

(1956) 05 PAT CK 0007
In the Patna High Court
Case No : A.F.O.O. No. 310 of 1951

Union of India(UOI)

APPELLANT

Vs

Abdul Razak and Another

RESPONDENT

Date of Decision : 11-05-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 27 Rule 2, Order 3 Rule 3(1), Order 41 Rule 14, Order 41 Rule 21, Order 5 Rule 12
Constitution of India, 1950 — Article 294, 300, 375
Limitation Act, 1908 — Article 169
Railways Act, 1890 — Section 140, 145, 145(1), 3, 77

Citation : AIR 1956 Patna 511

Hon'ble Judges : Misra, J;Ahmad, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; Qazi Nazrul Hassan, for the Respondent

Final Decision : Dismissed

Judgement

Ahmad, J.—This is a miscellaneous appeal by the applicant, in a proceeding under Order 41 Rule 21, Civil P. C., against the order dated 11-7-1951, refusing to restore Money Appeal No. 36/3 of 1950 to file and rehear it again, which, according to the appellant, was decreed ex parte without any service of notice on them.

2. The money appeal in the lower appellate Court arose out of a suit for compensation for the partial deterioration of a consignment of oranges booked from Itwari on the B. N. Railway to Patna Junction on the E. I. Railway. The sole defendant in that suit which was instituted on 27-5-1949, and numbered as Money Suit No. 470 of 1949, was the Dominion of India (Railway Department), New Delhi, who are the appellant here.

The written statement in the suit by the Dominion of India was filed on 27-12-1949, as the owner of the East Indian Railway Administration. That was signed and verified on behalf of the Dominion of India by Mr. D.R. Carmody as

Deputy General Manager, E. I. Railway and was also signed by Mr. A.K. Bose, the advocate, who acted and pleaded for the East Indian Railway in the trial Court. On contest the suit was dismissed. Against that decision the plaintiff respondents preferred Money Appeal No. 36/3 of 1950 on 17-6-1950, in the Court of the District Judge at Patna.

In appeal the defendant appellant did not put in appearance and the same on its transfer to the Court of Additional Subordinate Judge, 5th Court, Patna, was ultimately allowed ex parte by the order dated 30-9-1950. Thereafter on 6-6-1951, the defendant appellant filed Misc. Case No. 5 of 1951 under Order 41, Rule 21, Civil P. C., praying therein that the ex parte decree passed against them in Money Appeal No. 36/3 of 1950 should be set aside and the same be reheard in the presence of the parties on the ground, firstly, that the notices of that appeal had not been duly served on them, and, secondly, on the ground that the appellant had no knowledge of the decree passed in that appeal until 9-6-1951.

The Court on hearing the parties did not accept the appellant's contention and dismissed that miscellaneous case on the finding that "the notice of appeal was duly served on the applicant" and that the application was time-barred. Hence this appeal.

3. Here in appeal also the same two questions have been raised which were pressed in the Court below, namely, whether the notice of Money Appeal No. 36/3 of 1950 had been duly served on the appellant and whether Misc. Case No. 5 of 1951 under Order 41, Rule 21, Civil P. C., was barred by time. Order 41, Rule 21 says:

"Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal, and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him". The period of limitation as provided under Article 169 of Schedule 1, Limitation Act for the rehearing of each an appeal disposed of ex parte is thirty days and the period stipulated therein is to begin from "the date of the decree in, appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree". In this case it is not denied that the application under Order 41 Rule 21, Civil P.C., filed on 6-6-1951, was made much beyond thirty days from 30-9-1950, when the ex parte decree in appeal was passed. Therefore, in terms of the first part of Article 169 that application had to be taken as barred by time.

It was, however, alleged therein that the defendant-appellant had no knowledge of the ex parte decree until 9-5-1951, and it was on that date that their lawyer inspected the records of the appeal and then for the first time came to know of it and thereafter then and there filed the aforesaid miscellaneous case. If that is

so, that application can be taken to have been filed in time only if it is established firstly that the notice of appeal had not been duly served upon them and secondly that the date of knowledge of the ex parte appeal to them was in fact 9-5-1951, as alleged and not any date before thirty days from that date as contemplated by the second part of Article 169.

