk in the office of, Northern Railway, Headquarters Branch. He deposed that both the summons issued to Union of India (i) in the office of the Railway Board and (ii) in the office of General Manager, Northern Railway, were received on 24th Dec. 1979 and 7th Dec. 1979 respectively and these were sent to the office of the Divisional Superintendent, Northern Railway, vide documents A.W. 1/1 and A.W. 1/2. The summons which was served on the General Manager. Northern Railway, was dispatched on 10th Dec. 1979 whereas the summons sent to" the Railway Board was dispatched on 24th Dec. 1979.

10. Thereafter, Sh. Pyare Lal (A.W. 2), a Senior Clerk in the office of the Divisional Railway Manager, Receipt Branch, was examined. He inter alia stated" that only one summons was received on 26th Dec. 1979 which was sent by him vide a dak slip A.W. 2/1 to the Personal Branch and this was the summons which had been received from the office of the Railway Board. He also deposed that no other summons was received in the office of the Divisional Railway Manager in relation to any case of the plaintiff.

11. The Union of India then examined one Smt. Pinki Sabharwal (A.W. 3), a clerk in the office of the Divisional Railway Manager. She inter alia stated that she receives dak from the Receipt Branch and on 26th Dec. 1979 she was on leave. She stated that she has brought the dak register. She also stated that in her absence somebody else was working. She also deposed that in the dak register there is no entry whatsoever of the dak receipt from 25-12-1979 to 1-1-1980.

The entries are only up to 24-12-1979. She also deposed that the dak in respect of entries Nos. 240 to 293 dt. 37-12-1979 was received but the entire dak was missing.

12. The next witness examined was one Smt. Indu Chopra (A.W. 4). clerk in the office of Divisional Railway Manager working in pivot Section (Personal Branch) from 1-1-1980. She stated that there is no entry of 26th Dec. 1979 at all. She also stated that she received the summons of 24-12-1979 at entry No. 439 and she got it entered with the Bills (4) Branch on 10-1-1980. Of its own this witness was not necessary to be produced but the next witness (A.W. 5) was Smt. Kamla Topo. H.C., Divisional Railway Manager's Office, Bill Section, she proved receipt of one summons on 24-12-1979 which was entered on 10-1-1980. The idea of producing A.W. 4 and A.W. 5 is to correlate a particular summons as relating to a case of Saharanpur and not relating to the case of the plaintiff.

13. Thereafter the Union of India examined Shri Raja Ram (A.W. 6). Chief Law Assistant. Divisional Railway Manager's office and he stated that he deals with Court cases & summons relating to staff, Delhi Section. He also stated that no summons was received by him in relation to the plaintiff.

The next witness examined on behalf of the Union of India was Shri H.L. Bajaj (A.W. 7), Desk Officer, Establishment General Branch, Railway Board, New Delhi. He inter alia stated that whenever summons are received from the Courts; in case the name of Zonal Railways are mentioned in the same, they are sent to the concerned General Manager of that Zonal Railway for necessary action. He further stated that the summons pertaining to the case of the plaintiff was received in his office and it was forwarded to the General Manager. Northern Railway, on 18-12-1979 and the forwarding copy of the letter is Ext. A.W. 7/1.

14. The plaintiff examined two witnesses (i) pritma Ghosh and (ii) himself, and proved that he sent two letters dt. 14-7-1980 and 12-8-1980. Another letter addressed by the plaintiff to the Railway Board is dt. 25-8-1980.

15. I may mention that all these three letters were addressed to the Secretary, Ministry of Railways (Railway Board). New Delhi.

16. The Union of India admitted the receipt of letter dt. 12-8-1980 on 25-8-1980.

17. The learned trial Court held that the Office of the General Manager, Northern Railway, was served on 7-12-1979 and the office of the Railway Board was served on 24-12-1979. The learned trial Court also found that the loss of summons is not sufficient cause for non-appearance on the date fixed for hearing of the suit. The learned trial Court also cast doubt on the evidence which was led as to the proof of loss of summons.

As stated earlier the Union of India went up in appeal and the appellate court dismissed the appeal and held that there was service of summons (which was in fact admitted), but held that the Union of India cannot take advantage of misfeasance or nonfeasance of its officers if they lost the summons. But no

finding was given whether if loss has in fact occurred of summons, it would construe sufficient cause or not. No finding was also given whether there was in fact loss of summons or not.

18. Normally speaking in revision this Court is not concerned with questions of fact. This Court is concerned if there is any error of jurisdiction or material illegality or irregularity in exercise of jurisdiction.

19. Application under O. 9 R. 13 lies if the party is not served or he shows sufficient cause for non-appearance on the date for which he was served. There is thus two parts of O. 9, R. 13.

