
(1978) 08 GAU CK 0001
In the Gauhati High Court

Union of India (UOI)

APPELLANT

Vs

Mangilal Janakiprasad

RESPONDENT

Date of Decision : 21-08-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Partnership Act, 1932 — Section 69

Citation : AIR 1978 Guw 17

Final Decision : Dismissed

Judgement

1. This is an appeal by the defendant against the judgment and decree of Shri M.M. Rahman, Subordinate Judge, L.A.D., Gauhati in Money Suit No. 48 of 1965.

2. M/s, Mangilal Janakiprasad represented by its Karta Shri Mangilal Agarwalla, filed the suit for a decree of Rs. 7497/- against the defendants i.e. Union of India represented by General Manager, N.F. Railway, Gauhati for non-delivery of a consignment of lima valued at Rs. 6125/- and booked at Gotan Railway Station of the Northern Railways for carriage to Tezpur Railway Station under Invoice No. 3 and R/R No. 180525 dated 27-5-63 by M/s. Gotan Lime Syndicate. The consignor in due course endorsed the Railway receipt in favour of the plaintiff for valuable consideration. Thus, being the owner of the title to the goods and being entitled to receive the goods, the plaintiff demanded the delivery of the good from the officials of the Tezpur Railway Station, who failed to deliver the consigned goods. The factum of failure to deliver the goods was brought to the notice of the authorities, enquiries made, but the whereabouts of the consignment could not be traced; the plaintiff submitted his claim to the Railways u/s 78B of the Indian Railways Act on 21-10-63. No payment was made to the plaintiff in spite of the receipt of the notice and accordingly, the plaintiff served a notice u/s 80 C.P.C. on 21-3-64. To be precise this was a combined notice u/s 78B of the Indian Railways Act and Section 80 C.P.C. The relevant extracts of the notice are set out hereinbelow:

Please take notice that M/S Mangilal Janakiprasad will as a plaintiff institute a

suit against the Union of India representing the Northeast Frontier Railway and Northern Railway for the recovery of....

Plaintiff's name, place of residence and description:

Messrs Mangilal Janakiprasad a firm carrying on business at Tezpur, Police Station Tezpur, Mouza Mahabhairab, District Darrang, Assam.

3. The facts constituting the cause of action were clearly set out and under head "Relief to be claimed" it was also set out that the plaintiff would institute the suit for an amount of Rs. 7089.69 P. The notice was duly served. Thereafter, Shri Mangilal Agarwalla, son of Shri Binraj Agarwalla as the Karta of the plaintiff firm filed the suit in the name of M/s Mangilal Janakiprasad.

4. The defendants appeared and filed written statement and admitted therein that a pre-suit arrangement was made between the plaintiff and the defendants that the defendants would pay a sum of Rs. 2415/- to the plaintiff towards full and final settlement of the plaintiff's claim. The defendants did not take up any plea in the written statement that they had any difficulty to identify or place the firm who had served the notice u/s 80 C.P.C. The defendants took up a general and vague plea as to the validity and sufficiency of the notice u/s 80 C.P.C. The defendants however did not admit that Shri Mangilal Agarwalla was the Karta of the plaintiff firm or that the firm was a Hindu Joint Family business. The defendants also questioned the plaintiff's right to file the suit and further disputed as to the quantum of the claim. Upon the pleadings the following Issues were framed:

1. Whether the suit is maintainable in the present form?
2. Whether the plaintiff has got right to sue?
3. Whether the suit is bad for want of proper notice?
4. Whether this Court has got jurisdiction to try the suit?
5. Whether the claim is inflated ?
6. What relief, if any, the plaintiff is entitled to?

5. The plaintiff examined 3 witnesses in support of his case and proved Exts. 1 to 10. No evidence at all was adduced on behalf of the defendants. The learned Sub-Judge decided the Issues 1 to 4 in favour of the plaintiff and decided Issue No. 5 partially in favour of the plaintiff to the extent that the plaintiff was entitled to get only the Bijuk value of the consignment, which stood at Rs. 5247.50 P. and held that the plaintiff was not entitled to any interest. In the result, the suit was decreed for Rs. 6247.50 P. with proportionate cost. Against the judgment and decree the defendants have preferred the present appeal.

