

Niranjanlall Agarwalla

Vs

Union of India

Civil Appeal No. 577 of 1965

(J. C. Shah, V. Ramaswami – I, G. K. Mitter JJ)

07.03.1968

JUDGMENT

MITTER, J.-

This is an appeal by certificate under Art. 133(1)(c) of the Constitution of India from a judgment and decree of the High Court of Calcutta confirming a decree of dismissal of the suit of the appellant herein instituted in the court of the Subordinate Judge, 8th Court at Alipore, District 24 Parganas, West Bengal.

The only two points canvassed in the appeal to this Court are : (1) whether notices under section 77 of the Indian Railways Act were properly served on the Railway Administration in this case, and (2) whether the suit was barred by limitation ?

The relevant facts are as follows. The appellant was entitled to delivery of two lots of goods booked at Sealdah, Calcutta on June 9, 1945 and September 24, 1945 respectively. The goods were for delivery at Cooch Behar. They were to be transported by Bengal and Assam Railway owned by the State and having its Head Office at the relevant time at No. 3 Koilaghat Street, Calcutta. In respect of the first lot, there was a short delivery of 104 umbrellas and a certificate of shortage was issued to the plaintiff on July 20, 1945. The appellant wrote a letter to the Chief Commercial Manager (Claims and Refunds) of the Bengal and Assam Railway at No. 3 Koilaghat Street on August 11, 1945 claiming the value of the goods short delivered i.e. Rs. 1,284/- as per bill enclosed and the short delivery certificate issued to him. On November 12, 1945 the plaintiff sent a letter to the Governor-General in Council representing the Bengal and Assam Railway through the Secretary, Government of India, New Delhi giving full particulars of the claim and stating that the Chief Commercial Manager had already been approached for payment. This letter was replied to by the Secretary, Railway Board on November 27, 1945 to the effect that the plaintiff's letter had been forwarded for disposal to the General Manager, Bengal and Assam Railway. In respect of the second lot of goods, the plaintiff made a similar claim to the Chief Commercial Manager of Rs. 12,742-7-4 as per the short delivery certificate of October 10, 1945. The plaintiff also wrote a letter to the Governor-General in Council on February 14, 1946 giving full particulars about the two invoices and the railway receipts covering the consignments despatched on September 24, 1945 and mentioning further that a claim had been preferred on October 24, 1945 enclosing the plaintiff's bill. It was stated expressly in this letter that notice to the Chief Commercial Manager had been given under s. 77 of the Railway Act. It does not appear that this particular claim of the plaintiff was referred to the General Manager, Bengal and Assam Railway by the Secretary to the Railway Board as in the previous case.

Failing to get any redress the plaintiff served a notice under s. 80 of the Code of Civil Procedure on February 14, 1946 on the Governor-General in Council through the Secretary to the Railway Board and on the 14th August 1946 filed a suit on the Original Side of the High Court at Calcutta for recovery of the two sums of money for non-delivery of the goods and alternatively for damages for wrongful conversion or detention of the said goods. It was defended by the Governor-General in Council and one of the pleas taken was that the Court had no jurisdiction to entertain the suit as no part of the cause of action for the suit had arisen within the said jurisdiction. On July 16, 1954, the suit was dismissed on the ground that the Court had no jurisdiction to try the same. Thereupon the appellant filed a suit out of which the present appeal arises on August 5, 1954. In the plaint of the second suit, it was stated that the earlier suit had been filed on the Original Side of the High Court on a bona fide mistake on the part of the plaintiff's solicitor and prosecuted with due diligence by the plaintiff till it was dismissed on July 16, 1954. The plaintiff prayed for exclusion of the time taken between the date of the institution of the earlier suit and the dismissal thereof under s. 14 of the Limitation Act. A defence similar to that taken in the High Court suit was put up by the Union of India, the defendant in the later suit.

The Subordinate Judge who tried the suit dismissed it on various grounds, inter alia that the notice served upon the Chief Commercial Manager was not in terms of the Railways Act and that the first suit had not been pursued bona fide and with diligence on the Original Side of the Calcutta High Court.

In appeal to the High Court, it was argued that (a) no notice under s. 77 was necessary in the case of non-delivery of goods (b) alternatively, notice in terms of the said section had been served by the appellant and (c) the plaintiff was entitled to the benefit of s. 14 of the Limitation Act. The greater part of the judgment of the High Court was devoted to the first question which was answered against the appellant. The second contention was summarily turned down by the observation that there was nothing on the record to show that the Chief Commercial Manager had been held out as the authority competent to receive notice under s. 77 of the Act. The question of limitation was not decided in view of the above although the learned Judges felt inclined to allow the appellant the benefit of s. 14 of the Limitation Act.

The relevant portion of s. 77 of the Indian Railways Act (IX of 1890) provided that

"a person shall not be entitled to.... compensation for the loss, destruction or deterioration of animals or goods delivered to be.... carried unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway."

Section 140 of the Act provided that "any notice or other document required or authorised by the Act to be served on a railway administration may be served, in the case of a railway administered by Government.... on the Manager.... by delivering the notice or other documents to the Manager... or by leaving it at his office or by forwarding it by post in a pre-paid letter addressed to the Manager.... at his office." Under s. 3 cl. (6) of the Act, unless there is something repugnant in the subject or context "railway administration" or "administration" in the case of a railway administered by the Government means "the manager of the railway and includes the Government...."