Thus, the validity of the service of notice of appeal on the defendant appellant on the facts of this case is crucial both for the consideration or the question of limitation as also for the decision on merits as in that respect also the only question-raised is that of non-service of notice. I, therefore, take up that point first.

4. The records of the case show that originally the notice of the money appeal in the lower appellate Court was sent to the Secretary, Railway Board, who in reply thereto on 29-6-1950, wrote to the District Judge, Patna, as follows:

"Returned with the remark that, in accordance with the recent instructions issued by the Government of India, summonses should be sent direct to the General Manager Chief Administrative Officer of the Railway concerned".

Thereupon the notice of that appeal was issued to the Chief Administrative Officer, East Punjab Railway, who on receipt of the same on 30-7-1950, wrote to the District Judge in the following terms:

"The summons in the above noted suit has been received in this office without a copy of the plaint.

Will you please supply the same to the undersigned to enable relevant papers being connected and written statement filed".

And in that letter at the bottom it is noted that a copy of that letter was sent also to the Chief Commercial Manager, East Indian Railway, Banaras Cantonment, for a similar action. On the receipt of that letter, the Registrar, Civil Courts, Patna accordingly on 23-8-1950, sent a copy of the memorandum of Money Appeal No. 36/3 of 1950 to the Chief Administrative Officer (Commercial) East Punjab Railway, Delhi, requesting him to direct their lawyer at Patna to file his appearance slip in that case. What happened thereafter in regard to the service of notice of appeal is not clear from the papers on record barring this that in the meantime the lower appellate Court on 21-8-1950, passed the following order:

"Notices served. Respondents do not appear. Ask Mr. A.K. Bose, advocate to file his appearance slip in his appeal within a week. Fix 7-9-50 for hearing. Let the copy of memo, of appeal-be sent to the Chief Administrative Officer (Commercial) Delhi at early date as prayed for". And perhaps it was on the basis of this order that, the letter dated 23-8-1950, was sent by the Registrar, Civil Courts, Patna. Thereafter on 7-9-1950, the Court of appeal passed the next order which read as follows:

"Mr. A.K. Bose, advocate, has not filed his appearance slip. Inform the lawyer

and put up on 27-9-50 for hearing".

It is not denied that the aforesaid order was shown by the Court to Mr. A.K. Bose and that Mr. A.K. Bose in proof thereof had put in his signature also in the order sheet on 16-9-1950.

On these facts Dr. Qazi Nazrul Hassan appearing for the plaintiff respondents has contended that in this case two facts stand fully established, first, that the information of the appeal did reach the Chief Commercial Manager East Indian Railway, Banaras Cantt. though indirectly through the Chief Administrative Officer, East Punjab Railway, and second that their advocate Mr. A.K. Bose, who acted and pleaded for them in, the trial Court, had been fully informed about the appeal pending; against them in the Court below. Each of these two facts, according to the plaintiff respondents, amounted in law to a service of the notice on the East Indian Railway Administration.

5. In the case of a railway -- like the East, Indian Railway -- which is administered by the Government, the railway administration as laid down in Section 3(vi), Railways Act means the Manager of the Railway and includes the Government or the State. Therefore, in suits where such a railway is involved, the summons or the notice issued in their name may be served either on their Manager or the Government concerned.

In the case of the East Indian Railway the Government concerned is the Central Government, which before the Constitution? could sue or be sued in the name of the Dominion of India and now under Article 300 of the Constitution as also u/s 79, Civil P. C. may sue or be sued in the name of the Union of India. Order 27, Rule 2 defines persons who are thereunder authorised to act for the Government in suits by or against them. It says:

"Persons being ex-officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognised agents by whom appearances acts and applications under this Code may be made or done on behalf of the Government". And the form of the special power of authority shown to us by Mr. Bose appearing for the railway shows that in the Case of a railway administered by the Government it is the General Manager of the railway who is the person ex-officio authorised to act for and on behalf of the Central Government. Therefore, for purposes of suits involving a railway administered by the Government of India the word "Government" as used in Section 3(vi), Railways Act also practically means the same thing as the Manager of that railway and under Rule 3(1) of Order 3, Civil P. C., it is clear that processes served on the recognised agent of a party is as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

That being so, the proper and simple way of serving the notice of appeal on the East Indian Railway Administration was to serve the same on the Manager of that Railway Administration. In "this case it is not denied that no notice of appeal was ever served directly on the Manager of the East Indian Railway Administration.

