

BOMBAY HIGH COURT

Union of India

Vs.

Indian Hume Pipe Co. Ltd

A.F.O. No.436 of 1980

(S.K. Desai, J.)

18.12.1980

JUDGEMENT

S.K. Desai, J.

1. This appeal is filed from the decision of the learned Judge of the City Civil Court, Bombay, given on the Defendants' Notice of Motion No. 2759 of 1980 in Long Cause Suit No. 4847 of 1970.
2. The respondents to this appeal are the two plaintiffs who filed the said suit. The defendants to the suit who are the appellants before me are the Union of India who are sued as owners of the Northern Railway and the Central Railway and acting through their respective General Managers at New Delhi and V.T. Bombay-1.
3. The plaintiffs to the suit are the Indian Hume Pipe company Ltd., a public limited company, having its registered office at Bombay, and the New Great Insurance Company of India Limited, also originally a public limited company having its principal place of business at Churchgate Reclamation, Bombay. It may be mentioned that the suit is of 1970 and during the decade, the second plaintiffs have been nationalized and thereafter must have been merged with one of the four Government Corporations which are now carrying on the nationalized general insurance business.
4. As the summary of the pleadings would indicate, the claim is in effect and substance by the Insurance Company, whose shares are now entirely owned by the Government of India, against the Railway Administrations which are also owned by the Government of India. This is on the footing that plaintiff No. 1 has been paid its claim regarding damages by the Insurance Company and the rights of Plaintiff No. 1 must have on such payment been subrogated to plaintiff No. 2. It is sad to observe that the Government Corporation or Departments are still litigating *inter se* in

the Civil Courts and checking the dockets of the Courts by such litigation without evolving a separate machinery to resolve or adjudicate such disputes. Time and again the need for evolving such machinery has been emphasized, but the wheels of the Government are moving very slowly, if at all.

5. To turn back to the facts as appear in the pleadings, it would seem that certain consignments were handed over to the Central Railway at Lucknow (Industrial Area Siding) in U.P. by Indian Hume Pipe Company for carriage to Lalitpur (M.P. on the Central Railway). The consignments which were of R.C.C. Hume Pipe and Collars were accepted for carriage at railway risk. These fourteen consignments were offered for delivery by the Central Railway at Lalitpur to the consignees concerned in damaged condition. A number of damage certificates were issued after assessment and these certificates are indicated in paragraphs 4 and 5 of the plaint. According to the plaintiffs the loss suffered by the first plaintiff company in consequence of the breakage of the pipes and collars came to Rupees 11,731.44. The plaintiffs have claimed that this loss was occasioned by the negligent manner of carriage and accordingly have sued the defendants for reimbursement in respect of the said damage suffered by them. In paragraph 7 of the plaint the plaintiffs have explained how the second plaintiffs viz., the New Great Insurance Company came to be joined as party plaintiffs.

6. Paragraph 11 is the jurisdiction clause in the plaint and the same reads as follows:

"The defendants are carrying on their business in Bombay at the headquarters of the Central Railway. The plaintiffs, therefore, submit that this Hon. Court had jurisdiction to entertain and try the suit."

The necessary written statement was filed, though somewhat belatedly, by the defendants in March/April, 1974. In paragraph 11 of the said written statement a plea has been taken that the City Civil Court at Bombay has no jurisdiction to try the suit. It was also sought that the suit should accordingly be dismissed with costs. It may be mentioned that this plea is contrary to the provisions of the Civil Procedure Code which directs a return of the plaint to the plaintiffs for being presented to the proper Court if it is ascertained that the Court in which the suit is filed has no jurisdiction to entertain and try the suit.

7. It would appear that right up to the time the defendants took out their notice of motion dated 9th July, 1980 not much progress was made in the matter of the trial of the suit. Not even the issues were framed. If the City Civil Court had framed even the issues within this period of ten years, which is required to be done, and had been aware of the desirability of determining the issue as regards jurisdiction expeditiously which duty is enjoined on Courts now by the Civil Procedure Code, it is clear that the issue as to jurisdiction would have been tried as a preliminary issue without the necessity of the defendants taking out the notice of motion which was for the following principal prayer:

"That the plaint presented herein by the plaintiffs above named be returned to the plaintiffs herein for presentation to the proper Court having jurisdiction to entertain and try the claim in suit."

