

The State Of Madras vs C.P. Agencies And Anr. on 25 August, 1959

Equivalent citations: AIR1960SC1309, AIR 1960 SUPREME COURT 1309

Bench: S.K. Das, M. Hidayatullah

JUDGMENT

Das, C.J.

1. The only controversy arising in this appeal by special leave relates to the validity of a notice of suit given under Section 80 of the Code of Civil Procedure by the plaintiff, which is the first respondent before us, to the first defendant, which is the appellant herein. The very language of Section 80 makes it clear,--and it has been so held by the Judicial Committee in *Bhagchand Dagdusa v. Secy. of State*, which decision has been adopted by the same tribunal in many later cases--that Section 80 is express, explicit and mandatory and admits of no implications or exceptions. Section 80 peremptorily requires that no suit shall be filed against the Government or a public officer in respect of anything done in his official capacity until after the expiry of two months from the service of a notice in the manner therein prescribed stating the cause of action, the name, description and place of residence of the plaintiff and the reliefs which he claims. There is no dispute that the name, description and place of residence of the plaintiff and the reliefs claimed have been sufficiently stated in the notice. The only question is whether the cause of action has been so stated therein. Both the Courts below have held that it has been done.

2. The object of Section 80 is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for. As already stated, the reliefs claimed have been quite clearly formulated. The only question is whether the cause of action has been stated in the notice. The answer to the question depends on the interpretation of the notice given under Section 80. This being the true position, it is not necessary for us to refer to the decisions requiring the identity of the person who issues the notice and the person who brings the suit as in *Vellayan Chettiar v. Govt. of Madras*, 74 Ind App 223 : (AIR 1947 PC 197) and in *Government of the Province of Bombay v. Pestonji Ardeshir Wadia*, or those requiring the identity of the cause of action in two suits brought by the same plaintiff against the same defendant as a condition for the applicability of Order II, Rule 2, Code of Civil Procedure, as in *Mohammad Khalil, Khan v. Mahbub Ali Mian*, .

3. We have been referred to the well-known observations of Brett J. in *Cooke v. Gill*, (1873) 8 CP 107 and to the definition of "cause of action" given in *Read v. Brown*, (1888) 22 QBD 128 which are all referred to in 75 Ind App 121 : Lord Esher M. R., defined "cause of action" to mean "Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

Fry L. J. agreed and said:

"Everything which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action."

To the same effect are the observations of Lopes L. J. in *Mst. Chand Kour v. Partab Singh*, 15 Ind App 156. Lord Watson observed :

"Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers, entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour."

The meaning of "cause of action" being thus well understood, we now proceed to consider whether the cause of action with which the plaintiff has come to court has been stated sufficiently in the notice given under Section 80. For this purpose we must first see what is the cause of action set forth in the plaint.

4. Turning to the plaint, we find it stated that the second defendant was the Assistant Marketing Officer of the first defendant, the Madras Government, at Madras; that he had full authority to make purchases on behalf of that Government; that in 1945 the first defendant purchased black gram through the second defendant from the plaintiff at rates settled and fixed between the plaintiff and the first defendant represented by the second defendant; that deliveries would be made ex-godown; that godown rent would be paid according to the rates settled between the plaintiff and the first defendant at Nagpur and mentioned in the bills submitted on April 15, 1946; that interest would be paid on godown rent at six per cent. per annum; that godown rent would not be paid for two months; that annas eight per maund would be charged as overall charges for handling the goods including commission etc.; that the first defendant had paid the prices of the goods and the overall charges but had failed to pay the godown rent amounting to Rs. 28,444-6-6 and the plaintiff claimed Rs. 27,000 in round figures besides interest and lawyer's fees. The plaint makes it clear that the only claim was for godown rent and interest at six per cent. per annum thereon and lawyer's fees for drafting and sending the notice. The averments relating to the contract for the sale of black gram and the terms thereof are only matters of history set out as matters of inducement and are not, strictly speaking, parts of the cause of action on which this suit has been filed. The gist of the plaintiff's cause of action, as disclosed in the plaint, is for the recovery of godown rent for storing the goods agreed to be paid by the first defendant through the second defendant at rates mentioned in

the bill submitted by the plaintiff. The question is whether this real cause of action has been sufficiently stated in the notice under Section 80.