What, however, has been contended is that the aforesaid two persons, namely, the Chief Commercial Manager, East Indian Railway, Banaras Cantt. and Mr. A.K. Bose, Advocate, were the persons authorised by the General Manager of the East Indian Railway to receive notice and summons and as such the information conveyed to them regarding the appeal amounted to a service of notice on the General Manager. In support of this contention, so far as it relates to the service of notice on the Chief Commercial Manager at Banaras, reliance has been placed by him on Section 140, Railways Act. That section says:

"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 or a State, on the Manager 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 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 Agent at his office and registered under Part in of the Indian Post Office Act, 1866".

This section in terms mentions only three modes of service of notice on the Manager but in dealing with notices u/s 77, Railways Act Courts have accepted that the -section is not exhaustive and it being an enabling section includes in its other modes of service as well including the mode of indirect service which may be done by proving that the contents of the notice were intimated to the Manager departmental or that officer had somehow knowledge of its contents: A. Mahadeva Ayyar Vs. The South Indian Railway Co., .

How far this rule of indirect method of service will apply to notices of suits and appeals is not necessary to be considered here as there is no evidence in this case to prove that in any form or manner or through any means the notice of appeal did in fact reach the Manager.

Then in dealing with Section 77 notice Courts have also held that if the Manager specifically or by implication deposes another officer to receive that notice or if it be established as a fact that the railway company by its course of business or the terms of the contract between the parties has held out a particular official as competent to deal with claims then the service of notice u/s 77, Railways Act must be held to be legally valid Governor-General in Council Vs. Gouri Shanker Mills Ltd., .

It is on the basis of this principle that Dr. Qazi Nazrul Hassan has argued that the information conveyed to the Chief Commercial Manager at Banaras by the Chief Administrative Officer (Commercial), East Punjab Railway, Delhi, amounted to a service of notice of appeal on the Manager of the East Indian Railway.

In my opinion, there is no substance in this contention and that for a number of reasons. Firstly, there is no authority brought to, our notice which supports the contention that the rule of law laid down in Governor-General in Council Vs. Gouri Shanker Mills Ltd., in respect to a notice u/s 77, Railways Act applies with equal force to the notice of appeal and suit also. Secondly there is no evidence that the lower appellate Court itself also sent any notice to the Chief Commercial Manager, East Indian Railway, Banaras Cantt.

It is true, as already stated, that the Chief Administrative Officer of the East Punjab Railway did send a copy of his letter addressed to the District Judge, Patna, to the Chief Commercial Manager, East Indian Railway, Banaras Cantt. and thus possibly it may be that some sort of information as to Money Appeal No. 36/3 of 1950 did privately reach the Chief Commercial Manager, East Indian Railway, Banaras Cantt.

But it is difficult to hold that that piece of information -- vague and private as it was -- conveyed by the Chief Administrative Officer, East Punjab Railway, to the Chief Commercial Manager, East Indian Railway, Banaras Cantt. did in law amount to the service of notice of appeal on him. Then there is no evidence to establish that the copy of the letter which the Chief Administrative Officer, East Punjab Railway sent to the Chief Commercial Manager, East Indian Railway, had along with it the notice of appeal also which the Court at Patna had sent to him.

In my opinion, chances are very remote in favour of the probability that the Chief Administrative Officer of the East Punjab Railway did in any case send the original notice addressed to him by the Court; & if only a copy of the notice was sent, that could not, as laid down in E. I. Rly Co. v. Jethmull Ramanand ILR 26 Bom 669 (C) and Duni Chand Ram Saran Das Chopra Vs. Secy. of State and Others, , amount to a service of notice on the Chief Commercial Manager, East Indian Railway, Banaras Cantt.

6. Lastly, it was nowhere suggested by the respondents in the Court below that the Manager of East Indian Railway Administration specifically or by implication had in any form or manner authorised the Chief Commercial Manager, Banaras Cantt. to receive on his behalf the notice of appeal or that the East Indian Railway Administration by its course of business or the terms of the contract between the parties had held out that the Chief Commercial Manager East Indian Railway, Banaras Cantt. was competent to receive the notice of appeal on behalf of the East Indian Railway Administration.