In my opinion, such notice of motion was misconceived. It was, however, in substance an application to the Court to determine the question of jurisdiction and the Court on that application ought really to have framed the issue as a preliminary issue and disposed of the same. The Court instead of following the proper procedure has disposed of the said issue on the notice of motion which procedure can hardly be considered to be satisfactory. However, since the lower Court has given its findings and hence adjudicated the issue, it becomes necessary to consider the same on merits.

8. The first question is whether the suit could have been filed at Bombay in view of the fact that the consignment was loaded at Lucknow in the State of Uttar Pradesh and was to be delivered at Lalitpur in the State of Madhya Pradesh and the route admittedly was not through Bombay, so that there was no possibility of any damage having occurred at Bombay. Ordinarily the jurisdiction of the Court would be determined by the provisions contained in the Civil Procedure Code and it becomes necessary, therefore, to consider the provisions in the said Code pertaining to the institution of suits. Sections 15 to 20 of the Civil Procedure Code pertain to these provisions and we are admittedly concerned with Section 20 as it stood prior to the amendment of 1976. The whole of the section may now be extracted together with Explanation II :-

"20. Subject to the limitations aforesaid every suit shall be instituted in a Court within the local limits of whose jurisdiction -

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I: Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II : A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

It may be mentioned that by the amendment of 1976 Explanation I has been deleted with the

result that the original Explanation II now becomes the solitary Explanation to the said section.

9. Perusing the provisions contained in Section 20 it is clear that jurisdiction cannot be claimed to have been conferred on the City Civil Court under clause (c) as admittedly no part of the cause of action has arisen in Greater Bombay. Thus the plaintiffs, in order to substantiate the plea as to jurisdiction under Section 20 of the Civil Procedure Code, will have to contend that jurisdiction is conferred on the City Civil Court by reason of either Clause (a) or Clause (b). Now, the defendants to the suit are the Union of India, but they are sued as owners of two Railways viz., the Northern Railway and the Central Railway. It is the Central Railway alone which has its headquarters in Bombay. The Northern Railway Administration admittedly does not have its headquarters in Bombay and hence Clause (a) does not apply. If at all, jurisdiction is to be sought for under Section 20 of the Civil Procedure Code, it will have to be under Clause (b). I am making this analysis of the provisions because I find that leave of the Court has not been obtained as far as the Northern Railway Administration is concerned and such leave of the Court is clearly contemplated under Section 20 (b). There is also no acquiescence in such institution by the said Railway Administration. This, however, is not the point arising from the decision on the defendants' notice of motion which decision has been impugned in this appeal from order. Mr. Samant on behalf of the appellants fairly conceded that this point had not been urged by him in the lower Court and the attention of the trial Court had not been drawn to the failure of the plaintiffs to obtain leave under Section 20 (b) of Civil Procedure Code.

10. In the past there was a controversy as to whether the Union of India as owning the Railway Administration, can be said to be carrying on business and various High Courts had expressed differing views. Under Explanation II (original) a Corporation is deemed to carry on business at its sole or principal office in India. Thus, if the Union of India could be regarded as carrying on business of running railways through the Railway Administrations, it would be sued at the place where the principal office of the Railway Administration was situate. This controversy was resolved by the Supreme Court in its decision given in *Union of India v. Sri Ladulal Jain*¹, The rationale of the provision under Section 20 of the Civil Procedure Code was explained in paragraph 6 and the Court thereafter went on to observe that although the expression 'voluntarily resides or personally works for gain' cannot be appropriately applied to the case of the Government, the Government can however be said to carry on business. Articles 298 and 19 (6) of the Constitution of India were referred to and in the opinion of the Supreme Court, these Articles clearly indicate that the State could carry on business. The Court went on to consider that the running of railways was originally in the hands of private companies and individuals. According to the Supreme Court, it was the nature of the activity which defines its character. Running of railways is such an activity which would come within the expression 'business'. The motive of the person running the said business was irrelevant. Accordingly, it was held that the Union of India thus carries on the business of running railways and it could be sued in the Court within whose territorial jurisdiction the headquarters of the Railway run by the Union of India is situate. (See paragraph 16 of the report). Thus, as far as the Central Railway Administration was

concerned, the view of the Supreme Court in Ladulal Jain's case if applied would mean that the suit against the Union of India as owning the Central Railway Administration could be filed in the Bombay City Civil Court if the claim fell within the limits of pecuniary jurisdiction of that Court.