20. In this case it was admitted case that the defendants had been served. The only dispute is whether there was sufficient cause for their non-appearance on the date fixed or not. I have already noticed the evidence led by the Union of India and it transpires that after the summons which was addressed to the General Manager, Northern Railway was received by the clerk concerned on 7-12-1979 and he also forwarded the same to the Divisional Superintendent of Northern Railway vide letter Ext. AW. 1/1 but the same did not reach even the first step namely the office of the Divisional Railway Manager or Divisional Superintendent's office.

The summons which was served on the Railway Board was received by the office of the General Manager on 24-12-1979 and the same was also sent to the office of the Divisional Superintendent, Northern Railway, on the same date vide Ext. AW. 1/2.

21. Shri Pyare Lal, who appeared as A.W. 2 admitted the receipt of these summons, from the headquarters. He stated particularly that he received no other summons. The Divisional Railway Manager's office. Receipt Branch, then forwarded the summons which was received vide Ext. AW. 1/2 to the Personal Branch vide Ext, AW. 2/1. Thereafter the Union of India examined AW. 3 and A.W. 4 and it transpires from their evidence that the Pivot Section (Personal Branch) of the office of Divisional Railway Manager did not receive the summons. It is also clear from the statement of Shri Raja Ram (AW. 6) that he never received any summons in this case which he normally receives as he is the person to whom the summons are being sent for attending the Court. It is true, that Shri Raja Ram had not taken the register with him where these summons are regularly entered, but no effort was also made by the plaintiff to call that register to be produced.

22. I have no reason whatsoever to disbelieve any of the witnesses produced on behalf of the petitioner. It is not a personal matter of their that they would come to depose out of way against the plaintiff.

23. It is clear from their evidence that after the summons which was sent to the General Manager. Northern Railway the same was receipted by their clerk but it never reached the office of the Divisional Railway Manager. So far as the

summons which was sent to the Railway Board is concerned it reached till the Divisional Railway Manager's office but from there it never reached the Pivot Section (Personal Branch). It is also clear that in the register of Receipt and Dispatch Branch there is no entry of any summons or any documents from 25-12-1979 to 1-1-1980 and therefore it appears to have been lost in transit and it never reached to the Law Department.

24. It may be due to the negligence of one peon or the other but the question is whether it amounts to sufficient cause or not.

25. To my mind the approach of both the Courts below is totally erroneous. It certainly amounts to sufficient cause. The Government departments function through their officers. They may be liable" for misfeasance or nonfeasance towards Government. It was nobody's case that the summons were deliberately misplaced or there was any mala fides. The summons were lost in transit and within the meaning of O. 9 R. 13 of the Civil P.C. there was sufficient cause for non-appearance of the defendants on the date of hearing fixed in the suit.

26. It was then contended that the application was barred by time and in this connection Shri Ishwar Sahai, learned counsel for the respondent, brought to my notice three letters, which were addressed by his client to the Secretary, Ministry of Railways, (Railway Board), New Delhi.

It will be noticed that whenever Union of India is to be sued, it has to be sued through the Secretary of the Ministry concerned. In the case of Railways, parties are allowed to sue through the General Manager of the Railways concerned. In this case since the suit related to Railways, Union of India could be served through the General Manager. Northern Railway. There is no meaning of suing Union of India through Railway Board. Railway Board is different from the Ministry of Railways. Railway Board has a separate entity. The executive authority in connection with the administration of Railways in India vests in the Central Government in the Ministry of Railways by virtue of Indian Railways Act. Railway Board has merely been vested with certain powers by the Central Government. In fact in the case of K.N. Shukla Vs. Navnit Lal Manilal Bhat and Another, in para 8, the distinction of Railway Board and the Ministry of Railways has clearly been brought out.

27. All the three letters, even if I assume for the sake of arguments were sent by the plaintiff namely 14-7-1930, 12-8-1980 and 25-8-1980, they were sent at the wrong place. By sending these letters to the Railway Board, the Union of India cannot be fixed with knowledge of passing of the decree. In fact it is stated in the application that the letter dt. 12-8-1980 was received in the office of General Manager. Northern Railway, only on 25-8-1980 and therefore the authority concerned got merely an idea that the decree has been passed and as an ordinary citizen spent some time to find out how it has happened.

28. The Union of India had filed the application in Court on 17-9-1980. Even if there was knowledge acquired by them. I would condone delay under Sec. 5 of

the Limitation Act in the circumstances of the case.

29. The result is that the orders of the courts below are set aside and the ex parte decree dt. 26th May. 1980 passed by the trial Court and the ex parte proceedings are set aside and the Union of India is allowed to contest the suit.

30. Parties are directed to appear before the trial Court on 21-2-1933. There shall be, however, no order as to costs of the present proceedings.