

(1954) 02 PAT CK 0015
In the Patna High Court
Case No : Civil Revision No. 406 of 1952

Union of India (UOI)

APPELLANT

Vs

Lakshmi Narain

RESPONDENT

Date of Decision : 17-02-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1890 — Section 77

Citation : AIR 1954 Patna 424 : (1954) 2 BLJR 205

Hon'ble Judges : Imam, C.J.; Das, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; Devendra Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—A very short point of law arises on this application in Revision, On 2-1-1951, the plaintiff, who is opposite party before us, booked 10 bags of betel-nut from a station called Nimtala in the suburbs of Calcutta to the Darbhanga railway station. On 27-3-1951, an open delivery of the consignment was taken which was found to have been tampered with. It was then discovered that there was a shortage of goods worth Rs. 192-8-0, On 10-4-1952, the opposite party served a notice which specifically stated that it was a combined notice u/s 77, Railways Act, and S, 80, Civil P. C., on the General Manager of the East Indian Railway administration and the General Manager of the O. T. Railway administration. No reply to the notice having been received, the opposite party instituted a suit in the Court of Small Causes at Darbhanga. He claimed a sum of Rs. 224-4-0 being the cost of the betel-nut and freight etc. Several pleas in defence were taken by the present petitioner, namely, the Union of India. We are concerned now with only one plea, namely, the plea that there was no valid notice u/s 80, Civil P. C., nor a valid notice u/s 77, Railways Act.

2. The learned Small Cause Court Judge held that there was a valid notice both u/s 77, Railways Act, and u/s 80, Civil P. C. He also found in favour of the opposite

party with regard to the amount claimed. He decreed the suit accordingly.

3. The only point which is urged before us on behalf of the petitioner is that a combined notice u/s 77, Railways Act, and Section 80, Civil P. C. is unknown to law and cannot be valid either u/s 77, Railways Act, or u/s 80, Civil P. C. Learned counsel for the petitioner has cited before us several decisions in which the difference of the object of the two notices, one u/s 77, Railways Act and the other u/s 80, Civil P. C., was adverted to and it was observed that a notice u/s 77, Railways Act, could not take the place of a notice u/s 80, Civil P. C. It is worthy of note that those decisions were given before the amendment of Section 80, Civil P. C., in 1948. Section 80 of the Code of Civil Procedure, as it now stands, states, inter alia, that no suit shall be instituted against the Government until the expiration of two months next after notice in writing has been delivered to or left at the office of, in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway. Section 77 of the Indian Railways Act, read with Section 140, of the same Act, requires a notice to be given to the Manager in the case of a railway administered by the Government.

Therefore, the position is that both the notices have now to go to the same person or authority. It is true that the purpose of a notice u/s 77, Railways Act, is not the same as the purpose of a notice u/s 80, Civil P. C. The notice u/s 77, Railways Act, refers to a claim of compensation for the loss, destruction or deterioration of goods delivered to be carried, whereas the notice u/s 80 refers to the institution of a suit against the Government. None of the two provisions state, however, that the two notices must necessarily be on two sheets of paper or must necessarily be given one after the other. Learned counsel for the petitioner has contended before us that the notice u/s 80, Civil P. C., must state the cause of action; and as the cause of action includes a notice under S, 77, Railways Act, it necessarily follows that the notice u/s 77, Railways Act, must precede the notice u/s 80, Civil P. C. There is, however, no warrant for this contention in the provisions of either Section 77, Railways Act, or Section 80, Civil P. C.

It is difficult to see why the two notices to the same person cannot be given at one and the same time and in one sheet of paper, provided at course that, the notice complies with all the requirements of Section 77, Railways Act and Section 80, Civil P. C. The decisions on which learned counsel for the petitioner relies, namely,-- Ali Asmat Shakur Vs. G.I.P. Ry. and Another ; -- "Firm Baiakram-Atma Ram v. Secy, of State" AIR 1835 All 900 (B); and -- Jitendra Nath Basu Vs. Tarak Chandra Roy Choudhury and Others, , all related to cases where one of the two notices had not been given.

4. The point urged by learned counsel for the petitioner is covered by two recent authorities, -- "Moolji Bhai Maneklal & Co. v. Dominion of India" AIR 1352 Nag 22 (D) and -- Dharamsi Liladhar Vora Vs. Union of India (UOI), , In the Nagpur decision Hidayatullah, J. observed as follows :

"No good reason has been shown why, after the amendment, two separate notices should be sent. It is possible to give a single notice complying with the conditions of both the sections. It is possible to give a notice of claim and also of a suit. Such a combined notice will have to be given before six months and the plaintiff will have to wait for two months."

In the Calcutta decision Roxburgh, J- observed :

"The only question then that remains is whether it is essential that notices u/s 77 of the Railways Act, and Section 80, Civil P. C., must be written on separate pieces of paper and must be specifically labelled with their descriptions. I do not think that this is essential..... If the notice given is within the limits of time taken from either end it may well comply therefore in this respect with the purposes both of Section 77, Railways Act, and Section 80, Civil P. C. The notice u/s 80 must of course be a notice indicating that a suit will be brought. The cause of action is to be stated. It may be, in some cases, that a notice u/s 77 could not, by any reading of its contents, be said to comply with the requirements of Section 80. But in the present case, as I have indicated, the terms of the notice sent do comply with the requirements of Section 80, and if in fact it had been labelled as a notice under S, 80, I do not think there would have been any argument that it was not a proper notice under the section."

5. In the case under our consideration the notice specifically stated that it was a notice both u/s 77, Railways Act, and Section 80, Civil P. C. We have examined the contents of the notice. It complied with all the requirements of Section 77, Railways Act, and Section 80, Civil P. C. In my opinion there is nothing illegal in such a combined notice when it fulfils the requirements of both sections. The point taken in revision by the petitioner must, therefore, be overruled.

6. In my opinion the application is wholly without merit and must be dismissed with costs. Hearing fee Rs. 32/-.

Imam, C. J.

7. I agree.