11. The decision of the Supreme Court in Ladulal Jain's case (AIR 1963 Supreme Court 1681) was given in an appeal of 1962 which was from a decision of the Assam High Court in April, 1961 - and the view of the Assam High Court was approved by the Supreme Court. But both the decisions were given prior to the amendment of Section 80 of the Railways Act which amendment was effected by Act 39 of 1961 which came into force on 1st January, 1962.

12. It becomes necessary now to consider whether any change is required to be effected in the legal position by reason of the amendment to the said statutory provision. Section 80 of the Railways Act prior to this amendment of 1961 read as follows:

"80. Suits for compensation for injury to through-booked traffic. Notwithstanding anything in any agreement purporting to limit the liability of a railway

¹ AIR 1963 SC 1681

administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger, was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred."

(underlining supplied).

Thus the provision as originally enacted indicated the parties against whom actions could be initiated. After the enactment of Act 39 of 1961 the said section now reads as follows:

"80. Suits for compensation. - A suit for compensation for loss of the 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."

(underlining supplied).

13. Thus a visual comparison of the said section prior and subsequent to the amendment will indicate that there is now added a provision as regards the forum in which suits for compensation against a railway administration are to be instituted. However, the Legislature has used the words "may be instituted" in preference to the mandatory "shall". It is this provision which has given rise to a controversy in which the High Courts of Assam and Karnataka have expressed divergent views. The controversy may now be briefly stated. Was it intended by Parliament after Act No. 39 of 1961 to provide for exclusive forums at which the suits of the type indicated in the earlier part of Section 80 could alone be instituted taking away or abrogating to that extent the applicability of the general provisions for institution of suits found in Section 20 of the Civil Procedure Code? As far as the facts of the present case are concerned, if the view that jurisdiction is governed by the provisions contained in Section 80 only is accepted, there would be no warrant for applying the Explanation (Original Explanation II) - to Section 20 and permitting the present suit to be filed at the headquarters of the Central Railway. Under Section 80 it is the clear position, which is not seriously disputed, that the suit may be filed either at Lucknow or at Lalitpur or in a Court exercising territorial jurisdiction over the place where the damage to the goods has occurred (provided the plaintiffs are somehow aware of this precise place). Thus, if Section 80 alone holds the field excluding the application of Section 20 of the Civil Procedure Code, the City Civil Court would clearly have no jurisdiction to entertain and try the suit and must return the plaint to be presented to the proper Court. If on the other hand this is a clarifying or enabling provision not abrogating the applicability of the general provisions contained in Section 20 of the Civil Procedure Code, then the plaintiffs' suit was filed in a proper Court having jurisdiction by reason of the Explanation to Section 20 since the headquarters of the Central Railway Administration are admittedly within Greater Bombay. For the purposes of this argument we shall ignore the fact that the Northern Railway Administration is also impleaded as a defendant, we shall consider the suit as being filed only against the Union of India owning the Central Railway. Is such a suit competent after the changes effected in Section 80 of the Indian Railways Act by Act 39 of 1961? The matter came to be considered by a Division Bench of the Assam and Nagaland High Court in *Assam Cold Storage Co. v. The Union of India*², and P.K. Goswami, C.J. speaking for the Division Bench considered whether the Court in which the suit was filed had jurisdiction. The facts before the Assam High Court were that a consignment of certain bags of onion was booked at Lasalgaon railway station for carriage and delivery at Tinsukia railway station on the North East Frontier Railway. The consignment was delivered in a damaged condition and a certificate to that effect was given by the railway at the time of delivery.

After appropriate notices the suit was filed in the court of the Subordinate Judge at Gauhati which was the headquarters of the concerned Railway.