Therefore, on that ground also the rule of law laid down in some cases "that the requirements of 6. 77 read with Section 140, Railways Act, are satisfied by serving a notice within the prescribed period on the Chief Commercial Manager or any other subordinate officer of a Railway Company owned by the Government" is not applicable to the facts of this case even by analogy for those cases on a close reading clearly establish that that rule of law is ultimately based on the doctrine of delegation.

It is true that now in the face of the uniform decisions of the Court it is too late to say that the Agent or the Manager of railway companies of India is not an agent in the sense that he cannot appoint another person as his agent to do certain acts or that for all practical purposes he is not the principal himself of the railway administration entitled to delegate his powers, as it may be necessary, to other railway officers. *Mulchand v. G.I.P. Rly. Co.* 79 Ind Gas 602 : AIR 1924 Nag 288 (E)

But a person claiming himself to be an agent may legally act for his principal only if there is such delegation in his favour either expressly or by implication. Here, as already stated above, there is no evidence whatsoever that the Chief Commercial Manager, East Indian Railway, Banaras Cantt; apart from dealing with the claim advanced u/s 77, Railways Act, had also then an authority to act and receive notices of suits or appeals on behalf of the Manager, East Indian Railway Administration.

Therefore, the rule of law applicable to the Chief Commercial Manager regarding the notice u/s 77, Railways Act cannot be applicable in his favour in regard to the service of notice relating to a suit or appeal. That being so, the contention of Dr. Qazi Nazrul Hassan that the information communicated to the Chief Commercial Manager, East Indian Railway, Banaras Cantt. in the form of a copy of letter sent by the Chief Administrative Officer, East Punjab Railway, is equivalent to the service of notice of appeal on the Manager, East Indian Railway Administration fails.

7. The other point that remains to be considered in this connection is as to the information that the Court conveyed about that appeal to Mr. A.K. Bose, who acted and pleaded for the East Indian Railway Administration in the trial Court. I have already quoted above the order-sheet of the lower appellate Court of dates 21-8-50 and 7-9-50 of which, it is admitted, the latter bears the signature of Mr. A.K. Bose. This, according to the contention of the respondents, is tantamount to a service of notice of appeal on the East Indian Railway Administration and that for two reasons.

Firstly for the reason that Mr. A.K. Bose, as contemplated by Rule 2 of Order 27, Civil P. C., read with Section 145, Railways Act, was authorised under a special power to act for the East Indian Railway Administration in respect to all judicial proceedings in the civil Courts at Patna, and, therefore, under Rule 3 of Order 3, Civil P. C., a communication conveyed to him was as effectual as if the same had been communicated to the East Indian Railway Administration itself.

Secondly for the reason that Mr. A.K. Bose was the advocate who had acted and pleaded for the East Indian Railway Administration in the trial Court and his appointment as a pleader had not been determined in terms of Rule 4 (2) of Order 3, Civil Procedure Code. Therefore, he was the proper person on whom the notice of appeal could be served under Rule 14 (2) of Order 41 read with Rule 4(3) of Order 3, Civil P. O.

8. So far as the first reason is concerned, that I think is unanswerable. For this much is established that the General Manager of the East Indian Railway Administration is the ex officio authorised to act for the Central Government and, therefore, under Rule 2 of Order 27, Civil P. C., he has the authority to represent the Central Government in matters enumerated therein and u/s 145(1), Railways Act it is also open to him in the manner provided therein to authorise even any other person to act for or represent him in any proceeding.

In the present case it is not denied that an authority u/s 145, Railways Act in writing on a printed form given in his favour by the General Manager, East Indian Railway Administration, had been filed in the trial Court by Mr. A.K. Bose. The heading of that form read:

"Special Power of Authority. Know all men by these presents that I General Manager of the East Indian Railway Administration, Dominion of India, an ex officio authorised to act for and on behalf of the Dominion of India do hereby appoint and also pursuant to Section 145, Railways Act, 1890, do hereby authoriseto act for and represent the Dominion of India and the East Indian Railway administration in the matter of....."

