

therefore, Piare Lal was not a partner of the firm Chuni Lal-Dewan Chand, the application filed by Rattan Chand was perfectly competent as instituted.

Messrs. Bholabhai Bhogilal  
v.  
Rattan Chand  
and others  

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Grover, J.

As a result of what has been found above, no other point arises and the present appeal must be dismissed with costs.

BHANDARI, C.J.—I agree.  
B.R.T.

Bhandari, C. J.

APPELLATE CIVIL.

*Before Chopra and Gosain, JJ.*

FIRM M/S. SUNDER LAL-BRIJ LAL,—Plaintiff-Appellant.

*versus*

THE UNION OF INDIA,—Defendant-Respondent.

**Regular First Appeal No. 114 of 1950.**

*Railways Act (IX of 1890)—Section 77—Loss—Meaning of—Code of Civil Procedure (Act V of 1908)—Section 80—notice under—Construction and object of—Each Railway administration owned by the Central Government—Whether separate entity—Notice to each Railway administration sought to be made liable Whether necessary—Non-issue of such notice—Effect of—Railways Act (IX of 1890)—Section 80—Goods consigned for transport from one place to another over two or more railways—Goods lost in transit—Which Railway administration liable for loss—Relationship between the Receiving Railway and the Delivering Railway—Whether of principal and agent—Liability towards consignor—Whether of Receiving Railway or of Delivering Railway. . . .*

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*Held*, that the term 'loss' in section 77, Indian Railways Act, does not include non-delivery of the goods and, therefore, when a suit is brought against a Railway administration based upon non-delivery of goods which had been delivered to it for carriage by railway, notice of the claim is not necessary in the manner provided by section 77.

*Held*, that notice under section 80, Code of Civil Procedure, is not to be as strictly construed as a pleading. Its object is to inform the Government generally of the nature of the suit intended to be filed against it, so as to enable the Government to consider the actual position and to make amends or, if so advised, settle the claim. Some amount of precision in describing the cause of action is no doubt required, but that does not mean that every fact constituting the cause of action should also be mentioned. A little of common sense has always to be imported in interpreting the notice.

*Held*, that for the purposes of the provisions of section 80 of the Code of Civil Procedure, each Railway administration owned by the Central Government is to be treated as a separate legal entity and notice to each Railway administration which is sought to be made liable must be given. If such notice is not given, the suit will be defective for non-compliance with the imperative and explicit provisions of that section. Notice against one Railway administration of the plaintiffs' claim cannot be regarded as sufficient compliance with the provisions of the section to constitute a notice against the other Railway administrations.

*Held*, that where goods are consigned for transport from one place to another over two or more railways and there is evidence to show that they reached a particular midway station from where the jurisdiction of the delivering company commences, and the goods have not reached the destination, the only conclusion is that the loss occurred on the railway of the delivering company. It is well established that in such a case the consignor has the option to sue either the forwarding company with whom he had contracted for transport of the goods, or the delivering company which, after having received the goods, failed to deliver them to the consignor or his assignee. It is so provided by section 80 of the Indian Railways Act and also follows from the provisions of the Contract Act. The other Railway systems over which the goods are to be carried, including the delivering Railway, act as substituted agents for (and not as sub-agents of) the forwarding company and are liable to the principal for all kinds of torts committed by them. The plaintiff who having his right against the principal agent (the railway administration which contracted to transport the goods) chooses to omit

that administration and sues the substituted-agent administration undertakes to prove that the tort was committed on or by that administration. This onus he is to discharge strictly.

*Held*, that the consignor only contracts with the receiving Railway for safe carriage of the goods to and its delivery at the destination station. The receiving Railway acts as the agent of the consignor in this connection. As between the different Railway systems on which the goods are to be carried the receiving Railway acts as the principal and the other systems as its agents. The principal is always responsible to the consignor for the faults of his agents, but not *vice versa*. The agent will be responsible for its own faults, but not for those of the principal.

Case Law discussed.