6. Although a number of grounds were taken up in the Memo of Appeal, Shri P.P. Duara, the learned Counsel appearing on behalf of the appellant has canvassed before us only one point requiring determination of "Issue No. 3" which has

already been set out.

7. According to the learned Counsel for the appellants the Notice u/s 80 C.P.C. was invalid in law as the person who had issued the notice and the person who brought the suit was not the same. According to the learned Counsel, in the notice u/s 80 C.P.C. the plaintiff has been described as-

M/s. Mangilal Janakiprosad, a firm carrying on business at Tezpur;

Whereas in the cause title of the suit the plaintiff has been described as-

M/s. Mangilal Janakiprosad being represented by its Karta Shri Mangilal Agarwalla.

8. This being so, the identity of the person issuing the notice was not the same with the person who had brought the suit, was the submission made by the learned Counsel. He has relied on S.N. Dutt Vs. Union of India (UOI),

9. In S.N. Dutt (supra), Their Lordships on examination of the notice and the plaint came to the conclusion that the identity of the person who had issued the notice with the person who brought the suit could not be placed. The notice was issued by a lawyer under instruction from M/s. S.N. Dutt & Co. whereas the plaint was filed by "Shri Surrendra Nath Dutta" as the sole proprietor of the business. Therefore, it was held that there had been obvious difference in the name of the person suing and the person who had issued the notice. It was held that as M/s S.N. Dutt and Co. was only a name and style in which an individual was carrying on business and not a firm, the said M/s S.N. Dutt and Co. could not file a suit. Their Lordships held that Shri Surrendra Nath Dutta who had filed the suit had not served any notice u/s 80 C.P.C. Their Lordships have held on comparison of the notices with the plaint that there was no Identity of the person who issued the notices with the person who had brought the suit. Their Lordships distinguished AIR 1949 143 (Privy Council) on the score that the case of members of a firm stood on a different footing, for the members of the firm might sue in the name of the firm. But in the case, M/s. S.N. Dutt & Co. it was not a firm but was merely the name and style in which the individual Shri S.N. Dutt was carrying on his business. Their Lordships held as under:

Therefore, where an individual carries on business in some name and style the notice has to be given by the individual in his own name for the suit can only be filed in the name of the individual. The present suit is analogous to the case of trustees where the suit cannot be filed in the name of the trust; it can only be filed in the name of the trustees and the notice therefore has also to be given in the name of all the trustees who have to file a suit. Therefore comparing the notices given in this suit with the plaint, and remembering that Messrs. S.N. Dutt and Co. is not a partnership firm but merely a name and style in which an individual trades, the conclusion is inescapable that the person giving the notices is not the same as the person suing.

10. It was held in S.N. Dutt Vs. Union of India (UOI), that the defendant took up

a specific plea that the suit was barred u/s 69 of the Partnership Act as the firm was not a registered one.

11. In our opinion, the facts of the case in hand and those in S.N. Dutt (supra) are completely different. In the instant case if we read the notice along with the plaint we find that M/s. Mangilal Janakiprosad was the firm who had served notice and it was the very firm who brought the suit. The place of business has been shown. Therefore, the person serving the notice and the person filing the suit is one and the same. The defendants did not take up any plea that they were misled as to the identity of the plaintiff and/or the person who had Issued the notice. On the other hand, there is an admission in the pleading that they having had found out the Identity of the plaintiff had agreed to pay a sum of Rs. 2415/-, and in fact issued a cheque in favour of the plaintiff. In our opinion, the said conduct of the defendants clinches the issue in favour of the plaintiff.

12. S.N. Dutt Vs. Union of India (UOI), came up for their Lordships' consideration In a later decision, Raghunath Das Vs. Union of India (UOI) and Another, Hegde, J. speaking for the Supreme Court held as under:

8. The object of the notice contemplated by that section is to give to the concerned Governments and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised without litigation. The legislative intention behind that section in our opinion is that public money and time should not be wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. The purpose of law is advancement of justice. The provisions in Section 80, CPC are not intended to be used as booby traps against ignorant and illiterate persons. In this case we are concerned with a narrow question. Has the person mentioned in the notice as plaintiff brought the present suit or is he someone else ? This question has to be decided by reading the notice as a whole in a reasonable manner.