14. One of the questions being considered by the Court was whether the suit was properly instituted. The appellant contended that it was by reason of the provision contained in Section 20 of the Civil Procedure Code the Union of India, as representing the North East Frontier Railway Administration, urged that Section 80 of the Railways Act was a special provision on the point and it impliedly repealed Section 20 of the Civil Procedure Code which was not available for being invoked by the appellant. It was submitted for the consideration of the Assam High Court that prior to the amendment of Section 80 of the Railways Act there was no provision in that section about the place of suing which provision was introduced for the first time by the 1961 amending Act. Thus, according to the respondents it was Section 80 which held the field and since it was a special provision dealing with certain suits against the Railway, the question of place of suing as far as such suits are concerned, was required to be governed by that special provision and not by the general provision under the Civil Procedure Code P.K. Goswami, J. speaking for the Division Bench, rejected the contention of the defendant (Union of India) in the following words (at p. 70, para 5):-

"The question that arises for consideration is whether after the amendment it is permissible for a plaintiff to sue the defendant at a place not provided for under Section 80 of the Railways Act. Section 20, Civil Procedure Code finds its place in a group of Sections (Sections 15 to 25) in Part 1 of the Code under a sub-heading, namely "place of suing". Section 20, subject to the limitations of Sections 16 to

² AIR 1971 Ass and Naga 69

19, provides *inter alia* for a suit to be instituted in a Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain. It is not disputed that the defendant carries on business within the jurisdiction of the Gauhati Court. It is strenuously contended that after the amendment of Section 80, a suit cannot be instituted at any place not included in that Section by taking recourse to Section 20, Civil Procedure Code Section 20 is the earlier law on the point and it was meant for various suits indicated therein. This section was the only resort prior to the amendment of Section 80.

The precise point that arises for consideration in this appeal is whether after the amendment of Section 80, it is permissible to add any other place of suing outside the limits of Section 80 even though it may be permissible under Section 20, Civil Procedure Code In other words, has Section 80 impliedly repealed Section 20, Civil Procedure Code? or, could these two sections co-exist without any inconvenience or difficulty? It will be noticed that when the Legislature sought to amend Section 80, it must be assumed that it had Section 20, before it which was the earlier section in the field on the subject. If so, in absence of an express provision to the contrary, or in absence of a clear implication in the provision, it is not possible to hold that Section 20, Civil Procedure Code has been

impliedly repealed by Section 80. When it is a question of the place of suing, both the sections can co-exist and there is no repugnancy or inconsistency in the two sections standing together....."

The Bench thereafter considered whether there was such a positive repugnancy between the two provisions that they could not be reconciled and made to stand together. In the view of the Assam High Court there was no such positive repugnancy and the objection as to the lack of territorial jurisdiction which objection was based on the provisions contained in Section 80 of the Railways Act was misconceived.

15. It may be mentioned that the Assam High Court decided the Second Appeal before it on a number of pleas. However, this point was one of several pleas considered by it and must be regarded as part of the ratio laid down by that Court.

16. The decision of the Assam High Court came to be considered subsequently by the Karnataka High Court and a single Judge of the said High Court found himself unable to accept the reasoning and the conclusions of the Assam High Court. That was in the *Union of India v. C.R. Prabhanna and Sons*³, In the matter arising before the Karnataka High Court the goods had been despatched from Wadi Bunder Railway Station, Bombay, to Bangalore City Railway Station, but the suit came to be filed before the Munsiff, Tumkur. This was done on the footing that the Railway Receipt had been negotiated through the State Bank of Mysore, Tumkur and payment had been made by the plaintiffs at that place. Thus it was contended that part of the cause of action had arisen at Tumkur and jurisdiction was sought to be conferred on the Munsiff, Tumkur, by placing reliance on the provision contained in Section 20 (c) of the Civil Procedure Code It was contended before the High Court that the Court of the Munsiff at Tumkur had no territorial jurisdiction to entertain the suit in view of the special provisions contained in Section 80 of the Railways Act as substituted by the Railways (Amendment) Act, 1961 (39 of 1961).

³ AIR 1977 Karn 132

The objection of the Southern Railway regarding the territorial jurisdiction was overruled by the Munsiff who decreed the suit. The lower Appellate Court affirmed his decision. The Union of India carried the matter in Second appeal to the Karnataka High Court where Venkataramiah, J., upheld the objection as to territorial jurisdiction finding himself unable to agree with the view of the Division Bench of the Assam High Court. The learned single Judge of the Karnataka High Court went on to extract the provision of Section 80 which has earlier been extracted in this judgment and thereafter to state the rival contentions. He also referred to the decision in *Assam Cold Storage Co. v. The Union of India*⁴, He thereafter found himself unable to agree with the Division Bench of the Assam and Nagaland High Court. In the words of Venkataramiah J. (at p. 134 para 5):-

