

SUPREME COURT OF INDIA

Raghunath Das

Vs.

Union of India

C.A.No.1005 of 1965

(R. S. Bachawat and K. S. Hegde, JJ.)

26.07.1968

JUDGEMENT

HEGDE, J.:-

1. The only question that arises for decision in this appeal by certificate is whether the High Court is right in holding that the notice issued by the appellant-plaintiff under Section 80, Civil Procedure Code is defective and therefore the suit is not maintainable.

2. The plaintiff despatched on July 29, 1947 certain copper articles from Gujranwala through North Western Railway to a place call Aghawanpur near Moradabad. That consignment never reached the destination. Consequently the plaintiff claimed a sum of Rs, 13,880/- as damages. The learned Civil Judge, Moradabad, who tried the suit decreed the plaintiffs claim in a sum of Rs. 10,206/9/with interest at six per cent from 15-8-1947 till the date of realisation. As against that decision, the Union of India went up in appeal to the High Court of Allahabad. The decree of the trial Court was assailed on several grounds one of them being that the notice issued under Section 80, Civil Procedure Code is invalid. The High Court accepted the contention of the Union of India that the

notice in question is invalid but rejected the other pleas, advanced on its behalf. It accordingly allowed the appeal and dismissed the suit on the sole ground that the notice issued did not comply with the requirements of Section 80, Civil Procedure Code.

3. It is not disputed that at the relevant time, the plaintiff carried on his business at Gujranwala under the name and style of Raghunath Das Mulkhraj. He was the sole proprietor of that concern. He sent several notices to the concerned authorities demanding compensation for his goods lost in transit.

4. It is not necessary to refer to all the notices issued by the plaintiff. It is sufficient for our purpose if we consider the legality of the last notice sent by him viz., on June 19, 1948. If that notice is valid then undoubtedly the suit is maintainable. The notice in question reads thus:

From: M/s. Raghunath Das Mulkraj c/o. Dr. Khamani Singh, Katghar, Gari Khana, Moradabad.

To

The General Manager, East Indian Railway, Calcutta.

Sir,

A notice like this has already been given to the Secretary, Central Government of India, New Delhi and now it is being given to you according to Amendment in the Procedure Code.

We have the honour to serve you with the following notice under Section 80, Civil Procedure Code. The facts leading upto the said notice are as follows:

1. That we are the refugees of Gujranwala (West Punjab) and now residing in Katghar, Gari Khana, Moradabad.

2. That under R.R. No. 550240 dated 29-7-47 Ex. Gujranwala to Agwanpur weighing 52 bundles 73 mds. 29 seers were booked from Gujranwala to Agwanpur.

3. That the aforesaid consignment has not been delivered to us so far due to the Railway's negligence, misconduct and gross carelessness.

4. That the non-delivery of the said consignment we have suffered a great loss and damage. (sic)

5. That on 14-10-1947, we preferred a claim against the Railway and claimed the sum of Rs. 12,554/1/- for the loss of non-delivery of the aforesaid goods.

Price of the goods .. Rs. 10,206/9

Our Profit 20% thereon Our damage for the much money locked Rs. 2041/5

up @ 1% p.m. ..

Rs. 306/3

Total

Rs. 12,554/1

6. That the Chief Commercial Manager, E. I. Railway by his letter No. A-2/5196/ 47, dated 25-11-47 acknowledged the receipt of our claim.

7. That thereafter nothing was heard from him in spite of our several reminders and requests for early payment.

8. That so far the goods have not been delivered to us nor our claim in respect thereof settled and paid. Hence this notice is served to you.

9. That now we claim the sum of Rs. 1,331/10 as detailed above inclusive damage @ 1% till 26-6-48.

10. That the cause of action for this notice and the suit to be filed hereafter arose at Moradabad (U.

P.) which is the District where the goods ought to have been delivered on or about 13-8-47, when the same should have been delivered and thereafter on the various dates mentioned in the correspondence and on the expiry of the period of this notice.

11. That we hope and will request you to please pay to us the amount of the claim at an early date and not to force us to go to the law Courts in our present (sic) and plight in which case you and the Railway will be responsible and liable for all our costs and damages.

Yours faithfully,

For M/s. Raghunath Dass Mulkraj,

S/d. Raghunath Dass

Proprietor

Dated:

Copy to: Chief Commercial Manager, Calcutta."

5. The High Court held that the notice in question does not meet the requirements of the law as the person who issued the notice is not the same person who filed the suit. In so deciding it heavily relied on the decision of this Court in *S. N. Dutt v. Union of India*, 1962-1 SCR 560=(AIR 1961 SC 1449).

6. Section 80, Civil Procedure Code requires, among other things, that the notice must state the name, description and place of residence of the plaintiff. It is true that the notice purports to emanate from M/s. Raghunath Dass Mulkraj. It is also true that in the body of the notice in several places the expression 'we' is used. Further the plaintiff had purported to sign for M/s. Raghunath Dass Mulkraj. But at the same time he signed the notice as the proprietor of the concern "Raghunath Dass Mulkraj". That is a clear indication of the fact that "Raghunath Dass Mulkraj" is a proprietary concern and the plaintiff is its proprietor. Whatever doubts that might have been possibly created in the mind of the recipient of that notice, after going through the body of the notice as to the identity of the would-be plaintiff, the same would have been resolved after going through the notice as a whole. In the plaint, the plaintiff definitely stated that he was carrying on his business under the name and style of "Raghunath Dass Mulkraj" meaning thereby that the concern known as "Raghunath Dass Mulkraj" is a proprietary concern and the name given to it is only a trade name. He had also stated in the plaint that he had given a notice under Section 80 of the Civil Procedure Code. In the written statement filed on behalf of the Dominion of India, the validity of the notice issued was not challenged. Regarding the notice in question the only averment in the written statement is that found in paragraph 8 therein and the same reads:

"That the suit is barred by Section 80, Civil Procedure Code as no notice under that section appears to have been served on this administration."

7. From this it follows that the Dominion of India did not challenge the validity of the notice. It is no more in dispute that the notice sent by the plaintiff had been served on the authorities concerned. The Union of India did not take the plea that the identical person who issued the notice had not instituted the suit.

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, Civil Procedure Code are not intended to be used as boobytraps 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 v. Union of India*, 1958 SCR 781 at p. 795 =(AIR 1958 SC 274 at p. 281) this Court observed that while the terms of Section 80 of the Civil Procedure Code 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 common-sense. 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 *Bhagchand Dagadusa v. Secretary of State*, AIR 1927 PC 176 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 common-sense. As was stated by Pollock, C. B., in *Jones v. Nicholls*, (1844) 13 M and W 361=153 ER 149 "we must import a little common sense into notices of this kind." Beaumont, C. j., also observed in *Chandu Lal Vadilal v. Government of Bombay*, AIR 1943 Bom 138 "One must construe Section 80 with some regard to common-sense 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 common-sense 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 1962-1 SCR 560=(AIR 1961 SC 1449) (supra). 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 and 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 and 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.

12. In the present case the Union of India could not have been left with the impression that the notice had been issued on behalf of a partnership firm. There are clear indications in the notice showing that the plaintiff was the sole proprietor of the concern known as "Raghunath Dass Mulkraj." Hence the decision in S. N. Dutt's case does not govern the case before us.

13. In the result we allow this appeal, set aside the judgment of the High Court and restore the judgment and decree of the trial Court. The Union of India shall pay the costs of the appellant both in this Court as well as in the High Court.

Appeal allowed.