5. Turning now to the notice, which is Ex. P-6, we find an averment in paragraph 3 that the plaintiff had supplied about 11,000 tons of black gram to the first defendant, the Madras Government, in or about the year 1945 through the Assistant Marketing Officer of the Madras Government stationed at Nagpur, who is none other than the second defendant. This paragraph quite clearly indicates that in the matter of the sale of black gram the second defendant, the Assistant Marketing Officer, acted for the 1st defendant the Madras Government. Then in paragraph 4 it is averred that the black gram remained undespached for more than two months because transport facilities were not arranged by the Madras Government. The implication of the allegation that the goods remained undespached for more than two months is that something was to happen after the expiry of two months. Reference is made to the correspondence on this subject including a letter of the Assistant Marketing Officer, the second defendant, which, as said in paragraph 1 of the notice, was attached for ready reference and necessary action. Paragraph 5 refers to the bill of the plaintiff which the first defendant wanted to verify from the account books. In the penultimate paragraph of the notice a claim is made for interest at the rate of nine per cent. per annum.

6. Learned counsel appearing for the appellant points out that it is not clear at all from the notice whether the plaintiff's claim is based on a contract for the payment of godown rent or on the footing of damages for use and occupation of the plaintiff's godown or through whom the first defendant is alleged to have entered into the alleged agreement for the payment of godown rent or interest thereon and he submits that in the premises the notice does not fulfil the requirements of Section 80. In considering the question so posed before us we, must bear in mind the following observations made by this Court in *Dhian Singh Sobha Singh v. Union of India*, :

"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 that the terms of this section should be strictly complied with. That does not however, mean that the terms of the notice should be scrutinized 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) 153 ER 149 at p. 150, 'we must import a little common sense into notices of this kind'. Beaumont C. J. also observed in *Chandu Lal Vadilal v. Govt. of Bombay*, ILR (1943) Bom 128: (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..".

It should be remembered that Ex. P-6 is a legal notice of a suit sent through a lawyer. It is well known that a claim for "rent", in legal parlance, can only be founded on a contract. Throughout this notice the claim is described as "godown rent" and not damages for use and occupation of the godown. Therefore, the claim, prima facie, appears to be founded on a contract. Paragraph 3 is quite explicit that the supply of black gram by the plaintiff to the first defendant was arranged by and through the Assistant Marketing Officer, the second defendant. The arrangement for payment of godown rent was only incidental to the contract of supply of the goods and it is not unreasonable to

infer that this arrangement was also made by and through the second defendant acting for the first defendant. The relief claimed in paragraph 2 of the notice is that the Madras Government should pay up the amount claimed and if it does not pay or the failure is found to be due to the officer of the Madras Government, then the officer concerned should be held responsible, which indicates that the transaction was through some officer and the officer concerned in this case can be no other than the Assistant Marketing Officer through whom the goods were supplied, as stated in paragraph 3 of the notice. In the next place, paragraph 3 indicates that the godown rent is claimed for having stored 11,000 tons of black gram. Paragraphs 1 and 4 indicate that the godown rent became payable as the goods remained undespached for more than two months on account of no arrangement for transport facilities having been made by the first defendant, the Madras Government. The bill mentioned in paragraph 5 would show the rate at which the godown rent was calculated and the period for which it was claimed. Therefore, on a fair reading of the notice it may be said that the fact of the contract for the payment of the godown rent, the quantity of goods stored, the rate at which and the period for which the claim was made and the failure of the first defendant to pay the same are sufficiently stated so as to enable the first defendant, which is the appellant before us, to know what the plaintiffs claim was about and whether the claim should be conceded or resisted. On a careful consideration of the terms of the notice we are not of opinion that the contention of learned counsel for the appellant is well founded. This is sufficient to dispose of this appeal which is accordingly dismissed with costs.