*First appeal from the decree of Shri Jawala Das, Sub-Judge, 1st Class, Ambala, dated 7th March, 1950, dismissing the plaintiff's suit with costs.*

S. L. PURI and RAJINDAR SACHAR, for Petitioner.

F. C. MITTAL and K. C. NAYAR, for Respondent.

#### JUDGMENT

CHOPRA, J.—This is an appeal by the plaintiff against the judgment and decree of Sub-Judge, First Class, Ambala, dismissing his suit for the recovery of compensation for non-delivery of goods consigned to the Railway administration. The Dominion of India, now the Union of India, was the sole defendant in the case.

Chopra, J.

On 27th July, 1947, Mr. N. R. Aggarwal consigned 65 bags of brass scrap weighing 130 maunds of the value of Rs. 5,460 to the River Steam Navigation Company, Limited, at Dibrugarh Ghat (Assam) to be delivered to self at Jagadhari on the erstwhile N. W. Railway (then the E. P. Railway and now the Northern Railway)

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per navigation receipt No. 17010. The said receipt was endorsed in favour of the plaintiff-appellant against payment. The Navigation Company passed on the goods to the Assam Railway at Amingaon on the 31st July, 1947, for being transported by rail to the station of destination. The same day, the goods were despatched by goods train for Naihati, a station on the E. B. Railway. Thereafter, the goods were to pass through E. I. Railway before being delivered by N. W. Railway at Jagadhari. The goods do not appear to have reached Naihati and, therefore, could not be delivered to the plaintiff. On 23rd April, 1948, the plaintiff served a notice under section 80, Civil Procedure Code, on the General Manager, E. P. Railway, and then he brought the present suit for recovery of Rs. 5,460, the actual price of the non-delivered goods, and Rs. 1,820 as damages, the total being Rs. 7,280. So far, the facts are not disputed before us. In the plaint, it was alleged that the goods were received by the E. P. Railway and, therefore, the said Railway administration was responsible for the loss and payment of the plaintiff's claim and also that the plaintiff had served a notice under section 77 of the Indian Railways Act on the General Manager E. P. Railway. On neither of these points there is any reliable evidence on the record and the findings against the plaintiff are no longer challenged.

The defendant denied the plaintiff's claim and raised a number of legal objections to the maintainability of the suit. The trial Court dismissed the suit holding (1) that notice under section 77, Railways Act, to administrations of all the Railways, over which the goods were to be carried, was essential and (2) that notice under section 80, Civil Procedure Code, to E. P. Railway was not sufficient compliance with the requirements of

the section inasmuch as the notice did not disclose a cause of action, nor was it served on the other Railway administrations. On merits, it was found that the plaintiff was entitled to recover only the price of the goods amounting to Rs. 5,460 and not the damages. Claim for damages is no longer pressed by the appellant and the amount due to the plaintiff as price of the goods is not disputed by the respondent. The dispute, therefore, is confined to the above two legal objections.

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The present is a case of non-delivery of goods consigned to the Railway administration and the dispute rests on the interpretation of the term 'loss' in section 77, Railways Act. In *Babu Lal v. The Dominion of India* (1), a Full Bench of this Court has held that the term 'loss' in section 77, Indian Railways Act, does not include non-delivery of the goods and, therefore, in a suit against a Railway administration for the value of goods delivered to the administration to be carried by railway, when the suit is based upon non-delivery of those goods, notice of claim is not necessary in the manner provided by section 77. Mr. F. C. Mital, learned counsel for the respondent, has nothing to say against the view taken by the Full Bench and I am not only bound by but am in respectful agreement with the same. The finding of the trial Court on the first point has, therefore, to be set aside.

