

PETITIONER:
RAGHUNATH DASS

Vs.

RESPONDENT:
UNION OF INDIA AND ANR.

DATE OF JUDGMENT:
26/07/1968

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
BACHAWAT, R.S.

CITATION:
1969 AIR 674 1969 SCR (1) 450
CITATOR INFO :
R 1984 SC1004 (10,22)

ACT:
Code of Civil Procedure, 1908 (Act 5 of 1908), s. 80---Notice under section sent under trade name of proprietary firm--Suit filed in name of proprietor--Validity of notice--Suit whether maintainable.

HEADNOTE:

The appellant was the sole proprietor of a business carried on by him under the name and style of M/s. Raghunath Dass Mulkhraj. He sent a notice under s. 80 C.P.C. on behalf of 'M/s. Raghunath Dass Mulkhraj to the General Manager East Indian Railway Calcutta in connection with a claim for compensation for lost goods. The notice was signed by him as proprietor 'for M/s. Raghunath Dass Mulkhraj'. When he subsequently filed a suit against the Railway its maintainability was challenged on the ground that the notice under s. 80 was invalid, as there was no identity between the person who sent the notice and the person who filed the suit. The suit was decreed by the trial Court but the plea that the notice was invalid was accepted by the High Court. The appellant with certificate, came to this Court.

HELD: The object of the notice contemplated by s. 80 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 so that public time and money may not be wasted. The provisions in s. 80 Civil Procedure Code are not intended to be used as boobytraps against ignorant and illiterate persons. [454 B-C]

In the present case although the notice has been sent under the appellant's trade name he had clearly indicated that he 'signed it as the proprietor of the business. The notice had to be read as a whole and in a manner not divorced from common sense. So read the notice could not have given the Union of India the impression that it was issued on behalf of a partnership concern. The High Court had wrongly held that the notice was invalid. [454 H, 455 E]

S.N. Dutt v. Union of India, [1962] 1 S.C.R. 560, distinguished.

Dhian Singh Sobha Singh and Anr. v. The Union of India, [1958] S.C.R. 781, 795, relied on

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1005 of 1965.

Appeal from the judgment and decree dated April 24, 1962, of the Allahabad High Court in First Appeal No. 205 of 1950.

E.C. Agarwala and P.C. Agarwala, for the appellant.

V.A. Seyid Muhammad and S.P. Nayar, for respondent No. 1.

The Judgment of the Court was delivered by

Hegde, J. 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 s. 80, Civil

451

Procedure Code is defective and therefore the suit is not maintainable.

The plaintiff dispatched on July 29, 1947 certain copper articles from Gujranwala through North Western Railway to a place called Aghawanpur near Moradabad. That consignment never reached the destination. Consequently the plaintiff claimed a sum of P.s. 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 15th August 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 s. 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 s. 80, Civil procedure Code.

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.

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 Dass Mulkhraj, C/o. Dr. Khamani Singh, Katghar Gan Khana, Moradabad.

To:

The General Manager, East Indian Railway, Calcutta.

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.
452

2. That under R.R. No. 550240, dated 29th July 1947 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.

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

Price of the goods Rs.
10206-9

Our profit 20% thereon Rs.
2041-5

Our damage for the much money locked up @ 1% p.m... Rs. 306-3

TOTAL: Rs. 12554-1

6. That the Chief Commercial Manager, E. 1. Railway by his letter No. A-2/5196/47, dated 25th November 1947 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. 1331/10 as detailed above inclusive damage @ 1% till 26th June 1948.

10. That the cause of action for this notice and the suit to be filed here after arose at Moradabad (U.P.) which is the District where the goods ought to have been delivered on or about 13th August 1947 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 and

453

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 Mulkhraj

Sd./: Raghunath Dass

Proprietor Dated:

Copy to: Chief Commercial Manager, Calcutta."

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. (1)

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 Mulkhraj. 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 Mulkhraj. But at the same time he signed the notice as the proprietor of the concern "Raghunath Dass Mulkhrai". That is a clear indication of the fact that "Raghunath Dass Mulkhraj" 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 Mulkhraj" meaning thereby that the concern known as "Raghunath Das Mulkhraj" 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 s. 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

"That the suit is barred by s. 80, C.P.C. as no notice under that section appears to have been served on this administration."

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

(1) [1962] 1 S.C.R. 560.

454

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.

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 s. 80, Civil Procedure Code are not intended to be used as booby traps against ignorant and illiterate persons. In this case we are concerned with a narrow question. Has the person mentioned in the notice as plainsong 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.

In *Dhian Singh Sobha Singh and anr. vs. The Union of India*(1) this Court observed that while the terms of s. 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 rs. Secretary of State* 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 vs. Nicholls*, "we must import a little common sense into notices of this kind." Beaumont C.J. also observed in *Chandu Lal Vadilal vs. Government of Bombay* "One must construe section 80 with some regard to common sense and to the object with which it appears to have been passed."

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

(1) [1958] S.C.R. 781, 795.

455.

their pleadings shows that they never considered the person who brought the suit as being someone other than who issued the notice.

It is the contention of Mr. Seyid Mohammad, learned Counsel for the Union of India that the present case falls within the rule laid down by this Court in *S.N. Dutt v. Union of India*(1). 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 & 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 & 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.

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 Mulkhraj*". Hence the decision in *S.N. Dutt's* case does not govern the case before us.

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.

G.C.

Appeal allowed.

(1) [1962] 1 S.C.R. 560.

456