"Section 80 as it originally stood laid down that notwithstanding anything in any agreement purporting to limit any liability of railway administration, a suit for

compensation for loss of goods could be filed either against the railway administration from which the goods were booked or against the railway administration on whose railway the loss, injury, destruction or deterioration of the goods occurred. There was no reference to the territorial jurisdiction of the Courts in which such suits for compensation under Section 80 could be instituted. By Act 39 of 1961, Section 80 was substituted by the new section extracted above. While doing so, the Parliament specifically mentioned in that section the Courts before whom such suits could be filed. I am of the view that the Parliament when it enacted the new Section 80 intended to specify the Courts before whom alone suits under Section 80 of the Railways Act could be filed. It should be remembered that Section 20 of the Civil Procedure Code was in existence even at the time when Section 80 was substituted in the year 1961. If the Parliament intended that Section 20 of the Civil Procedure Code should continue to be applicable, then there was no need for specifying in Section 80 the courts which could entertain the suits referred to therein as they would also fall within the category of courts specified in Section 20 of the Civil Procedure Code. While interpreting statutory provisions we should bear in mind that no legislature would ordinarily indulge in superfluity. If we accept the argument which appealed to the High Court at Assam and Nagaland, we have got to attribute to the Parliament the error of enacting a provision which would amount to a surplusage."

In this view, therefore, Section 80 of the Railways Act enacted a complete Code regarding the Courts before whom the Suits referred to therein can be filed. Once the provision is accepted as constituting a complete Code, then the special provision must be accepted as excluding the operation of the general provisions. The learned Judge also referred to the object underlying the specification of the Courts having jurisdiction to try suits against the Railway Administration under Section 80. According to him:

".....The object of specifying the Courts having jurisdiction to try suits under Section 80 is also clear. The Parliament apparently did not wish that any Court in India merely because the Railway Receipt was negotiated within its jurisdiction should have jurisdiction to try a suit falling under Section 80 against the Railway as it would cause a good deal of inconvenience to the railway administration to

⁴ AIR 1971 Ass and Naga, 69

defend suits at Courts far removed from the booking station, place of destination and the place where the loss of goods had occurred, when they were not concerned with the negotiation of the railway receipt. It cannot also be said that the Union of India either resides or carries on business or work for gain in every part of India wherever a railway station is situated. The suits against the Union of India under Section 80 have to be filed only in the Courts specified therein. I am, therefore, of the view that Section 20 of the Civil Procedure Code has to be read as not being applicable to suits falling under Section 80 of the Railways Act after Act 39 of 1961 came into force....."

17. When the matter was argued before the learned Judge of the City Civil Courts, he was faced with both the decisions. The reasons given by the Assam High Court appealed to him more and accordingly in his view the City Civil Court had jurisdiction. Thus, the notice of motion taken out by the defendant was dismissed, but with no order as to costs. It is this decision which is now impugned in this appeal from order.

18. It goes without saying that the controversy is the result of the loose manner of drafting legislation which now seems to be the accepted practice, perhaps to create more work for the legal profession. Parliament, if it had wanted to provide for Section 80 to be a complete Code as to the place of institution of suits as far as claims against the Railway were concerned, could have so clearly provided by having a non obstante clause at the appropriate place as also perhaps to a limited extent, by using the word "shall or" "shall alone" instead of the word "may" before "be instituted". No guidance is to be found in the statement of objects and reasons tendered to the legislature at the stage of introduction of the Bill which resulted in Act 39 of 1961. There is only a bare statement that the amendments were being proposed to remove difficulties without specifying what the difficulties were. To a certain extent the decisions, both of the Assam and Nagaland High Court and of the Karnataka High Court are supported by good reasoning and like the learned Judge of the City Civil Court I am faced with a problem of accepting one of the two possible processes of reasoning in preference to the other.