The defect pointed in the notice under section 80. Civil Procedure Code, is that it does not state that the Navigation Company had delivered the goods to the Railway administration at Amingaon or that the goods had reached the E. P. Railway, and, therefore, it did not disclose a cause of action against the E. P. Railway or for the

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 matter of that against any Railway administration.  
 Paragraph No. 1 of the notice reads :—

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“That on 27th July, 1947, Mr, N. R. Aggarwal of Dibrugarh (Assam) consigned 65 bags weighing 130 maunds of Brass Scraps each containing two maunds from Dibrugarh to Jagadhari N. W. R. via Amin junction Nai Hati, Saharanpur, Deliverable to self and obtained a Navigation Receipt No. 17010, dated 27th July, 1947, after delivering the goods to the Navigation authorities for delivery being made at Jagadhari.”

In paragraph No. 3 it was stated that the plaintiff repeatedly made enquiries about the goods at Jagadhari but every time he was told that the goods had not arrived. The Dominion of India was held responsible for non-delivery and liable to pay Rs. 5,460 as price of the goods according to the *beejuck* and Rs. 1,820 as damages to the plaintiff. It is correct that the notice did not in so many words or expressly state that the consignment was made over by the Navigation Company to the Railway administration at Amingaon, but that can very well be implied in the notice read as a whole. The starting and delivering stations were mentioned and the route over which the consignment was to be transported was also stated. The Dominion of India, as owner of the Railway administrations, was stated to be responsible for delivery of the goods and liable to pay for the loss thereof. The Railway administrations came into the picture and were responsible for the loss only if the goods were delivered to them at Amingaon by the Navigation Company. That fact was, therefore, clearly implied in the contents of the notice and could very well be inferred. The records at Amingaon railway station contained

entries regarding the receipt of the goods from the Navigation Company on 31st July, 1947, and their trans-shipment the very day to the next junction station mentioned in the notice. Similarly, the statement in the notice that E. P. Railway administration was responsible to deliver the goods or pay for the loss meant to say that, according to the plaintiff, the goods had reached one of the stations on that Railway.

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Chopra, J.

Notice under section 80, Civil Procedure Code, is not to be as strictly construed as a pleading. Its object is to inform the Government generally of the nature of the suit intended to be filed against it, so as to enable the Government to consider the actual position and to make amends or, if so advised, settle the claim. Some amount of precision in describing the cause of action is no doubt required, but that does not mean that every fact constituting the cause of action should also be mentioned. A little of common sense has always to be imported in interpreting the notice. The plaintiff claim the price of the goods and damages on account of their non-delivery by the Railway administration. It meant to say that the goods were delivered to the Railway administration and substantially informed the defendant of the ground of claim against it. In my judgment, therefore, the notice does not suffer from any defect on that score.

As already observed, notice under section 80, Civil Procedure Code, was served only on the E. P. Railway administration and in the plaint the goods were stated to have been received and not delivered by the administration of that Railway. It was for this reason that the Dominion of India, as owner of the E. P. Railway, was held responsible for the loss and liable to pay compensation to the

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plaintiff. It is not disputed that if the plaintiff succeeded in proving that the goods were received by the delivering Railway, he would have every right to sue and demand compensation from the administration of that Railway. The notice as well as the suit would, in that case, be free from any defect on the score of the provisions of section 80, Civil Procedure Code. Where goods are consigned for transport from one place to another over two or more railways and there is evidence to show that they reached a particular midway station from where the jurisdiction of the delivering company commences, and the goods have not reached the destination. the only conclusion is that the loss occurred on the railway of the delivering company. It is well established that in such a case the consignor has the option to sue either the forwarding company with whom he had contracted for transport of the goods, or the delivering company which, after having received the goods, failed to deliver them to the consignor or his assignee. It is so provided by section 80 of the Indian Railways Act and also follows from the provisions of the Contract Act. The other Railway systems over which the goods are to be carried, including the delivering Railway, act as substituted agents for (and not as sub-agents of) the forwarding company and are liable to the principal for all kinds of torts committed by them. The plaintiff who having his right against the principal agent (the railway administration which contracted to transport the goods) chooses to omit that administration and sues the substituted-agent administration, undertakes to prove that the tort was committed on or by that administration. This onus he is to discharge strictly.