And in enumerating the powers given thereunder it said:

"and to take such steps and proceedings as may be necessary for the prosecution or defence of the said matter, as the case may be and for that purpose to make, sign verify and present all necessary Plaint Petitions, Written Statements and other documents and to lodge and deposit moneys in Court and to receive payments from the Court of any money deposited in favour of the Dominion of India or the East Indian Railway Administration and to file and take back documents from Court and for all or any of the foregoing purposes to nominate appoint or retain Counsel, At. torney, Vakeels and other persons, and generally to act in the premises in all proceedings arising thereout whether by way of execution, appeal or otherwise or in any manner connected therewith as effectually to all intents and purposes as I could act if personally present I hereby ratifying and agreeing to confirm whatever shall be lawfully done by virtue of these presents. In Witness whereof I have hereunto set my hand this"".

These terms of the power given under the written, authority were, as is evident on the face of it, not only sufficiently wide to authorise him to act for the East Indian Railway Administration in appeal arising from that suit but that thereunder Mr. "A.k. Bose could do all in the suit on behalf of the Railway Administration

In substance, it was not an ordinary vakalatnama but a power with much larger authority. This conclusion gets support, though indirectly, also from the circumstance that in fact no vakalatnama had been filed by Mr. A.K. Bose, at the trial stage as it appears from the order of that Court passed on 17-12-1949. That "reads:

"Plaintiff files no steps, W. S. filed. The pleader has no power on behalf of the

defendant. Put up on 19-12-49 for settlement of issues". To the similar effect is the indication in the order dated 21-8-1950, passed in appeal as thereunder what Mr. A.K. Bose was directed by the Court to file was not a vakalatnama but only an appearance slip; that means, only a proof to satisfy the Court that he had the special power of authority to represent the railway administration in Judicial proceedings. Then it is not denied that Mr. A.K. Bose did act and plea for the East Indian Railway Administration in the trial Court.

Therefore, the probabilities are that he acted and pleaded in the trial Court on the basis of the special power of authority that had been given to him by the General Manager, East Indian Railway Administration u/s 145, Railways Act read with Rule 2 of Order 27, Civil P. C. Therefore, I have no hesitation to hold that Mr. A.K. Bose was then the authorised agent of the East Indian Railway Administration, and, therefore, the processes of the appeal could in law be effectually served on him as the authorised agent of the East Indian Railway Administration.

As such the only other question that deserves investigation on this point is as to whether the communication of the order-sheet dated 21-8-50 and 7-9-50 to Mr. A.K. Bose by the appellate Court amounted in law to the service of processes as contemplated by Rule 3(1) of Order 3, Civil P. C. Mr. Bose appearing for the appellant has strenuously challenged the validity of such a service and in this connection has laid reliance on Rule 3 (2) of Order 3. That says:

"The provisions for the service of process on a party to a suit shall apply to the service of process on his recognised agent." According to him, what was conveyed to Mr. A.K. Bose at the appellate stage was only the order-sheets of dates 21-8-50 and 7-9-50 and not the process of appeal as contemplated by Rule 3(2) of Order 3, Civil P. C., and, therefore, the communication of the aforesaid order-sheets could not amount in law to the service of process of appeal on Mr. A.K. Bose. In my opinion, Mr. P.K. Bose is not correct in his submission on this point. The relevant rule dealing with the service of notice of appeal is Rule 14 of Order 41, Civil P. C. That says

"(1) Notice of the day fixed under Rule 12 shall be affixed in the Appellate Court house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to."

There is no doubt that the word "respondent" in Clause (2) of Rule 14 includes in it his recognised agent too as is evident from the provisions laid down in Rule

3(1) of Order 3, Civil P. C., and in Rule 12 of Order 5, Civil P. C., and then all that need be conveyed in the notice contemplated by Rule 14 are the specifications about the appeal and the date fixed for the hearing of the same.

The order-sheet of the lower appellate Court dated 21-8-50 and 7-9-50 did, in my opinion, convey both the elements, namely, the specifications about the appeal as also the date as to when the appeal was to be heard. Therefore, I hold that the communication of the order-sheet of dates 21-8-50 and 7-9-50 did in law amount to a service of notice of appeal on Mr. A.K. Bose, the authorised Agent of the East Indian Railway Administration.