19. To a certain extent it is possible to hold along with the Division Bench of the Assam and Nagaland High Court that the abrogation or non-application of Section 20 ought not to be easily accepted unless there was a clear positive repugnancy or clear indication in Section 80 of the Railways Act after amendment which would suggest that the Parliament intended to enact an exclusive Code as far as claims against the Railways were concerned which would impliedly repeal or abrogate the general provision contained in Section 20 as far as such suits were concerned. If there was clarity and precision in the enacted law, then obviously the problems would not have arisen. On the other hand, there is much that is attractive in the approach of the learned single Judge of the Karnataka High Court where he has stated that to accept the arguments and the conclusions which found favour with the Assam and Nagaland High Court would be to render the changes effected in Section 80 of the Railways Act totally redundant and otiose. Section 80, as originally enacted prior to its amendment in 1961, did not provide for the place where the suits could be instituted. If a consignment was given over to the Railways as carriers at place 'A' to be delivered at place 'B' where the same was delivered in a damaged condition and if it is ascertained or comes to the knowledge of the aggrieved party that damage had occurred at place 'C' then the suit could be filed against the Railway Administration at any of the three places 'A' 'B' or 'C' if the provisions contained in Section 20 (c) of the Civil Procedure Code were to be applied. Part of the cause of action would arise at the place where the goods were taken charge of by the Railway Administration or where the damaged goods are delivered by the Railway Administration; and similarly, where the damage to the goods took place. Thus,

Section 80 does not add anything to the provisions contained in Section 20, nor does it clarify or resolve any difficulty. If Section 80 is to mean something and we must proceed on the footing that the Parliament did not embark upon an exercise in futility it must be that these three were hence to be the only places at which such suits could be filed irrespective of the other places at which the suits could earlier be filed under Section 20 (a) or 20 (b) of the Civil Procedure Code. As far as the Railway Administrations are concerned, it would appear that Section 80 of the Railways Act, after its amendment, gave a go by to the Explanation to Section 20 of the Civil Procedure Code which permitted suits being filed at the headquarters of the Railway Administration. To continue with the illustration which I have earlier given, suits filed at places, A, B, or C cannot be regarded as causing any great inconvenience to the Railway Administration since the goods have been dealt with at each of the three places, and it would be easy for the Railway Administration to produce the necessary material before the Court, which material would have bearing on the question of its liability. Thus, if the suit was to be instituted at 'A' or 'B' or 'C' the Railway administration cannot be said to be inconvenienced by the forum at which the suit could be instituted. The same considerations, however, do not hold good if the suits were to be instituted at the headquarters of the Railway Administration. No part of the evidence would be available at such headquarters. The employees concerned with the receipt, transmission and delivery of goods would ordinarily be not at the headquarters and the necessary evidence thus would have to be sought for on commission in almost every case if the Explanation to Section 20 read with Section 20(a) or 20 (b) were to be available to allow such suits to be filed at a place where no part of the cause of action has occurred. Obviously, it was to meet and remove this difficulty that changes were effected in Section 80 of the Railways Act. If that was the basis for effecting the changes, then to read the provision in the manner that found favour with the Assam and Nagaland High Court would be to render the said provision as totally meaningless which ought not to be done. Certainly the changes could have been effected in a better manner. If a non obstante clause had been enacted as part of the changed Section then certainly there would have been no difficulty, no lack of clarity, no confusion and the matter would have been simple. Even if the legislation be not fully satisfactory, I think it is the duty of the Court to read it in a reasonable manner, to supply the deficiency, if any, to remove the lacunae, if any found, and to give meaning to law which otherwise it would not have. In this view of the matter, I am more inclined to accept the approach of the Karnataka High Court which had the benefit of considering the judgment of the Assam and Nagaland High Court, but felt itself unable to agree with the views of the Division Bench.

20. In the result, I am unable to agree with the impugned order of the learned Judge of the City Civil Court who has preferred the decision of the Division Bench of the Assam and Nagaland High Court to the decision of the single Judge of the Karnataka High Court. The reasoning process in the latter decision appeals to me more for the reasons earlier indicated. In this view of the matter I think the proper order to be made on the notice of motion would be to direct the preliminary issue as to jurisdiction to be framed and that preliminary issue being answered in favour of the defendants. On that issue it will have to be held that the City Civil Court had no

jurisdiction to entertain and try the suit. Once that conclusion is reached, the trial Court will have to consider the provisions for return of plaint contained in Order 7 Rule 10 onwards. Accordingly, I allow the appeal, set aside the impugned order and direct the trial Court on the defendants' notice of motion to fix the issue as to jurisdiction as a preliminary issue, answer it in the manner indicated by me and pass a proper order for return of plaint under Order 7 Rule 10 of Civil Procedure Code.

21. As the matter is not free from doubt, parties are directed to bear their own costs of the notice of motion and of the Appeal from Order. Even as regards the costs of the suit are concerned, this would seem to be the proper approach on the question of costs.

Appeal allowed.