

# Dominion Of India Through The Secretary ... vs Nihal Chand on 31 January, 1951

**Equivalent citations: AIR1951ALL617**

ORDER

Mootham, J.

1. This is an appln. in revn. under Section 25, Small Cause Cts. Act.

2. A concern known as the Citizens' Credit Syndicate Ltd. of Bombay drew seven credit notes in favour of one Dhanraj who transferred them by endorsement to the pltf. for a consideration of Rs. 250. The notes were dishonoured on presentation, & upon this fact being brought to the notice of the Syndicate it requested the pltf. to send the notes to it & undertook to pay him the sum of Rs. 250. The pltf. sent the notes to the Syndicate by value payable post stating their value to be Rs. 250. The letter containing the notes was delivered to the addressee but owing to a mistake on the part of the postal authorities they neglected to collect any money from the Syndicate. The pltf. having failed to obtain any redress from the postal authorities, filed a suit for the recovery of a sum of Rs. 250. The trial Ct. gave the pltf. a decree for the full amount claimed.

3. In this appln. for revision it is contended that the Dominion Govt. is, by virtue of the proviso to Section 34, Post Office Act, 1898, absolved from all liability. That section enacts that :

"The Central Govt. may, by notification in the Official Gazette, direct that, subject to the other provisions of this Act & to the payment of fees at such rates as may be fixed by the notfn., a sum of money specified in writing at the time of posting by the sender of a postal article shall be recoverable on the delivery thereof from the addressee, & that the sum, so recovered, shall be paid to the sender :

Provided that neither the Central Govt. nor the Secretary of State shall incur any liability in respect of the sum specified for recovery unless & until that sum has been received from the addressee."

The argument is that the proviso would have been unnecessary had it not been intended to make provision for the case in which the postal authorities have, through their own negligence, delivered a value payable postal article to the addressee without recovering the specified sum. In my opinion that is not so. The section provides that the Central Govt. may, in the circumstances therein mentioned, direct that the sum specified by the sender of a postal article shall be recoverable on the delivery thereof from the addressee; & the purpose of the proviso, in my view, is to make it clear that the postal authorities, notwithstanding the terms of the section, do not guarantee the collection of

the money but only undertake, if the money is recovered, to remit it to the sender. When the post office accepts a value payable postal article it enters into a contract with the sender to deliver that article only against payment by the addressee of the sum specified by the sender; & the proviso does not absolve the post office from liability to pay damages if, in contravention of its contract, it neglects to collect the specified sum on delivery. This was the view taken in the Madras case of *Mothi Rungaya v. Secretary of State*, 28 Mad 213 : (15 M. L. J. 226) with which I respectfully agree.

4. The trial Ct. awarded the pltf. Rs. 250 by way of damages, apparently on the ground that the amount was not in dispute. The written statement is not well drafted, but I am satisfied that it did put the amount of damages in issue. If the post office had performed the contract the applt. would have received the sum of Rs. 250 or, in view of the provisions of chap. VII of the Act, the letter would have been returned to him. In the latter case the pltf. would presumably have been able to sue the Syndicate on the basis of the dishonoured notes, but in the circumstances it appears unlikely that he would have recovered anything for it is in evidence that the Syndicate had ceased to do business. On the whole, therefore, it appears to me that a fair estimate of the loss sustained by the pltf. is Rs. 125 & the decree of the lower Ct. will be amended accordingly.

5. I confess to some surprise at the attitude of the postal authorities, for it appears from the evidence that not only did they decline to answer the perfectly legitimate inquiries made by the pltf. as to what had happened to his letter, but in that written statement they even denied having had letters from the pltf. the receipt of which they had themselves acknowledged. In the circumstances there will be no order for costs on this appln. but the order for costs made by the trial Court will stand.