

(1964) 01 PAT CK 0025
In the Patna High Court
Case No : Civil Revision No. 536 of 1961

Union of India(UOI)

APPELLANT

Vs

Nirmal Kumar Promode Kumar

RESPONDENT

Date of Decision : 10-01-1964

Acts Referred:

Railways Act, 1890 — Section 77

Citation : AIR 1964 Patna 392

Hon'ble Judges : U.N. Sinha, J;S.P. Singh, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant;

Final Decision : Allowed

Judgement

1. This application has been filed by the defendant u/s 25 of the Provincial Small Cause Courts Act. It is directed against a judgment passed by the learned Small Cause Court Judge, "Ranchi, in a suit instituted by the plaintiff for recovery of Rs. 153-2-0, as compensation for non-delivery of a part of a consignment.
2. The plaintiff's case was that one bale of Sarees was despatched from Wadi Bunder on the 13th of March, 1959, to be delivered at Ranchi. The consignment reached its destination, on the 11th of September, 1959, but the bale was found torn and the plaintiff took open delivery. It was found that 35 pieces of Sarees were missing. Thereafter, notices u/s 77 of the Indian Railways Act and section 80 of the CPC were given to the authorities, and this suit was filed in due course.
3. The suit was contested on one point only, that is to say, on the point that the notice u/s 77 of the Railways Act had not been served within proper time. Thus, it was contended that the suit was not maintainable.
4. The learned trial Judge has held that the notice u/s 77 of the Railways Act had not been served validly. This conclusion is based on the fact that the consignment was booked on the 13th of March, 1959, whereas the notice u/s 77 of the Railways Act was issued on the 19th of September, 1959. Therefore, there

was no doubt that the notice was served after more than six months from the date of delivery of the goods for carriage by the railways. But the learned trial Judge has held that the plaintiff's suit was one of non-delivery of a part of the consignment and not a case of loss, and, therefore, no notice u/s 77 of the Railways Act was necessary, and consequently, there was no bar to the maintainability of the suit even if the notice was served more than six months after the date of delivery of the goods for carriage by the railway.

5. Learned counsel for the petitioner has contended that even on the facts of this case, where a portion of the consignment had been delivered on the 11th of September, 1959, and a portion had not, the case was really one of loss, and, therefore, a notice u/s 77 of the Railways Act was necessary. It is urged that nondelivery of a part of the consignment, as it is called, was really one of loss of a part not delivered. Reliance is placed upon a decision of this Court in the case of *Sitaram Kheria v. Union of India*, S. A. No. 1046 of 1959, D/- 3-9-1963 (Pat).

In this decision of this Court, what had happened was that the plaintiff had taken open delivery of certain consignment and discovered that out of six consignments, all excepting the consignment under railway receipt No. 59217 had been pilfered and damaged. The plaintiff instituted the suit on the allegation that there was negligence and misconduct on the part of the railway administration resulting in the non-delivery of the consignment in question. A defence was taken by the Union of India, amongst others, that a notice u/s 77 of the Indian Railways Act had not been served. It was held that a notice u/s 77 had not, in fact, been served. Upon a consideration of the decisions of this Court and of the Supreme Court, it was held that a notice u/s 77 of the Railways Act was imperative under the circumstances.

Reference was made to a decision of their Lordships of the Supreme Court in the case of *Governor-General-in-Council v. Musaddi Lal*, AIR 1961 S C 725. In our opinion, the instant case is directly governed by the decision of the Second Appeal of this Court., mentioned above and it must be held that the plaintiff was bound to give a notice u/s 77 of the Railways Act, within the time mentioned in that section, before it could claim compensation for the loss of the goods which had not been delivered to it, namely, 35 pieces of Sarees.

6. In view of this conclusion, this application must succeed and the plaintiff's suit must be dismissed. The application is, therefore, allowed and the suit is dismissed. Under the circumstances, however, the defendant must bear its costs throughout.