9. In Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), AIR 1958 SC 274 at p. 281 this Court observed that while the terms of Section 80 of the CPC must be strictly complied with that does not mean that the terms of the section should be construed in a pedantic manner or in a manner completely divorced from commonsense. The relevant passage from that judgment Is set out below:

We are constrained to observe that the approach of the High Court to this question was not well founded. The Privy Council no doubt laid down in AIR 1927 176 (Privy Council) that the terms of section should be strictly complied with. That does not however mean that the terms of the notice should be scrutinised in a pedantic manner or in a manner completely divorced from commonsense. As was stated by Pollock, C.B., in Jones v. Nicholls (1844) 13 M & W 361 : 153 ER 149 "we must import a little common-sense into notices of this kind." Beaumont,

C.J., also observed in *Chandulal Vadilal Vs. Government of The Province of Bombay*, "One must construe Section 80 with some regard to commonsense and to the object with which it appears to have been passed.

10. It is proper to expect that the authorities who received the notice would have imported some commonsense into it. At any rate they should have done so and we must assume that they did. The fact that they did not object to the validity of the notice in their pleadings shows that they never considered the person who brought the suit as being someone other than who issued the notice.

11. It is the contention of Mr. Syed Mohamud, learned Counsel for the Union of India that the present case falls within the rule laid down by this Court in *S.N. Dutt Vs. Union of India (UOI)*, We are not persuaded that It is so. In *S.N. Dutt's* case a notice was sent by a lawyer on behalf of the concern known as *S.N. Dutt & Co.* The notice in question did not indicate either specifically or by necessary implication that the concern in question is a proprietary concern and *S.N. Dutt* was its sole proprietor. Referring to that notice, this Court observed. "The prima facie impression from reading the notices would be that Messrs. *S.N. Dutt & Co.* was some kind of partnership firm and notices were being given In the name of that partnership firm. It cannot therefore be said, on a comparison of the notices in this case with the plaint that there is identity of the person who issued the notice with the person who brought the suit." Further in that case the defendant challenged the validity of the notice right from the beginning.

13. Their Lordships have considered the purpose of provisions relating to notice. It is worthwhile to mention that Section 80 C.P.C. has undergone a change exactly in tune with the observations made by their Lordships in *Raghunath Das Vs. Union of India (UOI)* and Another, It is true that there was a move by the Law Commission to delete Section 80 C.P.C. altogether, but it has been retained in a modified form and Section 80, Sub-section (3), as amended, reads as under:

80. (3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect In the notice referred to in Sub-section (1), if in such notice-

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

xxx xxx xxx

14. The present law, in our opinion, is the upshot of the decision rendered by their Lordships in *Raghunath Das (supra)*. In the present case, the firm which had served the notice is the same firm who filed the suit. Their right to file the suit has been upheld by the trial court and the validity or correctness of the findings has not been questioned before us. The defendants did not take up the

plea that they were misled as to the identity of the plaintiff, contra, the defendants could place the plaintiff, had negotiations and agreed to pay a certain amount and they stare on the face of the records.

15. We have no manner or doubt that the firm which had served the notice has brought the action and the Karta of Hindu Joint Family firm has presented the suit as the representative.

16. Section 80 C.P.C. should be construed with some regard to common-sense bearing in mind the object for which it stands. The defendants did not, in our opinion, very rightly take up any plea in their written Statement as to the validity of the notice on the score that the person who had brought the suit was somebody other than the one who had issued the notice. Therefore, we are firm in our view that the notice was not invalid in law as contended by the learned Counsel for the appellants.

17. We are of the positive view that the principles of law laid down by their Lordships in Raghunath Das Vs. Union of India (UOI) and Another, are squarely applicable in the instant case. As such, we do not find any reason to disturb the judgment and decree. No other point has been urged before us during the course of argument

18. In the result, we dismiss the appeal with costs.