In this case, there can be no dispute that if notices to the Chief Commercial Manager (Claims and Refunds) complied with the terms of section 77 of the Act the most serious obstacle to the

appellant's success in this appeal would be overcome. It therefore becomes necessary to consider the ambit and effect of the said section.

The scope of section 77 has come up for consideration by various High Courts at different times. It is not necessary to refer to the same; but we may refer to a decision of this Court in *Governor General in Council v. Musaddi Lal* [[1951] 3 S.C.R. 647, 651.]. It was there observed that :

"Section 77 of the Railways Act is enacted with a view to enable the railway administration to make enquiries and if possible to recover the goods and to deliver them to the consignee and to prevent stale claims. It imposes a restriction on the enforcement of liability declared by s. 72. The liability declared by s. 72 is for loss, destruction or deterioration. Failure to deliver is the consequence of loss or destruction of goods; it does not furnish a cause of action on which a suit may lie against the railway administration, distinct from a cause of action for loss or destruction."

This aspect of s. 77 was again referred to in *Jetmull Bhojraj v. The Darjeeling Himalayan Railway Co. Ltd.* [[1963] 2 S.C.R. 832, 845.]. There it was observed that the object of service of notice under s. 77 being essentially to enable the railway administration to make an enquiry and investigation as to whether the loss, destruction etc. was due to the consignor's laches or to the wilful neglect of the railway administration and its servants, the notice under s. 77 should be liberally construed. To quote the words of the judgment of the majority Judges :

"In enacting the section the intention of the legislature must have been to afford only a protection to the railway administration against fraud and not to provide a means for depriving the consignors of their legitimate claims for compensation for the loss or damage caused to their consignments during the course of transit on the railways."

In the light of section 3(6) there would be sufficient compliance with section 77 if the notice was served on the Manager of the State owned railway. Section 140 only provides for the manner of service of notice. The Bengal and Assam Railway administration did not have an authority known as the Manager. It had a General Manager as also another high ranking officer i.e. the Chief Commercial Manager (Claims and Refunds) working in the head office of the company at Calcutta. As the said statutory provisions do not make it obligatory to serve a notice under s. 77 on the General Manager of a State-owned Railway, it is difficult to see why a notice served on the Chief Commercial Manager (Claims and Refunds) would not be a proper notice under the said section. The General Manager is in overall charge of many departments of the railway administration and is not particularly or immediately concerned with dealing with claims against the railway administration. The Chief Commercial Manager (Claims and Refunds) is the authority specially engaged in the enquiry into such claims and would therefore prima facie appear to be competent to deal with the claims by consignors or consignees against the railway administration envisaged by s. 77 of the Act. He is not a person of such inferior status that it can be said that a claim preferred as regards non-delivery would not be properly investigated or looked into for finding out the truth or falsity of the claim preferred. Apart from any authority it seems to us that a notice on the Chief Commercial Manager (Claims and Refunds) of a State-owned railway administration would be in terms of s. 77.

The question came up for consideration before a Full Bench of the Patna High Court in *Governor-General in Council v. G. S. Mills Ltd.* [I.L.R. 28 Patna 178.]. There are learned Judges of the Patna

High Court examined the various authorities of the High Courts of Madras, Lahore, Bombay, Allahabad and Calcutta. On a conspectus of all the authorities referred to, the answer to the question posed before the Full Bench was as follows :

"The requirements of section 77 read with s. 140, Railways Act, 1890 are satisfied by serving a notice within the prescribed time on the Chief Commercial Manager or any other subordinate officer of a Railway owned by the Government of India, provided it is 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 the claims on receipt of a notice to him."

There is a current of authority in the Calcutta High Court which is in line with the above Patna decision. We are in complete agreement with the view expressed by the Full Bench of the Patna High Court. In our opinion, it is only in the case of an authority subordinate or inferior in rank to the Chief Commercial Manager that proof of competence to deal with the claims would be called for. The question has now become academic in view of the recent amendment of the Railways Act.

The second point about limitation is not of any substance. The appellant had filed a suit in the Calcutta High Court on its Original Side for recovery of compensation within time. The despatch of the goods had taken place from Sealdah which is on the border of the territorial limits of the jurisdiction of the Calcutta High Court. It would appear from the plaint that the plaintiff was under the impression that the head office of the Bengal and Assam Railway administration being situated within the said limits, his suit could properly be instituted in the High Court. The Subordinate Judge was not right in holding that the suit had not been proceeded with bona fide. The learned Judges of the Division Bench of the High Court were disposed to give the plaintiff the benefit of s. 14 of the Limitation Act and nothing has been shown to induce us to take a different view.

The judgment and decree of the High Court are therefore reversed. The appeal is allowed with costs throughout and the plaintiff's suit decreed for the amount claimed and interest pendente lite at 6% per annum.

Before parting with the case, we however wish to make a remark against the conduct of the authorities of the railway administration concerned in the disposal of claims like the one in the present appeal. There is no suggestion anywhere that the plaintiff's claim was not genuine. The railway authorities had promptly issued certificates of shortage in respect of the consignments. There is nothing to show that the Chief Commercial Manager found any defect in the plaintiff's claim. If the claim had been settled in good time, the public exchequer would have been spared not only of its own costs of litigation which will be considerable but the costs which will have to be paid to the appellant. It does not behave the State to contest a good claim on the off-chance of success on some unsubstantial technical plea.

Appeal allowed.##

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