9. The other approach to the same problem, as contended on behalf of the respondents, is that Mr. A.K. Bose was not only the authorised agent of the East Indian Railway Administration but also a pleader who acted and pleaded for the East Indian Railway Administration in the trial Court. The provision dealing with the appointment of a pleader is given in Rule 4 of Order 3, Civil P. O, and the first three relevant sub-rules of that rule read;

"1. No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

2. Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

3. For the purposes of Sub-rule (2) an application for review of judgment, an application u/s 144 or Section 152 of this Code, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies as paid into the Court in connection with the suit shall be deemed to be proceedings in the suit."

The submission made on behalf of the respondents is that as Mr. A.K. Bose was also a pleader as contemplated by Sub-rule (1) and that as his appointment as such had not been determined in any of the modes enumerated in Sub-rule (2) of that rule, therefore, it should be deemed to have remained in force until all proceedings in the suit had ended.

Further, according to his contention, an appeal from a decree passed in a suit is only a continuation of the proceedings in the suit. Therefore, his appointment as a pleader on behalf of the East Indian Railway Administration continued to remain in force up to the appeal preferred against the decree passed at the trial as provided in sub-rules (3) and (4), and as such the communication of the order-sheet to Mr. A.K. Bose and his endorsement thereon was tantamount to the

acceptance of the notice of appeal by him on behalf of the East Indian Railway Administration, as laid down in Rule 5 of Order 3, which says:

"Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person."

In this case there is no evidence that the Court passed any order directing otherwise after the endorsement made by Mr. A.K. Bose on the order-sheet. Therefore, in this view also, according to Dr. Qazi Nazrul Hassan, the process of appeal should be held to have been served on the railway administration through their pleader.

In support of this contention reliance was placed on a number of decisions including those in *Har-nand Lal v. Lakshmi Chand* AIR 1950 Ajm 40 (F); *Babui Radhika Debi Vs. Ramasray Prasad Chowdhry and Others*, ; *Jugal Kishore Acharyya and Others Vs. Kapil Chandra Acharyya*, ; In the matter of two Pleaders 2 Pat LJ 259: AIR 1917 Pat 211 (1); *Boora Mal v. Tulsi Ram* AIR 1930 Lah 68 (J); *Mt. Balois Begum v. Shahzada Muhammad Hantdam* AIR 1934 Lah 973(1) (K); *Rasul Shah v. Diwan Chand* AIR 1936 Lah 583 CD and *Ishur Dutt Mundul v. Shib Per-shad Thakoor* 15 SWR 290 (M).

In my opinion, there appears to be sufficient force in this aspect of the case also but in view of the finding already given on the question of service of notice it is not necessary to give any concluded opinion on this point

10. Before, however, I leave the discussion on this Question of service of notice, it is necessary, I think, to dispose of one more small point raised by Mr. Bose as to the validity of the agency of Mr. A.K. Bose to accept service on behalf of the Railway Administration.

It is said that, the suit was instituted against the railway administration in the name of the Dominion of India and as the Constitution of India had in the meantime come into force when the appeal was filed on 17-6-1950, so in appeal the Union of India had to be substituted for the Dominion of India and that being so, the special power of authority or the vakalatnama, even if any, given to Mr. A.K. Bose by the General Manager, East Indian Railway, on behalf of the Dominion of India could not be of any avail for the proceedings in appeal as by then the entity of the appellant had changed.

In my opinion, there is not much substance in this contention. The special power of authority or vakalatnama, if any, given to Mr. A.K. Bose, for acting in the trial Court for the defendant was on face one on behalf of the General Manager, East Indian Railway Administration, and he was, it is not denied, as is also evident from the provisions given in the Constitution under Article 375, not only the then

ex-officio authorised to act for the Government in respect of all judicial proceedings involving East Indian Railway Administration but continued to remain as such even after the enforcement of the Constitution of India on 26-1-1950.

If, therefore only the constitutional set up of the Central Government was changed from the Dominion of India to that of the Union of India and not the authorised agent of the Central Government in matters of judicial proceedings involving East Indian Railway Administration, there is no reason why in view of the specific provisions made in Arts. 294 and 300 of the Constitution of India for the continuity of such proceeding in spite of the change brought there under the authority given by that authorised agent to Mr. A.K. Bose on behalf of the Central Government should be taken as having ceased to have any legal effect on the transfer of power from the Dominion of India to the Union of India.

