
(1951) 04 CAL CK 0018
In the Calcutta High Court
Case No : Civil Revn. No. 1019 of 1950

Union of India (UOI)

APPELLANT

Vs

Indumati Saha

RESPONDENT

Date of Decision : 05-04-1951

Acts Referred:

Railways Act, 1890 — Section 140, 77

Citation : AIR 1951 Cal 512 : 55 CWN 662

Hon'ble Judges : R.P. Mookerjee, J; Guha, J

Bench : Division Bench

Advocate : Bhabesh Narayan Bose, for the Appellant; Manindra Nath Ghosh and Tarini Prosad Bagchi, for the Respondent

Judgement

Guha, J.—This is an appln. for revn. of an order, dated 29-4-1960, passed by an Addl. Dist. J. of 24-Pergannas.

2. The facts are briefly as follows: On 30-1-1946, sixty-five bags of tobacco were booked by the pltf. opposite party from Nilphamari, a station on the B. A. Rly. Administration for carriage & delivery to him at Khulna which is also on the same Rly. Administration. Both the stations are now within the Dominion of Pakistan. On 8-2-1946, the pltf. was given delivery of only forty, five bags out of sixty-five bags, the balance having been lost in transit. On 22-1 1947, the pltf. instituted a suit against the then Governor-General of India in Council as representing the B. A. Rly. Administration. This suit was instituted in the Ct. of the Subordinate Judge at Khulna, & it was based on a claim for compensation for short delivery of consignment. On 15-7-1948, the Khulna Ct. ordered the return of the plaint to the pltf. holding that the liability was of the Indian Dominion. Thereupon on 80-7-1948, the plaint was refiled in the Ct. of the Subordinate Judge at Alipore against the Dominion of India as representing the E. I. Rly. Administration.

3. The present petnr. viz., the Union of India, as representing the E. I. Rly. Administration, filed a written statement submitting inter alia that the Alipore Ct. had no territorial jurisdiction to try the suit inasmuch as no part of the cause of

action arose within the jurisdiction of that Ct. The trial Ct. found in favour of the pltf. on the merits, but gave effect to the plea of the present petnr. relating to want of jurisdiction, & ordered the return of the plaint. The pltf. opposite party filed an appeal, & an Addl. Dist. J., Alipore, allowed the appeal, & directed the Trial Ct. to proceed with the suit in accordance with law & decree the same in favour of the pltf. The present Revn. appln. is directed against this order of the Addl. Dist. J.

4. In deciding that the Alipore Ct. had jurisdiction to try the suit, the Lower Appellate Ct. was influenced by two considerations, viz., (a) notice u/s 77, Rlys. Act, claiming damages for compensation for the short delivery was served upon the Chief Commercial Manager, B. A. Rly., whose office was at Sealdah, within the jurisdiction of the Alipore Ct. & (b). The E. I. Rly. as represented by the Dominion of India has an office at Sealdah.

5. In our opinion, neither ground, as set forth above, is sound.

6. As regards the first ground, the main point for investigation is whether in view of the provisions of Sections 77 & 140, Rlys. Act, service of notice upon the Chief Commercial Manager is a valid service so as to satisfy the requirements of the above sections. In our opinion, the answer must be in the negative. In the case of a Rly. administered by the Govt. as in the present case, notice has to be given to the Manager of the Rly., & that term, in our opinion, means not any sectional or departmental Manager like the Chief Commercial Manager, but the Principal or General Manager who is in over-all charge of the Rly. administration concerned. The General Manager can override the views of sectional officers & he can compromise or allow or resist any claim, as was pointed out in the decision of Sen J. in the unreported case of Surendra Nath Poddar v. Governor-General of India in Council, (civil Revn. No. 1353 of 1947, D/- 25-11-1948). In The Assam Bengal Railway Co., Ltd. Vs. Radhica Mohan Nath , it was held that a notice to the Traffic Manager would not amount to a notice to the Agent or General Manager. In the present case, therefore, no notice having been served upon the General Manager of the Rly. & his head quarters, it may be pointed out, is outside the jurisdiction of the Alipore Ct.--the Lower Appellate Ct. was in error in holding that there was accrual of cause of action by reason of the service of notice upon the Chief Commercial Manager's office at Alipore.

7. Nor are we prepared to accept the view of the Lower Appellate Ct. to the effect that the Alipore Ct. could have jurisdiction simply because the E. I. Rly., happens to have a subordinate office at Sealdah. Exhibit 8, a notfn. issued by the Rly. Administration is also of no assistance to the pltf. it did not invite claims which were subject-matters of litigation, nor was payment promised at Sealdah when the suit was filed at Khulna. Reference in this connection may be made to the case of Dominion of India Vs. R.C.K.C. Nath and Co., where it was, pointed out that in somewhat similar circumstances as the present one, no cause of action accrued at Sealdah so as to confer jurisdiction upon the Alipore Ct.

8. We hold, therefore, that the Lower Appellate Ct. was not right in holding that the Alipore Ct. had territorial jurisdiction to try the suit. In the result, the Rule is made absolute, the decision of the Lower Appellate Ct. is set aside & that of the Trial Ct. directing return of the plaint is restored & affd. In the circumstances, no order is made as to costs.

9. It is not necessary for us to express any opinion regarding the other aspects of the case so far as the present Rule is concerned.

R.P. Mookerjee, J.

10.I agree.