
(1966) 09 KL CK 0013
In the High Court Of Kerala
Case No : C.R.P. 91 of 1965

Union of India (UOI)

APPELLANT

Vs

Lakshmi Textiles

RESPONDENT

Date of Decision : 06-09-1966

Acts Referred:

Railways Act, 1890 — Section 140, 141, 142, 27, 56(1)

Citation : (1966) 09 KL CK 0013

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;S. Velu Pillai, J

Bench : Division Bench

Advocate : K.P. Abraham, K.P. Pathrose and K.K. Poulouse, for the Appellant; V. Bhaskaran Nambiar, C.R. Natarajan and M.K. Ananthakrishnan, for the Respondent

Final Decision : Allowed

Judgement

Velu Pillai, J.—This civil revision petition has been referred to a bench for decision as it raises a question of importance u/s 78B of the Indian Railways Act, 1890 On the 15th March 1962, the respondent consigned goods For carriage by railway from Cannanore railway station for delivery to self at Bllimora railway station. They were not taken delivery of at the destination, and were, at the request of the respondent, re-booked at Bilimora on the 25th June. 1962, for carriage by railway and delivery at Cannanore. The consignment never reached Cannanore The respondent preferred a claim u/s 78B by forwarding it by registered post on the 26th December, 1962. The claim not being met, the respondent sued the revision petitioner, the Union of India, represented by the General Managers of the concerned railways, for compensation for nondelivery of goods. The petitioner contended, that no claim was preferred within the period prescribed by Section 78B The Munsiff overruled the contention and gave judgment to the lespondent which is now sought to be revised.

2. The only question is whether the claim preferred was in compliance with Section 78B. The relevant part of that Section is as follows"

"A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf -

(a) to the railway administration to which the animals or goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred, within six months from the date of the delivery of the animals or goods for carriage by railway:

According to the revision petitioner, the claim had not been preferred within six months from the 25th June, 1962, the date on which the goods were delivered at Bilimora railway station for carriage by railway to Cannanore, Applying Section 9 of the General Clauses Act," 1897. the period of "six months from the date of delivery" has to be reckoned, excluding the 25th June. 1962; so excluding, the period of six months expired on the 26th December 1862. It may be assumed that the 26th December being Christmas day, was a holiday for the post-office and it may further be assumed without deciding, that by virtue of Section 10 of the General Clauses Act, the claim may be made on the next day. the 26th- That was the date on which the claim was forwarded by registered post. It is not necessary to pronounce on these points, for even so. we are of the view that the respondent has to fall.

3. To appreciate the contention of the revision petitioner. Section 78B has to be read with Sections 140 and 142 of the Act. Section 141 though not applicable. has a bearing on the discussion Section 140 provides for three modes of service of a notice or other document required to be served on a railway administration, Section 141 provides for such service on any person by a railway administration and Section 142 raises a presumption as to the point of time when such notice or document shall be deemed to have been served by post. These three Sections may be quoted:--

Section 140. "Any notice or other document required or authorised by this Act to be served on a railway administration may be served, in the case of a railway administered by the Government on the Manager or the Chief Commercial Superintendent, and in the case of a railway administered by a railway company, on the Agent in India of the railway company -

(a) by delivering the notice or other document to the Manager or the Chief Commercial Superintendent or Agent; or

(b) by leaving it at his office; or

(c) by forwarding it by post in a prepaid letter addressed to the Manager or the Chief Commercial Superintendent or Agent at his office and registered under the Indian Post Office Act, 1898 (6 of 1898)"

Section 141. "Any notice or other document required or authorised by this Act to be served on any person by a railway administration may be served-

(a) by delivering it to the person, or

(b) by leaving it at the usual or last known place of abode of the person; or

(c) by forwarding it by post in a pre-paid letter addressed to the person at his usual or last known place of abode and registered under the Indian Post Office Act, 1898 (6 of 1898)."

Section 142. "Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such services it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered "

According to learned counsel for the petitioner, a claim u/s 78B when forwarded by post, has to be in accordance with clause (c) of Section 140 and when so forwarded, the presumption u/s 142 is attracted. Ostensibly, the claim was forwarded by post by the respondent in compliance with Clause (c) of Section 140. This is neither more nor less than service by post within the meaning of Section 142. According to this section, when the claim is served by post, it shall be deemed to have been served at the time when it would be delivered to the addressee in the ordinary course of post. In the case of service by post under Clause (c) of Section 140, three dates may be considered. (1) the date of posting of the notice or other document, (2) the date of actual delivery of it to the addressee and (3) the date when it would be delivered to the addressee in the ordinary course of post. Whether it was actually delivered or not, or if delivered whatever be the date of delivery, the loss of such letter or other document, or incidental delay in the transmission thereof to the addressee, being of no consequence, Section 142 ordains, that the last of such dates shall be taken as the date of service, provided however that the letter containing the notice or document was properly addressed or registered. There is no dispute here that the letter containing the claim was properly addressed and registered. The claim having been posted on the last day of the period of six months, could not have reached the addressee in the ordinary course of post on the same day. According to Section 142, it could be deemed to have been served only after an interval. This is sufficient for holding that the claim was not preferred or served within the prescribed period. The argument that the above construction would virtually reduce the period of six months prescribed by the Section, or would destroy the definiteness of the period by making it dependent upon the ordinary course of post which may vary between different places, cannot prevail over the express provision in Section 142. Even the rule of liberal construction of Section 78B would not permit of Section 142 being overlooked or by-passed.

4. In *Secretary of State Vs. Firm Imperial Metal Works*, a similar view was taken of Section 77 of the Indian Railways Act before amendment which

corresponded to Section 7SB. read with Section 142 It was observed.

"The law requires that the notice should not merely be preferred, but preferred to the railway administration. within six months. What this means in the case of a notice sent by post is made clear by Ss. 141 and 142 of the Indian Railways Act. If the notice was so posted that in the ordinary course of post it should have been delivered to the Railway Company within six months, this would have been a sufficient compliance with the law "

This decision was not followed in two cases. *Rani Gopal Marwari v. Bengal and North Western Railway Co.*, AIR 1927 Pal 241 and *Union of India (UOI) Vs. Asharfi Devi and Others*, In the former it was held to be sufficient, if the claim was preferred in accordance with Section 140 Cause (c) by posting it within the prescribed period This decision was followed in the latter. Though in both of them it was noted, that the claim was preferred according to Section 140(c), the effect of Section 142 was not considered. In the former that Section was not adverted to. and in the latter it was not applied

(B) But learned counsel for the respondent argued, that whereas Section 78B uses the term "preferred". Sections 140 to 142 use the term "served" Such a distinction was not maintained in any of the cases relied on by him, not even in the two cases just cited Even the term "served" according to Clause (c) of Section 140 and Section 141. contemplates no more than forwarding by post and not actual or constructive delivery by post According to the dictionary too, the distinction does not seem tenable It is useful to note that there is no provision in the Act. which expressly and in terms uses the term "serve" or "service by post" on or by the railway administration except Sections 140 to 142. Section 59(2) speaks of "giving" notice to a railway servant, and Section 78B appears to be the only provision in the Act for a notice of claim being given to the railway administration. Similarly Section 56(1) appears to be the only provision in the Act for a notice being served by the railway administration upon any person. It seems to follow, that Sections, 140 and 141 were intended to govern the manner of service of claims or notices under Section 78B and Section 56(1) respectively; to hold otherwise would be to render both Sections 140 and 141 otiose. According to Section 27 of the General Clauses Act. the term "serve" has the same meaning as the terms "give", "send" etc If so. the term "preferred" cannot mean anything different. Apparently, the respondent himself adopted the mode prescribed by Section 140(c) for preferring the claim u/s 78 B. On these considerations. It is not possible to hold that Section 142 has no application to a claim u/s 78B. 161 Learned counsel for the respondent advanced a third argument, based on the interpretation of the words "the date of the delivery", occurring in the clause "within six months from the date of the delivery of the animals or goods for carriage by railway" in Section 7SR According to him, the words "for carriage by railway" qualify the word "goods" and not the date of delivery of the goods," and therefore the period of six months should be counted from the date the goods were to be delivered at Cannanore and not from the

date on which the goods were consigned at Bilimora. The interpretation is opposed to the plain grammatical meaning of the clause. Section 78B uses the words "de livery for carriage" in more than one place and have to be read and understood consistently and not differently if so. The interpretation of the clause suggested is impossible or far-fetched. The decision of the Assam High Court in *Amarchand Pannalal v Union of India*, AIR 1955 Gau 221, does support the respondent. It was dissented from in *Union of India (UOI) Vs. Asharfi Devi and Others*, by a Division Bench and later in *Union of India (UOI) Vs. Haji Jiwakhan*, by a single Judge of the Madhya Pradesh High Court. There are decided cases of other High Courts also, taking a similar view as the Madhya Pradesh High Court. We are accordingly of the opinion that the period of six months u/s 78B has to be computed in the present case from the date of delivery of the goods at Bilimora for carriage to Cannanore, that is, from the 25th June 1962. (7) It follows, that the claim preferred was out of time and was not valid. The Revision Petition has to be allowed and the suit has to be dismissed. We do so but as the revision petitioner succeeds on a technical point, we direct the parties to bear their costs throughout.