Mr. P.K. Bose, however, has in support of his contention laid much reliance on the decision in *The Governor-General in Council Vs. Kabir Ram and Others*, . Therein Ramaswami J, observed :

Before parting with this case I may advert to the argument of the respondent that there has been no substitution in place of Governor-General in Council and the appeal was incompetent. But Section 12(1), Indian Independence (Rights, Property and Liabilities) Order, 1947, enacts that where the Governor-General in Council is a party to any legal proceedings on the appointed date, the Dominion of India "shall be deemed" to be substituted for the Governor-General in Council as a party to these proceedings and the proceedings may- continue accordingly. In the present case, the substitution should be deemed to have been made; and it is merely necessary for the learned advocate, Mr. S.N. Bose, to file a fresh Vakalatnama which he has undertaken to do."

And to the same effect was the observation made by his other learned colleague (Manohar Lall J.). who in his separate judgment stated as follow :

"I agree with the contention of the respondents that the substitution of the Dominion of India does not mean that the Dominion of India shall also be deemed to be represented by the same advocate who appeared for the Governor-General in Council. To meet this difficulty, Mr. S.N. Bose has undertaken to file a fresh vakalatnama." It is true that the last parts of these observations do give some support to the view advanced by Mr. P.K. Bose. It has, however, to be remembered that the learned Judges in making the aforesaid observations did not in substance give any decision on the point raised nor in fact that point was fully canvassed and argued at the bar.

It appears that that point having been raised, the learned lawyer appearing for the railway administration at once offered to file a fresh vakalatnama and the Court thereupon in those circumstances decided that the flaw, if any, due to the change in the constitutional set up of the Central Government was met by the fresh vakalatnama and, therefore, it stood rectified. That, in my opinion, cannot be taken as a decision on merit on the point under discussion.

It is further clear that in that case the attention of the learned Judges was not drawn in connection with that controversy either on the provision of law paid down in Section 145, Railways Act or on any provision corresponding to what is laid down in Article 376 of the Constitution. That being so, the decision in The Governor-General in Council Vs. Kabir Ram and Others, cannot be of any authoritative value to support the contention of Mr. P.K. Bose.

11. The next point raised in this appeal relates to the question of limitation. The finding of the lower appellate Court is that the application filed on behalf of the appellant under Order 41, Rule 21, Civil P. C. was barred by time under Article 169, Limitation Act as the same was filed much beyond thirty days from 30-9-50. When the ex parte decree in the miscellaneous appeal had been passed. Mr. Bose appearing for the appellant has contested this finding on the ground that the appellant got knowledge about the ex parte decree for the first time on 9-5-1951, and as notice of the appeal had not been duly served on them, the appeal filed on 9-5-1951, cannot under the latter part of Article 169, Limitation Act be said to be barred by time. He has further contended that the know-ledge that is referred to in the latter part of Article 169 must be a clear knowledge of the ex parte decree and not any vague information about the appeal wherein that decree is passed and in support of this contention reliance has been placed by him on the decision in Bapurao Sakharam Karmarkar Vs. Sadhu Bhivba Gholap, ; Kedar Nath Singh Vs. Kesri Mull and Others, and Rajeshwari Prasad Singh Vs. Brahmanand Lal and Another, .

In my opinion, so far as the second contention is concerned, that is unquestionably correct. The difficulty, however, arises in accepting the former contention. That is based on the assumption that the notice had not been duly served on the appellant, but in view of the finding already given that the service of notice of appeal on Mr. A.K. Bose, the agent for the railway administration in, the suit, amounted in law to the service of notice on the General Manager, East Indian Railway Administration, it cannot any more be agitated that the notice of appeal was not served on the appellant. Therefore, the contention on the point of limitation also fails.

12. In the result, therefore, I hold that there is no substance in this appeal and it must be dismissed with costs.

Misra, J.

13. I agree with my learned brother that this appeal should be dismissed. The service of notice of the appeal on" Mr; A.K. Bose must be taken as valid and sufficient service of notice on the appellant who was respondent in the Court below, as Mr. A.K. Bose was not only the advocate for the Railway Administration in the trial Court but held special authority to appear in the appeal arising from the suit. I also agree that intimation given to Mr. A.K. Bose, in the circum stances of the present case, must be taken as ser vice of notice of the appeal on him.