

Rekh Chand Nop Chand Through Phul Chand vs The Governor-General In Council And ... on 7 January, 1954

Equivalent citations: AIR1954ALL495, AIR 1954 ALLAHABAD 495

JUDGMENT

Malik, C.J.

1. 220 bales of piece-goods cloth were sent to Khurason Railway Road station in the district of Azamgarh and the consignee was the plaintiff, Messrs. Rekh Chand. The consignment arrived at the railway station and open delivery was obtained by the plaintiff on 24-7-1946. It was found that there was a shortage in the quantity of cloth delivered and the value of such shortage was Rs. 262-3-0. The plaintiff claimed this amount as damages with interest and certain other expenses that he had to incur in serving notices. The lower Court held that it was proved that the plaintiff had suffered damages to the extent of Rs. 304-7-3. Notice under Section 80, Civil P. C. had been sent by registered post to the Governor-General in Council and the acknowledgment due receipt was filed by the plaintiff. It was however held by the lower Court that inasmuch as it was not stated in the plaint that the notice had been delivered or 'left' at the office of the Governor-General the plaint was defective and it was on this ground alone that the plaintiff's suit was dismissed.

2. Paragraph 7 of the plaint is as follows:

"That the plaintiff gave notices to defendants Nos. 2 and 3 under Sections 77 and 140 of the Indian Railways Act on 3-10-1946 and notice under Section 80 to defendant No. 1 (Governor-General in Council) on 15-4-1947 within the time prescribed by law)."

The learned Judge has held that it was necessary for the plaintiff to have stated in the plaint that the notice had been delivered to the Governor-General in Council.

Reliance is placed by the learned Judge on the language of Section 80, the relevant portion of which is as follows:

"80. No suit shall be instituted against the Government, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

and the plaint shall contain a statement that such notice has been so delivered or left."

3. The objection is that in the plaint it was alleged that the plaintiff had 'given notice' under Section 80 to defendant No. 1 and it was not said that the notice had been 'delivered'. In our view this is hypercriticism and the lower Court has taken a very technical view. The lower Court relied on a judgment of the Court of Judicial Commissioners, Sind, -- 'Gangaram and Rupchand and Co. v. Secretary of State', AIR 1937 Sind 291 (A). The learned Judicial Commissioners relied on a decision of the Privy Council and were of the opinion that the decision of their Lordships of the Judicial Committee concluded the matter. We have looked into the decision of the Judicial Committee in -- 'Bhagchand Dagadusa v. Secretary of State', AIR 1927 PC 176 (B). The point did not arise in that case and the observations were only to this effect that the provisions of Section 80 were to be strictly complied with. That does not mean that in drafting the plaint the exact words of Section 80 are to be repeated and even if the purport of that section is conveyed in a different language the plaint was to be rejected.

In -- 'Mohammad Farooq v. Governor-General in Council', AIR 1949 Pat 93 (C), Imam J., as he then was, observed:

"While one must strictly enforce the provisions of Section 80 of the Code, it seems to me that the question of interpretation of the plaint as to what it means is another matter.... In the case before me, the notice had been given under a registered post. The respondent admitted having received the notice. The acknowledgment due also shows that the notice had been delivered to the Secretary, Central Government. In these circumstances there had been a sufficient compliance with the provisions of Section 80 of the Code."

In -- 'Sankunni Menon v. South Indian Railway, AIR 1952 Mad 502 (D), a learned Judge of the Madras High Court held that though Section 80 of the Civil P. C. was mandatory it was equally well settled that the Court should not be hypercritical in examining the language used but should interpret the same in a free and liberal spirit. It is not denied that notice in accordance with Section 80(b) was given by registered post and the notice was duly served. In the plaint it was mentioned that notice had been given. The acknowledgment due receipt duly signed on behalf of the defendant was filed in Court. The mere fact that the plaintiff mentioned that he had given notice instead of mentioning that the notice had been delivered did not justify the dismissal of the suit. If the learned Judge was of opinion that there was any defect he should have allowed the plaintiff to amend his plaint.

4. We must, therefore, allow this revision, set aside the decree passed by the lower Court and decree the plaintiff's suit for Rs. 304-7-3 with interest at 6 per cent, per annum up to the date of the filing of the suit and thereafter till the date of payment at 34 per cent, per annum. The plaintiff will get his costs in both the Courts.