

**(1980) 09 SHI CK 0012**  
**In the High Court Of Himachal Pradesh**  
**Case No : C.R. No. 118 of 1978**

Union of India (UOI)

APPELLANT

Vs

Potato Suppliers Syndicate

RESPONDENT

**Date of Decision :** 04-09-1980

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 79, 80  
Constitution of India, 1950 — Article 300  
Railways Act, 1989 — Section 3(6), 77, 78B, 80

**Citation :** (1981) ShimLC 39

**Hon'ble Judges :** V.D. Misra, C.J

**Bench :** Single Bench

**Advocate :** A.C. Mehta, for the Appellant; Kailash Chand, for the Respondent

## Judgement

V.D. Misra, C.J.—This revision raises an important question relating to the interpretation of Section 80 of the Indian Railways Act (referred to as the Act) about the place of suing.

2. The present Respondent had consigned on 30th October, 1972, 200 bags of seed potatoes ex-Simla to Sheoraphuli by parcel train. But on account of the alleged "negligence of the concerned staff of the carrier Railways" the consignment was abnormally delayed in transit resulting in deterioration of the goods. Notice u/s 78B of the Act was given to the Chief Commercial Superintendent, Eastern Railways, Calcutta. A notice u/s 80 CPC was given to the General Manager of the same railway. A suit for recovery of Rs. 6,304.43 as damages was filed against the Union of India at Simla. Summons were issued for service upon the Union of India through the General Manager Eastern Railways, Calcutta, as requested by the Plaintiff. The summons were duly served. However, no one put in appearance. When the case was fixed for hearing, ex parte proceedings were ordered and an ex parte decree, as prayed for, was passed on 30th October, 1975.

3. On 14th April, 1976, an application under Order 9, Rule 13 CPC was made by

the Union of India for setting aside the *exparte* decree. It was contended that the cause title of the suit did not show which department of the Union of India was being impleaded. It was submitted that after perusing the plaint it was realised that though the cause of action to the Plaintiff had arisen against the Northern Railway administration as well as the Eastern Railway administration, the requisite notices were served only on the General Manager, Eastern Railways. It was finally submitted: "That in the absence of any summons to the Northern Railway (applicant) in regard to the filing of the suit in question, it was only on 3rd March, 1976, that this Railway Administration came to know of the existence of the suit for the first time when it received a letter from the Eastern Railway asking it to defend the suit". It was, therefore, submitted that there was sufficient cause for non-appearance of the Defendant on the date fixed for hearing.

4. This application was resisted. It was contended, *inter alia*, that the application was hopelessly barred by time. It was submitted that it was not the duty of the Plaintiff to particularly specify the name of the department of the Union of India in the heading of the plaint. It was emphatically denied that the Plaintiff had sought any relief against the Northern Railway or in any manner made any reference to it in their pleadings. The application was dismissed. The appeal was also dismissed by the District Judge holding that Section 80 of the Act gives a choice to the Plaintiff to file a suit either in the court in whose jurisdiction the goods were consigned or in the court in whose jurisdiction the goods were to be delivered. It was also noticed that the application was hopelessly barred by time and no application for condonation of delay was made.

5. Mr. A.C. Mehta, learned Counsel for the Union of India, contends that the title of the suit was defective inasmuch as it was not stated how the Union of India was to be served. This contention is without any force. u/s 79 of the CPC whenever a suit is against the Central Government, the authority to be named as Defendant is Union of India. Article 300 of the Constitution also lays down that the Government of India may sue or may be sued in the name of Union of India. Therefore, the title of the plaint cannot be said to be defective.

6. It is then contended that in view of Section 80 of the Act, suit against the Eastern Railway could not be filed at Simla and, therefore, the court had no jurisdiction to proceed.

7. In order to appreciate the contention of the learned Counsel it is necessary to read Section 80. It is in the following terms:

A suit for compensation for loss of life of, or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted,-

(a) if the passenger was, or the animals or goods were, booked from one station to another on the railway of the same railway administration, against that railway administration;

(b) if the passenger was, or the animals or goods were, booked through over the railway of two or more railway administrations against the railway administration from which the passenger obtained his pass or purchased his ticket or to which the animals or goods were delivered for carriage, as the case may be, or against the railway administration on whose railway the destination station lies, or the loss, injury, destruction, damage or deterioration occurred;

and, in either case, the suit may be instituted in a Court having jurisdiction over the place at which the passenger obtained his pass or purchased his ticket or the animals or goods were delivered for carriage, as the case may be, or over the place in which the destination station lies, or the loss, injury, destruction, damage or deterioration occurred.