In the case in context, if the plaintiff had succeeded in discharging that onus there would



have been no defect in the notice under section 80, Civil Procedure Code, and consequently in the suit. There is not an iota of evidence to prove or even to indicate that the goods had reached any station within the jurisdiction of E. P. Railway administration or were ever received by that administration. An additional and specific issue (No. 4-A), was framed on the point. Though no reference to this issue is made in the judgment, the trial Court has given a definite finding on the point against the plaintiff and the same is not being questioned before us on behalf of the appellant. The plaintiff's suit against the Dominion of India, as representing the E. P. Railway, must, therefore, fail for lack of evidence in proof of the only fact which could furnish a cause of action against that administration.

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Mr. S. L. Puri, learned counsel for the appellants, contends that the Union of India, the sole defendant in the case, is now the owner of all the Railway administrations concerned and, therefore, the suit can be decreed against the Union of India as representing the Assam Railway, to whom the goods were consigned. If the suit were to be regarded as one against the Union of India in the capacity of its being the owner of the Assam Railway, the suit would be hit by the provisions of section 80, Civil Procedure Code. The relevant portion of the section lays down—

“No suit shall be instituted against the Government until the expiration of two months next after notice in writing has been delivered to or left at the office of, in the case of a suit against the Central Government where it relates to a railway the General-Manager of that Railway.”

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The section leaves no doubt that for the purposes of its provisions each Railway administration owned by the Central Government is to be treated as a separate legal entity. If the suit against the Union of India is to be regarded as one relating to the Assam Railway, a notice under section 80, Civil Procedure Code, ought to have been delivered to, or left at the office of, the General-Manager of Assam Railway. That having not been done, the suit would be defective for non-compliance with the imperative and explicit provisions of section 80, Civil Procedure Code. Notice against one Railway administration of the plaintiff's claim cannot be regarded as sufficient compliance with the provisions of the section to constitute a notice against the other Railway administrations. In *Dominion of India v. Firm Museram Kishunprasad* (1), each Railway administration was regarded as a separate entity, with separate existence and personality, for the purposes of section 80, Railways Act, the administration that received the goods being the principal and the other Railways merely acting as agents of the principal. In *Union of India v. Durgadutt* (2), it was held that section 80, Railways Act, and section 80 of the Civil Procedure Code definitely contemplate that for the purposes of a suit the different Railways of India must be treated as separate legal entities and that there is no warrant for the proposition that it is sufficient to serve one notice under section 77 against the Union of India as representing all Railways.

The facts of the Division Bench decision of this Court in *Salig Ram v. Dominion of India* (3), relied upon by Mr. Puri, were somewhat different. There, certain bags of wheat were booked from a

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(1) A.I.R. 1950 Nag. 85  
(2) A.I.R. 1957 Cal. 202  
(3) 1952 P.L.R. 440

station on Jodhpur Railway to Simla on E. P. Railway, Notice under section 80, Civil Procedure Code, was sent to the Chief Administrative Officer of E. P. Railway. Suit for non-delivery of goods instituted against the Dominion of India was dismissed solely on the ground that there was some variance between the notice and the plaint. On plaintiff's appeal, it was held that there was really no variation between the name, description and place of residence of the plaintiff given in the notice and those given in the plaint and, therefore, the notice was good under section 80, Civil Procedure Code. Counsel for the respondent relying upon section 80, Railways Act, however, contended that the suit was not properly framed as no suit could be brought against the E. P. Railway, because the loss had occurred on Jodhpur Railway. Kapur, J., overruled the objection with the following observations :—

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“In the first place, the suit has been brought against the Dominion of India, now the Union of India, which is the owner of both these Railways and secondly, in their replication the plaintiffs had alleged that the loss had not occurred on the Jodhpur Railway but had occurred on E. P. Railway and there was no serious attack on this part of the plaintiffs' case in the trial Court. No issue was framed and there is no finding on this point.”

