

(1970) 08 OHC CK 0003

In the Orissa High Court

Case No : Civil Revision No. 381 of 1969

Union of India (UOI)

APPELLANT

Vs

Mahhammad Jafar Haji Ibrahim and Another

RESPONDENT

Date of Decision : 17-08-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1970) 08 OHC CK 0003

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant;

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The Union of India represented by the General Manager, South Eastern Railway is the petitioner against a concurrent decision of the Courts below in a suit for damages.

2. The plaintiff sued for recovery of Rs. 660.74 which represented the loss of 67 kgs. of betel-nut. The Courts below have concurrently found that there was shortage which duly certified by the Railway Authorities and the claim is justified. The only question which was canvassed in the courts below and negated is one in relation to the notice u/s 80, Civil Procedure Code. The contention about the insufficiency of notice has been raised by defendant No. 1 on the following basis. The notice u/s 80, CPC is Ext. 2. It was given on behalf of Haji Ebrahim Haji Jamal Noor Mohammad and Co., on 6-11-1964. It was admittedly a registered firm which was dissolved by a deed of dissolution of partnership dated 30-9-1965. That document has been produced in Court and is Ext. 5. The terms of this dissolution deed go to show that the good will of the firm Haji Ebrahim Haji Jamal Noor Mohammad and Co. was given to defendant No. 2. Under Clauses 4 and 5 of the said deed the entire business at Cut-tack was given to the plaintiff who commenced to run the business in the name of M/s. Jaffar Haji Ebrahim Jamal. Admittedly the notice was given when the firm was in existence

but by the time the suit was filed there had been dissolution. In the plaint it was specifically stated,

"3. That the original firm M/s. Haji Ebrahim Haji Jamal Noor Hohammad and Co. was a registered firm under the Indian Partnership Act and was carrying on business at Cuttack and several other places.

4. That the said firm M/s. Haji Ebrahim Haji Jamal Noor Mohd, & Co. while carrying on business at Cuttack indented a consignment of 29 bags of betel-nut from Mangalore to Cuttack under Invoice No. 313 R. R. No. 003944 dated 15-9-1964 and when the consignment was delivered at Cuttack on or about 17-10-1964 there was a shortage of 67 kgs. of betel-nuts which was due to gross and culpable negligence and misconduct of the Railway staff. The said 67 kgs. of betel-nuts have not been delivered to the said firm M/s. Hazi Ebrahim Haji Jamal Noor Mohd. & Co. in spite of repeated demands. Hence the said firm M/s. Hazi Ebrahim Haji Jamal Noor Mohd. & Co. sent a notice dated 6-11-1964 u/s 80, CPC and u/s 78-B of the Railways Act to the General Manager, South Eastern Railway, Calcutta calling upon him to pay the sum of Rs. 482.40 together with interest " Re. 1/- P. C. P. M. thereof within the statutory period. The said notice was duly received by the General Manager, South Eastern Railway, Calcutta.

XX XX XX 7. That the said firm having been dissolved in the year 1965 and the present plaintiff having been allotted the Cuttack business the present plaintiff is entitled to the amount in suit and the defendant No. 2 can have no claim whatsoever."

In paragraphs 3 and 4 of the written statement it was stated,

"3. That the averments made in para 4 of the plaint are not admitted and it is submitted that the plaintiff having not served any notice u/s 78-B, I. R. Act or u/s 80, CPC he is not competent to bring the suit against the defendant No. 1.

4. That there is no identity of the person giving notice u/s 80, CPC and the person filing the Suit according to the decision reported in S.N. Dutt Vs. Union of India (UOI),"

One of the issues in the suit was "Has the plaintiff served any valid notice on the defendant No. 1 u/s 78-B of I. R. Act and u/s 80, CPC ? The learned Trial Judge held that in the facts of this case identity of the person issuing notice and the person bringing the suit had been sufficiently established and, therefore, the plaintiff could not be non-suited on the basis of the decision of their Lordships of the Supreme Court in S.N. Dutt Vs. Union of India (UOI), . The learned Appellate Judge has affirmed the said decision. He referred to the two decisions of the Supreme Court reported in Raghunath Das Vs. Union of India (UOI) and Another, and Beohar Rajendra Sinha and Others Vs. State of Madhya Pradesh and Others, By the time the judgment of the appellate court was given, the full reports had not appeared and, therefore, reference was made to the short notes.

3. Mr. Pal for the petitioner confines his contention to the question of validity of the notice. According to him, the two subsequent decisions of the Supreme Court referred to above have no application to the facts of the case and on the facts of this case the ruling of their Lordships of the Supreme Court in S.N. Dutt Vs. Union of India (UOI), is fully applicable.

4. I find difficult to accept the contention of Mr. Pal. The notice Ext. 2 had been given by the registered firm. The plaintiff was admittedly a partner. In the meantime between this notice and the suit there was dissolution of the partnership firm. In terms of the said dissolution deed the business of the firm at Cuttack was allotted to the plaintiff and there was a clear stipulation that the plaintiff would be free to collect the debts owing to the firm. Identity between the person giving notice and the plaintiff has to be established only at the trial and not earlier. In view of the pleadings, Ext. 5 the dissolution deed and the oral evidence, such identity must be taken to have been clearly established.

5. Section 80 C. P. C. provides for notice as a condition precedent to an action against one category of defendants as specified therein. The essential purpose for such notice is to apprise the public officer or the State of the claim. The public officer and/or the State are put in a different category of litigants and as a matter of public policy notice is stipulated so that if upon an examination of the claim contained in the notice, the public officer or the State is satisfied about its bona fides of the claim then it may be conceded. If this is the essential purpose behind the scheme of Section 80 C. P. C. or the corresponding Section 78-B of the Indian Railways Act, a notice had been given under Ext. 2 by the undissolved firm. The plaintiff has sufficiently established the identity of the notice under Ext. 2 with himself. I do not find any justification to require the plaintiff to issue a fresh notice before the suit. The contention of Mr. Pal must, therefore, be repelled. This Civil Revision fails and is dismissed.

6. There was no appearance for the opposite party when the case was taken up. The opposite party is, therefore, not entitled to any costs.