8. It may be noticed that this section was amended by the Indian Railways (Amendment) Act, 1961 (Act No. XXXIX of 1961). Whereas the old section did not provide for the place of instituting the suit, a specific provision has now been made. Clause (b), with which we are concerned in this case, gives a right for filing the suit for compensation, inter alia, for the damage to goods either against the railway administration to which the goods were delivered for carriage or against the railway administration on whose railway the destination station lies or the damage occurred. The place of suing is specifically laid down. The relevant part of Clause (b) be again noticed:

...the suit may be instituted in a Court having jurisdiction over the place at which the...goods were delivered for carriage, ...or over the place in which the destination station lies, or the loss, injury, destruction, damage or deterioration occurred.

Now the railway administration itself is not a legal entity. The history of the Indian Railways Act, which was enacted as far back as 1890, shows that various companies owned various parts of the railway system in India. With the passage of time practically all these were nationalised from time to time. There may still be a minor part of railways left with private owners. Now u/s 3(6) of the Act "railway administration" or "administration" in the case of a railway administered by the Government, means the manager of the railway and includes the Government, and in the case of a railway administered by a railway company, means the railway company.

9. This section shows that various railway administrations are to be treated as separate units even though they may be state-owned. Clause (b) permits a person to institute a suit "against the railway administration from which" goods etc., were booked or "against railway administration on whose railway the destination station lies". Section 80 of the CPC requires the notice under that section to be served on the General Manager of the railway concerned. Similar is the effect of Section 78-B of the Act which enjoins upon the claimant to serve a notice in respect of compensation arising out of the damage to the goods to the railway administration to which the goods were delivered for being carried or to

the railway administration on whose railway the destination station lies. It is, therefore, necessary for the Plaintiff to indicate the railway administration on which the liability is sought to be fastened.

10. The Supreme Court in *The State of Kerala Vs. The General Manager, Southern Railway, Madras*, observed:

The significance of treating the various railway administrations as separate units, even though they may state-owned is to be found in Section 80 of the Act, and Section 80 of the Code of Civil Procedure. For claiming a decree against the Union of India under the Act the Plaintiff has got to specify the railway administration or administrations on account of which liability is sought to be fastened upon the Union of India, as contemplated by Section 80 of the Act. The institution of the suit has to be preceded by service of notice u/s 77 of the Act and Section 80 of the Code to the appropriate authority which is the General Manager of the railway concerned. The requirement of Clause (b) of Section 80 of the Code that a notice in the case of a suit against the Central Government where it relates to a railway must go to the General Manager of the concerned railway or railways is also based upon the assumption that it is primarily the liability of the railway administration of the said railway or railways to satisfy the claim of the suitor in accordance with Section 80 of the Act.

11. In the instant case a bare reading of the plaint shows that though a mention is made of the goods having been booked at Simla and handed over to the Northern Railway for carriage but the notices having been served on the Eastern Railway the liability was sought to be fastened on the Union of India because of the negligence of that railway.

12. However, the question is whether the suit could be instituted at Simla? It could be if liability was fastened on Northern Railway. But the suit as framed fastening liability on Eastern Railway could not be filed here. Admittedly the courts here have no jurisdiction "over the place in which the destination station lies". The jurisdiction mentioned in this clause is evidently territorial. The contention that suit against a railway administration is in fact a suit against the Union of India and for that reason the suit could be instituted at Simla, is begging the question. It is true that the Union of India runs the Northern Railway as well as the Eastern Railway. It is also true that a part of the cause of action had arisen at Simla within the jurisdiction of courts here. But if the frame of the suit shows that the claim for compensation was against the Eastern Railway on whose railway the destination station lay, the suit could not be instituted in Simla Courts. I find that a similar view was taken by a learned Single Judge of the Allahabad High Court in *Union of India v. Krishna Prasad Katiyar* 1974 ALJ 722.

13. In these circumstances I hold that the trial court had no jurisdiction to entertain the suit and so all the proceedings conducted by that court are null and void. The plaint is directed to be returned to the Plaintiff.