Following the Full Bench decision in *Babu Lal's case* (1), it was further held that section 80, Railways Act, did not cover the case of non-delivery of goods. It is evident that no objection on the basis of there being no notice under section 80, Civil Procedure Code, to the receiving Railway

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was raised in the case, nor was the point discussed or decided. In view of the finding that section 80, Railways Act, on which the objection was based, had no application and also the fact that the plaintiff's allegation that the loss occurred on the E. P. Railway was not contested, the observation regarding the Dominion of India being the owner of both the Railways is merely *obiter* and of no help to the appellant.

The plaintiff's suit against the Union of India, as representing the Assam Railway, shall, therefore, fail for non-compliance with the provisions of section 80, Civil Procedure Code.

It is next contended that in cases where the goods are to be carried by more than one Railway systems, all other Railway systems ought to be regarded as agents to the Railway where the goods are to be delivered. The argument is that E. P. Railway administration was the principal and all other Railway administrations, including the receiving Railway, acted as agents of the delivering Railway. Reliance in support of the proposition is placed upon certain observations made by Westropp, C.J., in *G. I. P. Railway, Co. v. Radhakisan Khushaldas* (1), In my view, there is no force in the contention. The consignor only contracts with the receiving Railway for safe carriage of the goods to and its delivery at the destination station. The receiving Railway acts as the agent of the consignor in this connection. As between the different Railway systems on which the goods are to be carried the receiving Railway acts as the principal and the other systems as its agents. The principal is always responsible to the consignor for the faults of his agents, but not vice versa. The agent will be responsible for its own faults, but

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(1) I.L.R. 5 Bom. 371

not for those of the principal. The goods in this case were originally consigned with the Navigation Company for transport. The company delivered the goods to the Assam Railway for being carried to and delivered at Jagadhari by the E. P. Railway. There is nothing on the record to show that the Assam Railway and for the matter of that the other Railways, over which the goods were to be carried, acted merely as out-agencies of the E. P. Railway, or that the latter was in fact the contracting party.

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The observations in *G. I. P. Railway Company v. Radhakistan-Khushaldas* (1), on which reliance is being placed, were based upon the facts of that case. The suit against the delivering Railway was based on the allegation that "the defendants (The G. I. P. Railway Company) through their agents in that behalf, the Madras Railway Company, agreed with and promised the plaintiff to safely carry the aforesaid bale from Raichore and deliver the same to the plaintiff at Sholapur." The plaintiff relied upon a written agreement between the two companies, and in this connection it was observed—

"that agreement may not have actually constituted a partnership between the two companies, yet it rendered the Madras Railway Company the agents of the G. I. P. Railway Company for the purposes of making a contract for carrying the bale of cloth over, at least, so much of the line of the latter company as forms part of the distance from Bellary (the place of booking) to Sholapur (the place of delivery), i.e., from Raichore to Sholapur".

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The more accepted view is that where goods are received by one Railway administration for carriage and delivery at a station on another Railway system, the receiving Railway does not thereby become, in relation to the consignor, the agent of the delivering Railway (*Kalu Ram Maigraj v. The Madras Railway Company* (1). The principle was followed in *Ammu Amma v. Kunapadi Kalan* (2), and it was held that the receiving Railway is to be regarded as the principal and the delivering Railway as its agent. In *Chunni Lal v. N. G. S. Railway Company Limited* (3), Stanley, C.J., at page 231 observed—

“When a railway company receives and undertakes to carry goods from a station on its railway to a place on another distinct railway with which it communicates, this is evidence of a contract with the receiving company for the whole distance, and the other railway company will be regarded as their agents and not as contracting with the bailor.”

The same view was taken in *Governor-General v. Sukhdeo Ram*, (4). I am in respectful agreement with this view and would, therefore, reject the contention based on the theory of agency.

In the result, the appeal is dismissed, but the parties are left to bear their own costs throughout.

B.R.T.

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(1) I.L.R. 3 Mad. 240  
(2) A.I.R. 1946 Mad. 229  
(3) I.L.R. 29 All. 228 (F. B.)  
(4) A.I.R. 1949 Pat. 329